



CareNet Security

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Introductory Clause

THIS POLICY IS A CONTRACT FOR INSURANCE FOR CONSIDERATION BETWEEN YOU AND US. THE COVERAGE IS PROVIDED AS DESCRIBED BELOW SUBJECT ALWAYS TO OUR RECEIPT OF THE PREMIUM AND OUR RELIANCE UPON THE STATEMENTS MADE BY YOU IN THE APPLICATION WHICH FORMS PART OF YOUR POLICY AND THE BASIS OF YOUR INSURANCE COVER. THE POLICY IS SUBJECT TO THE LIMIT OF LIABILITY, EXCLUSIONS, CONDITIONS AND OTHER TERMS SET OUT BELOW.

READ THIS POLICY CAREFULLY TO DETERMINE THE EXTENT OF COVERAGE. VARIOUS PROVISIONS IN THIS POLICY RESTRICT YOUR COVERAGE.

Words and phrases that appear in bold print have special meanings and are defined separately. Whenever a singular form of a word is used, the same shall include the plural when required by context.

IMPORTANT:

THIS IS A CLAIMS FIRST MADE AND NOTIFIED POLICY. THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AND NOTIFIED TO US DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD, ARISING FROM ANY CIRCUMSTANCES WHICH TOOK PLACE ON OR AFTER ANY RETROACTIVE DATE SPECIFIED IN ITEM 7 OF THE SCHEDULE AND BEFORE THE EXPIRY DATE OF THE POLICY PERIOD.

I. RISK MANAGEMENT SERVICES – DATA BREACH SUPPORT

We shall provide risk management and data breach compliance assessment services made available by Identity Theft 911®, as more fully set forth in the IDT 911™ materials included with this Policy. You may take advantage of Identity Theft 911® services at your convenience under this risk management/risk assessment provision and initiation of such services will not alter or limit any other terms, conditions or coverages under this Policy. For information on how to initiate these services, please contact your agent, broker or go to www.safeonline.breachresponse.com/home.aspx

II. INSURING AGREEMENTS

A - Privacy Breach Expenses

We will reimburse you for **privacy breach expenses** within the Limit or Sub-Limits of Liability in excess of your Deductible which are reasonable and necessary to pay as a result of a **privacy breach** first identified by you during the **policy period** and notified to us in writing during the **policy period** or any Additional Extended Reporting Period.



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B - Media, Privacy, IP Liability

We shall pay on **your** behalf all **damages** and **claims expenses** within the Limit or Sub-Limits of Liability in excess of **your** Deductible which **you** become legally obliged to pay as a result of any **claim** first made against **you** and notified by **you** to **us** in writing during the **policy period** or any Additional Extended Reporting Period arising out of the following:

- (a) disparagement or harm to the reputation or character of any person or organization, defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress, mental anguish, wrongful entry or eviction, trespass, eavesdropping, false arrest, malicious prosecution, outrage or outrageous conduct;
- (b) **privacy breach**;
- (c) **employee privacy breach**;
- (d) plagiarism, piracy or misappropriation of ideas in connection with any **media**;
- (e) infringement of copyright, domain name, trade dress, title or slogan, or the dilution or infringement of trademark, service mark, service name or trade name;
- (f) liability arising out of **your** negligence in respect of any **media** content;
- (g) liability arising out of **your** failure to prevent a party (including **your** employees who are not **directors** or **officers**) from unauthorized access to, use of or tampering with **computer systems** including:
 - (i) **hacker attacks**,
 - (ii) **computer virus** attacks, and
 - (iii) **theft of data**;
- (h) negligent and inadvertent transmission by **you** to a third party of any **computer virus**;
- (i) failure to provide opt-out or opt-in notices, or failure to adhere to opt-out or opt-in specifications of customers or consumers;
- (j) notwithstanding anything contained within Exclusion (o), unfair competition, involving misuse of matter, dilution, deceptive trade practices, civil actions for consumer fraud, false advertising or misrepresentation in advertising activities committed in the utterance, dissemination, gathering, acquisition, or obtaining of matter by **you** or with **your** permission solely in **your** performance of **advertising**;
- (k) unauthorised disclosure of any trade secret, data, design, interpretation, forecast, formula, method, practice, process, record, report or other item of information which is not owned by **you**, which is (i) in **your** care, custody or control; (ii) not available to the general public, and is: (iii) provided to **you** under a mutually agreed to written confidentiality/non-disclosure agreement; or (iv) marked "confidential" or otherwise specifically designated in writing as "confidential" by such other party; or
- (l) inability of an authorized third party to gain access to **your** services including denial of service, unless caused by a mechanical or electrical failure.

C - Cyber Extortion Event

We shall also pay, in excess of **your** deductible and within the applicable Limit or Sub-Limit of Liability, only where insurable by law and with **our** prior written consent, **cyber extortion expenses**.



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As a condition precedent to payment by **us**, **you** shall:

- (a) keep the terms of this **cyber extortion** coverage confidential, to be shared only with necessary management and potential law enforcement authorities in the course of responding to a **cyber extortion event**;
- (b) take all reasonable steps to terminate a **cyber extortion event** by means other than through payment of monies to a third party;
- (c) co-operate with outside governmental authorities, where necessary, to effectively mitigate the extent and nature of any **cyber extortion expenses**.

D – Business Interruption and Loss of Data

We will indemnify **you** in respect of:

- (a) the loss of **business income** incurred as a consequence of an **insured event** within the **indemnity period** and after the **deductible time period**;
- (b) **first party expenses you** incur as a result of the loss of **data** or **data** which **you** hold in trust (or for which **you** are legally responsible) arising from an **insured event**;

Our liability under this Insuring Agreement is deemed limited to the amount specified in Item 5 of the Schedule.

III. DEFENSE AND SETTLEMENT OF CLAIMS

- (a) It is **our** duty to defend a **claim** against **you** even if such **claim** is groundless or fraudulent however **our** right and duty to defend **you** under this Policy ends when the applicable Limit of Liability has been exhausted by payments of **damages** or **claims expenses**.
- (b) **We** have the right and duty to defend, subject to the Limit of Liability, Exclusions, and other terms and conditions in this Policy, any **claim** against **you** seeking **damages** including injunctive or other non-monetary relief first made against **you** and notified to **us** during the **policy period** or any Extended Reporting Period, for any circumstance first committed by **you** on or after any **retroactive date** and before the end of the **policy period**.
- (c) **You** may not make any payment (except at **your** own cost), assume any obligation, or incur any expense in relation to a **claim** without **our** written consent, provided that such consent may not be unreasonably withheld. Only reasonable and necessary costs will be paid.
- (d) **We** have the right to select and appoint defense counsel to defend any **claim** notified under this Policy. If **you** have appointed defence counsel, at **our** request **you** shall instruct them to turn over all their relevant files, materials and work product and co-operate with counsel who **we** select and appoint as defense counsel.



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- (e) **We** have the right to investigate and settle any **claim** in the manner and to the extent that **we** believe is proper unless the total cost of **damages** and **claims expenses** is less than the amount remaining within **your** Deductible. If **you** refuse to consent to any settlement or compromise recommended by **us** which is also acceptable to the claimant and then elect to contest the **claim**, **our** liability for any **damages** and **claims expenses** shall not exceed:
- (i) the amount for which the **claim** could have been settled, less the remaining Deductible, plus the **claims expenses** incurred up to the time of such refusal; and
 - (ii) fifty percent (50%) of any **damages** and **claims expenses** incurred after the date such settlement or compromise was recommended to **you** with the remaining fifty percent (50%) of such **damages** and **claims expenses** to be borne by **you** at **your** own risk and uninsured;
- or the applicable Limit of Liability, whichever is less, and **we** shall have the right to withdraw from further defense by tendering control of said defense to **you**.
- (f) Theodore J. Kobus III of Baker Hostetler, 45 Rockefeller Plaza, 11th Floor, New York, NY 10111 shall serve as defense counsel for all **claims** notified under and covered by this Policy. In the event Mr. Kobus and Baker Hostetler are unable to defend any **claim** due to a conflict of interest or additional counsel is required, **we** have the right to select and appoint such other or additional counsel to defend any covered **claim**.

IV. DEFINITIONS

1. **Advertising** means, publicity or promotion (including contests, sweepstakes, games and game materials) of any kind of products or services.
- Advertising** does not include:
- (a) films for theatrical release, radio, or television programs;
 - (b) the operation of a radio station, television station, or cable system; or
 - (c) books or periodical publications that are independent of and separate from advertising.
2. **Bodily injury** means physical injury, sickness, disease or death of any person.
3. **Business income** is defined as:
- (a) the net income (net profit or loss before income taxes), which would have been earned or incurred had no loss occurred, and/or
 - (b) operating expenses that were affected by the insured event, and were incurred during the indemnity period.

Calculation of loss shall be based on an analysis of the revenues and costs generated during each month of the twelve months prior to the loss occurring and will also take into account the reasonable projection of future profitability or otherwise had no loss occurred and will include all material changes in market conditions which would affect the future profits generated.

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You requests for indemnity shall be accompanied by a computation of the loss. This shall set out in detail how the loss has been calculated and what assumptions have been made. **You** will produce any documentary evidence, including any applicable reports, books of accounts, bills, invoices and other vouchers and copies of the such which **we** may require, and **you** will afford every assistance in **our** investigations.

Any payment under **II. Insuring Agreements D** will, where applicable, be reduced by the extent to which **you**:

- (a) use damaged or undamaged **data**; or
- (b) make use of available stock, merchandise or other **data**; or
- (c) use substitute facilities, equipment or personnel.

4. **Claim** means:

- (a) a civil proceeding for **damages** commenced by the filing of a complaint or similar pleading;
- (b) an arbitration or mediation proceeding in which **damages** are sought;
- (c) a written demand for **damages**;
- (d) any written notice received by **you** or a written report by **you** to **us** of a **privacy breach** committed or allegedly committed on or after the **retroactive date** listed in the Schedule; or
- (e) regulatory actions and investigations commenced by a federal, state or local regulatory body as a result of an actual or alleged **privacy breach**.

All **claims** arising out of:

- (a) the same covered event; or
- (b) covered events of one or more insureds which have as a common nexus any fact, circumstance, situation, event, transaction, cause, or series of connected facts, circumstances, situations, events, transactions, or cause;

shall be considered a single **claim** regardless of the number of **claims**, claimants, defendants or causes of action. The date when any such **claim** is made will be the date that the first **claim** is made.

5. **Claims expenses** means:

- (a) fees charged by a lawyer(s) designated by **us** to defend any **claim**, and
- (b) all other reasonable fees, costs and expenses resulting from investigation, adjustment, defense and appeal of a **claim**, suit or proceeding arising in connection therewith, if incurred by **us**, or by **you** with the written consent of **us**.

Claims expenses do not include any salaries, overheads or other charges **you** incur for any time **you** spent in cooperating in the defense and investigation of any **claim** or circumstance which might lead to a **claim** under this Policy.

Claims expenses are part of and not in addition to the Limit of Liability.

6. **Computer system** means electronic, wireless, web or similar systems (including all hardware and software) used to process data or information in an analogue, digital, electronic or wireless format including computer programs, electronic data processing media, electronic data, electronic data communications equipment, operating systems, computer network and networking equipment, firmware, servers, web sites, extranet, and all input, output, processing, storage and on-line or off-line media libraries, music, graphic, entertainment and other content (to the extent that they hold electronic data).

7. Computer

virus means computer instructions placed on a **computer system** without the owner or user's knowledge or consent, that are designed to harm, impede, corrupt, erase, remove, disrupt, degrade or destroy the **computer system**, electronic data or software (or any part of them). **Computer virus** includes malicious codes, malware, trojan horses, worms, and time or logic bombs.

8. **Cyber extortion** means any credible threat or series of threats by a third party, other than an employee of **yours** or former employee with prior knowledge of the existence of this coverage, expressing intent to:
- (a) release, divulge, disseminate, destroy or use confidential or proprietary information, or personally identifiable information, stored on **your computer system**
 - (b) alter, corrupt, damage, manipulate, misappropriate, delete, or destroy data, instructions, or any electronic information transmitted or stored on **your computer system**;
 - (c) initiate an attack on **your computer system** that depletes the **computer system's** resources or impedes access available through the Internet to **your computer system** to authorized users of **your computer system**;
 - (d) introduce an unauthorized **computer virus** or other material for the purpose of denying authorized users access to **your computer system**; or
 - (e) restrict or inhibit access to **your computer system**.
9. **Cyber extortion event** means any incident in the form of a threat or connected series of threats to commit an intentional computer attack against **you** for the purpose of demanding extortion monies from **you**.
10. **Cyber extortion expenses** means monies paid by **you** with **our** prior written consent to terminate or end a **cyber extortion event**; **our** written consent will not be unreasonably withheld. Such monies will not exceed the amount **we** reasonably believe the loss would have been in the absence of the insurance coverage afforded under this Policy. **Cyber extortion expenses** also means such reasonable and necessary expenses which directly result from a **cyber extortion event**, including sums incurred in order to mitigate the impact of the threat or mitigate the amount of the expenses
11. **Damages** means a compensatory monetary judgment, award or settlement, other than:
- (a) **your** future royalties or future profits, restitution, disgorgement of profits, or the costs of complying with orders granting injunctive relief;
 - (b) return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
 - (c) punitive, exemplary (unless insurable by the applicable law that most favors coverage for such damages), treble or other damages that are assessed in part to punish the defendant or to deter others; damages pursuant to federal, state or local statutory law other than:
 - (i) compensatory;
 - (ii) **privacy regulatory defense and penalties**;
 - (iii) awards under the provisions of the Copyright Act for non-wilful violations;
 - (d) any amounts owed under any express or implied contract; or
 - (e) any amounts for which **you** are not liable, or for which there is no legal recourse against **you**



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12. **Data** means machine-readable information, including **delivered programs**, machine-readable information, irrespective of the way it is used or rendered, including but not limited to text, digital media or images.
13. **Data media** means hardware or any other physical system or device used to store, process, read, amend or control any computer programs, text, digital media, voice or images.
14. **Deductible time period** means the first period of time after an **insured event** for which **we** will not indemnify **you** for the loss of **business income**.
15. **Delivered programs** means programs where the development stage for these has been finalized having passed all test-runs and been proven successful in daily operations (ready for use).
16. **Directors and officers** mean all persons who were, or shall be directors or officers and all persons serving in a functionally equivalent role for the **Named Insured** or any **Subsidiary**.
17. **Employee privacy breach** means a **privacy breach** affecting **your** employee(s).
18. **First party expenses** mean
 - (a) the costs involved to restore re-collect or replace the **data** including expenses for materials, rented or leased equipment, third party services, additional working time, as well as overhead cost allocations at the affected location(s) associated with restoring and replacing the **data**, or
 - (b) in respect of **your computer systems** the actual costs incurred by **you** for the unauthorized use of **your computer systems**.
19. **Indemnity period** means the period beginning with the expiry of the **deductible time period** following an **insured event** and ending not later than three months thereafter during which **you** incur loss of **business income**.
20. **Hacker attack** means unauthorized use of or gaining access to **computer systems** by a person not authorized to do so or in an unauthorized manner.
21. **Insured Event** means:
 - (a) a **network security breach**, or
 - (b) unauthorized use of **your computer system**, or
 - (c) a **computer virus**, or
 - (d) accidental damage or destruction of **data media** so that stored **data** is not machine readable.
22. **Media** means newspapers, newsletters, magazines, books and literary works in any form, monographs, brochures or other types of publications, video cassettes and digitally stored data products, advertising materials including packaging, photographs and digital images, literary, artistic, pictorial, informational, printed, musical, dramatic, statistical, audio or audio-visual content and graphic or any other form of expression in any medium not existing or hereafter created.



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23. **Named Insured** means the entity identified as such on Item 2 of the Schedule.
24. **Network security breach** means the malicious, intentional and willful misuse of **your computer system** to modify or delete **data** or deny legitimate users access to **your computer system**.
25. **Policy period** means the period of insurance stated in Item 4 of the Schedule.
26. **Privacy breach** means a common law breach of confidence, infringement, or violation of any rights to privacy, including but not limited to breach of **your** privacy statement, breach of a person's right of publicity, false light, intrusion upon a person's seclusion, public disclosure of a personally identifiable financial or medical information or misappropriation of a person's picture or name for commercial gain by **you** or others for whom **you** are legally responsible. **Privacy breach** includes any breach of **privacy regulations**, whether such breach involves information stored in electronic form or in paper form.
27. **Privacy breach expenses** include:
- (a) **crisis management expenses**, which are any reasonable and necessary fees incurred by **you** with **our** prior written consent for the employment of a public relations consultancy if **you** reasonably consider that action is needed in order to avert or mitigate any material damage to any of **your** brands as a result of a **privacy breach**. Reimbursement for **crisis management expenses** is subject to **your** notification to **us** of the **privacy breach** as required by Section VI.D of the policy and is also subject to the Sub-Limit stated in the Schedule;
 - (b) **customer notification expenses**, which are those reasonable and necessary legal expenses, postage expenses, and related advertising expenses incurred by **you** in order to comply with US and Canadian governmental privacy legislation mandating customer notification in the event of a **privacy breach** or breach of **privacy regulations** or in the event of **theft of data** that results in the compromise or potential compromise of their personal information maintained or otherwise residing on **computer systems** operated by **you** or on **your** behalf, subject to the Sub-Limit stated in the Schedule;
 - (c) **customer support and monitoring service expenses**, which are those reasonable and necessary expenses **you** incur with **our** prior written consent for the provision of customer support activity including the provision of credit file monitoring services, the establishment of a call center and assistance in the event of a **privacy breach** or breach of **privacy regulations** or in the event of a **privacy breach** that results in the compromise or potential compromise of personal information maintained or otherwise residing on **computer systems** operated by **you** or on **your** behalf subject to the Sub-Limit stated in the Schedule. **Customer support and monitoring service expenses** shall also include the provision of identity theft insurance for individuals affected by a **privacy breach** or breach of **privacy regulations** when required by law or by a court judgment or administrative order.;
 - (d) **forensic costs**, which are those reasonable and necessary computer forensic costs of outside experts retained to determine the scope, cause, or extent of any theft or unauthorized disclosure of information, **privacy breach** or breach of **privacy regulations**, but such expenses will not include compensation, fees, benefits, or expenses of **you** or any of



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your employees. **We** will not make any payment under this paragraph unless **you** first learn of the breach within the **policy period** and report such breach to **us** as soon as practicable and within the **policy period**;

- (e) **privacy regulatory defense and penalties** are:
- (i) fees charged by a lawyer(s) designated by **us** to defend any breach of **privacy regulations**;
 - (ii) all other reasonable and necessary fees, costs and expenses resulting from investigation, adjustment of a breach of **privacy regulations** if incurred by **us**, or by **you** with **our** prior written consent;
 - (iii) fines, penalties or sanctions imposed by a federal, state, or local regulatory body including PCI Security Standards Council, and also as a result of breach of contract in respect payment card processing agreements or similar however only as a result of a **privacy breach**.

The above **privacy breach expenses** may be provided by Identity Theft 911® or by another service provider selected by **you** with **our** prior consent for their retention or involvement.

Privacy breach expenses do not include any salaries, overheads or other charges **you** incur for any time that **you** spend in cooperating in the defense and investigation of any **privacy breach, claim** or circumstances which might lead to a **claim** under this Policy.

Privacy breach expenses are part of and not in addition to the Limit of Liability.

28. **Privacy regulations** include but are not limited to the following statutes and regulations associated with the control and use of personally identifiable financial or medical information:
- (a) Health Insurance Portability and Accountability Act of 1996 (Public law 104-191)(HIPAA), including Title II that requires protection of confidentiality and security of electronic protected health information and the rules and regulations promulgated thereunder as they currently exist and as amended, including related state medical privacy laws as they currently exist and as amended, including the Health Information Technology for Electronic and Clinical Health Act (HITECH);
 - (b) Gramm-Leach-Bliley Act of 1999, also known as the Financial Services Modernization Act of 1999, including sections concerning security protection and standards for customer records maintained by financial services companies, and the rules and regulations promulgated thereunder as they currently exist and as amended;
 - (c) State and federal governmental or administrative enforcement actions regarding the security and privacy of consumer information, including, but not limited to those brought by state attorney generals and the Federal Trade Commission;
 - (d) Governmental privacy protection regulations or laws, such as California Database Protection Act of 2003 and Massachusetts General Law c. 93H (Security Breaches) as they currently exist now or in the future, in the United States or Canada only, associated with the control and use of personal information, including but not limited to



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requirements to post privacy policies, adopt specific privacy controls, or inform customers of breaches of security that has or may impact their personal information;

- (e) Federal and state consumer credit reporting laws, such as the Federal Fair Credit Reporting Act (FCRA) and the California Consumer Credit Reporting Agencies Act (CCCRAA), as they exist now or in the future, in the United States or Canada only;
 - (f) Identity Theft Red Flags under the Fair and Accurate Credit Transactions Act of 2003;
 - (g) Children's Online Privacy Protection Act ("COPPA")
29. **Programming error** means an error which occurs during the development or encoding of a computer program, application or operating system and which would, when in operation result in a malfunction of **your computer system**, processing system, interruption of operations, or incorrect result.
30. **Property damage** means injury to, impairment, destruction, corruption or distortion of any tangible property, including the loss of use thereof or loss of use of tangible property which has not itself been physically impaired, injured or destroyed.
31. **Retroactive date** means the date specified in Item 7 of the Schedule.
32. **Subsidiary** shall mean any corporation of which the **Named Insured** owns on or before the inception date of the **policy period** more than 50% of the issued and outstanding voting stock either directly or indirectly through a subsidiary.

Subsidiary shall also mean any corporation that becomes a **subsidiary** during the **policy period** provided that such corporation does not represent more than a ten percent (10%) increase in **your** total assets, employee count or gross revenue as of the date of the acquisition. Where such corporation represents an increase in the **Named Insured's** total assets, employee count or gross revenue of more than 10 percent (10%), such corporation shall be deemed a **subsidiary** under the Policy, but only upon the condition that within 30 days of it becoming a **subsidiary**, the **Named Insured** shall have provided **us** with full particulars of the new **subsidiary** and agreed to any additional premium and/or amendment of the provisions of this Policy required by **us** relating to such new **subsidiary**, subject to the review and acceptance by **us** of full and complete underwriting information. Further, coverage as shall be afforded to the new **subsidiary** is conditioned upon the **Named Insured** paying when due any additional premium required by **us** relating to such new **subsidiary**. A corporation becomes a **subsidiary** when the **Named Insured** owns more than fifty percent (50%) of the issued and outstanding voting stock either directly or indirectly through one or more of its **subsidiaries**, and ceases to be a **subsidiary** at such time when the **Named Insured** ceases to own more than fifty percent (50%) of the issued and outstanding voting stock.

33. **Theft of data** means the unauthorized taking or misuse of information:

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- (a) that exists in electronic form, or which is in the course of transmission to or from a mobile or wireless device which is intended to interact with a **computer system**, while stored in a **computer system** maintained to the minimum standards in respect of security and back up procedures as specified in **your** Application; or
- (b) or the physical theft of paper documents, hardware or firmware which is owned or controlled by **you** on which information is stored and for which **you** are responsible.

Theft of data includes account information, confidential information, proprietary information and personal information and also means failure to prevent identity theft and credit or debit card fraud.

34. "**We**", "**us**" or "**our**" means the Underwriters providing this insurance.
35. "**You**" or "**your**" or "**yours**" means
- (a) the legal entity(s) shown in Item 2 of the Schedule;
 - (b) any **subsidiary** but only with respect to any circumstances which occur while it is a **subsidiary** and otherwise covered by this Policy
 - (c) any past, present or future officer, director, trustee or employee and in the event that **you** are a partnership, limited liability partnership or limited liability company, then any general or managing partner or principal, stockholder, owner thereof, but only while acting within the scope of their duties as such;
 - (d) any agent or independent contractor, including distributors, licensees and sub-licensees, but only whilst acting on **your** behalf of or at **your** direction, and under **your** control; and
 - (e) any entity whom **you** are required by contract to add as an insured under this Policy, but only for **your** actions and with **our** prior consent.

V. EXCLUSIONS

We shall not be liable for any **damages, claims expenses** or **privacy breach expenses** directly or indirectly arising out of or in any way attributable to:

- (a) any **claim** made against **you** arising out of any, willful, malicious, fraudulent, dishonest or criminal act; however, notwithstanding the foregoing, the insurance afforded by this Policy shall apply to **claims expenses** incurred in defending any such **claim** or circumstance which might lead to a **claim**, but shall not apply to any **damages** which **you** might become legally obligated to pay; however upon the determination by a court, jury, or arbitrator, **we** will have the right to recover those **claims expenses** incurred from those parties found to have committed criminal, dishonest, fraudulent or malicious acts. Furthermore, this exclusion shall not apply to any of **you** who did not personally commit or personally participate in committing or personally acquiesce in such conduct, except that the exclusion shall apply if an admission, final adjudication, or finding in a proceeding separate or collateral to the **claim** establishes that any of **your** current principals, partners, directors, or officers in fact engaged in such conduct;
- (b) any **claim** made by one Insured against another Insured; however this exclusion does not apply with respect to a **claim** made by a current or former employee as a result of an **employee privacy breach**;



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- (c) **bodily injury or property damage;**
- (d) **your** insolvency, however this does not alleviate **us** of **our** responsibilities under this Policy;
- (e) any **claim** or **privacy breach** arising out of **your** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the Named Insured;
- (f) any **claim** or circumstance arising out of any acts committed prior to the **retroactive date** of this Policy or where **you** knew or could reasonably have foreseen such circumstance may be the basis of a **claim**;
- (g) any **claim, privacy breach** or circumstance previously notified to a prior insurer;
- (h) breach of any express, implied, actual or constructive contract, agreement, warranty, guarantee or promise, provided, however this exclusion shall not apply to:
 - (i) any liability or obligation **you** would have in the absence of such contract or agreement; or
 - (ii) any indemnity by **you** in a written contract or agreement with **your** client regarding any **privacy breach** suffered by **you** which results in the failure to preserve the confidentiality or privacy of personal information of customers of **your** client.
- (i) actual or alleged infringement of any patent or trade secret;
- (j) any actual or alleged violation of the Organized Crime Control Act of 1970 (Racketeer Influenced and Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law;
- (k) any action brought by or on behalf of the Federal Trade Commission ("FTC"), Federal Communications Commission ("FCC") or any other federal, state or local government agency or other licensing organizations in such entity's regulatory, quasi-regulatory or official capacity, function or duty other than is expressly covered hereunder as a result of a breach of **privacy regulations**;
- (l) employment or work place practices (except **employee privacy breach**), including **claims** arising under worker compensation laws or **claims** in respect of alleged discrimination, harassment or inappropriate employment conduct of any sort;
- (m) any acts related to the violation of any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or any violation of any regulation, ruling or order issued pursuant to ERISA;



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- (n) any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, rules and regulations of the Securities Exchange Commission, the securities laws or regulations of any state, or any common law claim relating to any transaction arising out of, involving, or relating to the purchase or sale or offer to purchase or sell securities of **your** Company or any other entity;
- (o) any actual or alleged antitrust, restraint of trade, unfair competition, false, deceptive or unfair business practices, violation of consumer protection laws including violations of any local, state or federal laws regarding the aforementioned conduct other than is expressly covered hereunder as per II. Insuring Agreements B; However, this exclusion shall not apply to **claims** arising out of: a **privacy breach**; an **employee privacy breach**; or unfair competition, involving misuse of matter, dilution, deceptive trade practices, civil actions for consumer fraud, false advertising or misrepresentation in advertising activities committed in the utterance, dissemination, gathering, acquisition, or obtaining of matter by **you** or with **your** permission solely in **your** performance of **advertising**;
- (p) coupons, gift cards, promotional gift cards, prizes, awards, or discounts whether in paper, card, electronic or any other form or any other valuable consideration given in excess of the total contracted or expected amount;
- (q) the actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products or services; or as a result of **your** cost guarantees, cost representations, contract price, or estimates of probable costs or cost estimates being exceeded;
- (r) any **claim** or **privacy breach** arising out of:
 - (i) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
 - (ii) any act of terrorism.

For the purpose of this Exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

We also exclude loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

If **we** allege that by reason of this Exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon **you**.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect;

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- (s) directly or indirectly arising out of or resulting from the presence or actual, alleged, or threatened discharge, seepage, dispersal, migration, release, escape, generation, transportation, storage, or disposal of pollutants at any time, including any request, demand or order that **you** or others test for, monitor, clean up, remove, assess, or respond to the effects of pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, odors, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed;
- (t) any **claim** arising out of or resulting from the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos or asbestos fibers or dust;
- (u) gambling, pornography, or the sale or provision of prohibited, restricted or regulated items including but not limited to alcoholic beverage, firearms, tobacco, or drugs; and
- (v) **claims** alleging or arising out of the rendering or failure to render professional services.

The following additional Exclusions are to apply in respect of **II. D – BUSINESS INTERRUPTION AND LOSS OF DATA** (a) only:-

1. **We** will not be responsible for any loss of **business income** caused by or resulting from;
 - a) **programming errors**
 - b) Failure of external networks resulting in **you** being unable to pursue **your** activities due to failure of external networks that does not erase, modify or compromise its **data**
 - c) gradual deterioration of subterranean cables insulation
 - d) failure of overhead transmission and distribution lines.
2. **We** will not indemnify **you** in respect of loss of **business income** incurred during the period of the **deductible time period**.
3. **We** will not be responsible for any loss of **business income** caused by or resulting from unauthorised trading.

The following additional Exclusions are to apply in respect of **II. D – BUSINESS INTERRUPTION AND LOSS OF DATA** (b) only:

1. physical damage to **data media**;
2. contractual penalties or consequential damages;



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3. any legal costs or expenses;
4. fines or penalties imposed by law;
5. the use of programs or applications which are not **delivered programs**;
6. **you** knowingly using illegal or unlicensed programs in violation of the provisions of the laws referring to software protection;
7. the confiscation, commandeering, requisition, destruction of, or damage to, **data media** by order of the government de jure or de facto, or by any public authority for whatever reason;
8. the wear and tear, drop in performance, progressive deterioration or aging of electronic equipment and other property or **data media** used by **you** which is covered under a comprehensive maintenance contract and where **you** have failed to comply with the recommendations of such agreement.

VI GENERAL CONDITIONS

A. Limit of Liability

Our maximum aggregate liability for all **damages, claims expenses, privacy breach expenses** and **cyber extortion expenses** on account of all **claims, privacy breaches** and circumstances covered by this Policy, shall be the Limit of Liability or any applicable Sub-Limits of Liability set forth in Item 5 of the Schedule.

In the event of the exhaustion of the Limit of Liability, **we** shall have no further liability whatsoever.

The Limit of Liability for the Additional Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability for the **policy period**.

B. Deductible

The Deductible stated in Item 6 of the Schedule shall be satisfied by payments by **you** and apply to all **damages, claims expenses, privacy breach expenses** and **cyber extortion expenses** or any combination thereof resulting from **claims** and/or **privacy breaches** notified during the **policy period** and any Additional Extended Reporting Period. **We** will only be liable for amounts excess of any Deductible and not exceeding the Limit of Liability, or Sub-Limits of Liability, as stated in Item 5 of the Schedule.

C. Extended Reporting Provisions

1. Automatic Extended Reporting Period



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If either **you** or **us** shall cancel or non-renew this policy, **you** shall have the right following the effective date of such cancellation or non-renewal, to a period of 60 days in which to give written notice to **us** of any **privacy breach** or **claim** first made against **you** prior to the end of the **policy period** and otherwise covered by this Policy.

2. Additional Extended Reporting Period

- A. In the event of cancellation or non-renewal of this Insurance by **you** or **us**, **you** shall have the right, upon payment of an additional premium in full of the total policy premium, to purchase a 12 month Extended Reporting Period at either 100% of the total policy premium if **we** cancel or non-renew, or 200% if **you** cancel or non-renew, for **privacy breaches** or **claims** first made against **you** and notified to **us** during the Extended Reporting Period, committed on or after the **retroactive date** and before the end of the **policy period**, subject to the conditions set forth herein. In order for **you** to invoke the Extended Reporting Period option, **you** must pay **us** within 30 days of the non-renewal or cancellation.
- B. The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability for the **policy period**.
- C. **Your** right to the Extended Reporting Period shall not be available where cancellation or non-renewal by **us** is due to non-payment of premium or **your** failure to pay such amounts in excess of the applicable Limit of Liability or within the amount of the applicable Deductible.
- D. All notices and premiums payments with respect to the Extended Reporting option shall be directed to **us** through the entity named in Item 10 of the Schedule.
- E. At the commencement of the Extended Reporting Period the entire premium shall be deemed earned; in the event that **you** terminate the Extended Reporting Period for any reason prior to its natural expiration, **we** will not be liable to return any premium paid for the Extended Reporting Period.

D. Notice/ Claims Reporting Provisions

- 1. If **you** discover any **privacy breach**, **you** shall immediately notify the persons named in Item 9a of the Schedule of the **privacy breach**.
- 2. If any **claim** is made against **you**, **you** shall as soon as practicable forward to **us** through persons named in Item 9b of the Schedule every letter of claim, demand, notice, summons or other process received by **you** or **your** representative.
- 3. If **you** discover or learn of any **cyber extortion event**, **you** must within 3 business days of any threat being made notify the persons named in Item 9a of the Schedule of the threat and keep **us** fully informed of all developments concerning the threat or demand.



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4. If during the **policy period you** first become aware of any circumstance that could reasonably be the basis for a **claim you** may provide written notice to **us** through persons named in Item 9b of the Schedule during the **policy period** of;
 - (i) the specific details that could reasonably be the basis for a **claim**;
 - (ii) the injury or damage which may result or has resulted from the circumstance; and
 - (iii) the facts by which **you** first became aware of this.Any subsequent **claim** arising out of such circumstance made against **you** which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to **us**.
5. A **privacy breach, claim, cyber extortion event** or circumstance shall be considered to be notified to **us** when written notice is first given to **us** through persons named in Item 9 of the Schedule of the **privacy breach, claim, cyber extortion event** or circumstance, which could reasonably be expected to give rise to a **claim** if provided in compliance with 4. above.
6. If **you** shall make any **claim** or other notification under this policy knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void and all coverage hereunder shall be forfeited.

E. Your Duties

1. In the event of a **privacy breach, claim** or potential **claim** as covered by this Policy, **you** shall at all times co-operate with **us**. At **your** own cost, **you** shall make available **your** employees so as to reduce or avoid circumstances which might lead to a **claim** as covered under this Policy.
2. **You** shall at **your** own expense take all reasonable precautions to prevent and thereafter mitigate **privacy breaches** and **claims** at all times.
3. **You** shall not admit liability, make any payment, assume any obligations, incur any **privacy breach expense** or **claims**, enter into any settlement, stipulate to any judgement or award or otherwise dispose of any **claim** or **privacy breach** without **our** consent.

Expenses incurred by **you** in assisting and cooperating with **us** as described above, do not constitute **claims expenses** or **privacy breach expenses** under this Policy.

F. Other insurance

The cover provided by this Policy is excess over and above any other valid insurance, (including any deductible portion) or agreement of indemnity available to **you**.

G. Legal Action Against Us



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No person or organization has a right under this Policy to (1) join **us** as a party or otherwise bring **us** into a suit asking for **damages** from **you**, or (2) sue **us** under this Policy in the absence of compliance with all of the terms and conditions of this Policy by **you**. A person or organization may sue **us** to recover on an agreed settlement or on a final judgement against **you** obtained after an actual trial, but **we** will not be liable for **damages** that are not payable under the terms of this Policy or that are in excess of the applicable Limit of Liability. An agreed settlement means a settlement and release of liability signed by **us**, by **you**, and by the claimant or the claimant's legal representative.

H. Subrogation

In the event **we** are required to make any form of payment under this Policy, **we** shall be subrogated to all **your** rights of recovery against any person or organization and **you** must execute and deliver instruments and papers and do whatever else is necessary to secure such rights. **You** must not do anything to prejudice such rights. Subrogation recovery shall reimburse **us** for all **claims expenses** as well as costs of pursuing the subrogation and additional amounts, if any, shall be emitted to **you** to the extent of **your damages** paid.

I. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Insurance or stop **us** from asserting any right under the terms of this Insurance; nor shall the terms of this Insurance be waived or changed, except by endorsement issued to form a part of this Insurance, signed by **us**.

J. Mergers and Acquisitions

In the event that **you** consolidate, merge or are acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage under this Policy, and **you** have agreed to any additional premium and terms of coverage required by **us**.

K. Assignment

This Policy may not be assigned to any party without **our** written consent.

L. Cancellation

1. This Policy may be cancelled by **you** by surrender thereof to **us** or by mailing to **us** through the entity named in Item 10 of the Schedule written notice stating when thereafter the cancellation shall be effective. **We** may cancel this Insurance by mailing to **you** via the broker written notice stating when not less than 60 days thereafter such cancellation shall be effective. However, if **we** cancel this Insurance because **you** have failed to pay a premium when due this Insurance may be cancelled by **us** by mailing a written notice of cancellation to **you** at the address shown in the Schedule stating when not less than 10 days thereafter such cancellation shall be effective.



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2. If **you** cancel this Insurance, thirty percent (30%) of the premium shall be deemed earned upon inception of this Policy, and the remaining earned premium shall be computed in accordance with the Lloyd's short rate table and procedure. If **we** cancel this Insurance, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation. Notwithstanding the foregoing, the premium shall be deemed fully earned if any **claim** is notified to **us** on or before the date of cancellation.

M. Dispute Resolution

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Policy promptly by negotiation. If the dispute has not been resolved by negotiation within forty-five (45) days of the disputing party's notice, either party may seek an alternative dispute resolution to be agreed by both parties. All applicable statutes of limitations and defenses based upon the passage of time shall be tolled while the procedures specified herein are pending. The parties will take such action, if any, required to effectuate such tolling.

The parties agree that no suit will be filed by either party against the other party seeking resolution of any dispute arising out of or relating to this Policy until the parties have attempted to negotiate a resolution.

N. Service of Suit

It is agreed that in the event of the failure of **us** to pay any amount claimed to be due, at **your** request, **we** will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of **our** rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon the firm noted in Item 11 of the Schedule Sedgwick, Detert, Moran & Arnold, 3 Park Plaza, 17th Floor, Irvine, California 92614-8540, U.S.A., and that in any suit instituted against any one of **us** upon this contract, **we** will abide by the final and unappealable decision of such Court or of any Appellate Court including in the event of an appeal.

The above named are authorized and directed to accept service of process on **our** behalf in any such suit and/or upon **your** request to give a written undertaking to **you** that they will enter a general appearance upon **our** behalf in the event that such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, **we** designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or their successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on **your** behalf or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.