

TECHNOLOGY ERRORS AND OMISSIONS COVERAGE FORM INTEGRATED TECH CLAIM EXPENSES INCLUDED WITHIN THE LIMITS OF INSURANCE

THIS IS A CLAIMS MADE POLICY – PLEASE READ IT CAREFULLY

In consideration of the payment of the premium and in reliance upon all statements and information furnished to **us** including all statements made in the application, its attachments and the material incorporated therein, which are incorporated herein and deemed to be a part of this policy, **we** agree as follows:

SECTION I – COVERAGE

A. Insuring Agreements

1. Technology Coverage

We shall pay on **your** behalf all sums, not exceeding the limits of insurance and in excess of the applicable deductible set forth in the Declarations, for which **you** shall become legally obligated to pay as **damages** resulting from any **claim** first made against **you** during the **policy period** or any subsequent extended reporting period, arising out of a **wrongful incident** committed after the retroactive date stated in ITEM 4. in the Declarations and prior to the end of the **policy period** as a direct result of **your technology professional services** provided that:

- a. The **wrongful incident** occurs in the **coverage territory**;
- b. The **wrongful incident** occurs after the retroactive date shown in the Declarations and prior to the end of the **policy period**; and
- c. (1) The **claim** is first made against an **insured** during the **policy period** and reported to **us** in accordance with **SECTION V – GENERAL CONDITIONS, B. Notice & Claim Reporting Provisions**;
- (2) Prior to the inception date of this coverage form, no **executive officer** had knowledge of or should have known of any circumstances which might have resulted in a **claim**; and
- (3) The **wrongful incident** or any **affiliated wrongful incident** has not been the subject of any notice given under any previous coverage form.

Subject to any applicable limit of insurance, we will also pay **claim expenses** in connection with such covered **claim**.

2. Technology Products Coverage

We shall pay on **your** behalf all sums, not exceeding the limits of insurance and in excess of the applicable deductible set forth in the Declarations, for which **you** shall become legally obligated to pay as **damages** resulting from any **claim** first made against **you** during the **policy period** or any subsequent extended reporting period, arising out of a **wrongful incident** committed after the retroactive date stated in ITEM 4. in the Declarations and prior to the end of the **policy period** as a direct result of the failure of **technology products** to perform the function or serve the purpose intended provided that:

- a. The **wrongful incident** occurs in the **coverage territory**;
- b. The **wrongful incident** occurs after the retroactive date shown in the Declarations and prior to the end of the **policy period**; and
- c. (1) The **claim** is first made against an **insured** during the **policy period** and reported to **us** in accordance with **SECTION V – GENERAL CONDITIONS, B. Notice & Claim Reporting Provisions**;
- (2) Prior to the inception date of this coverage form no **executive officer** had knowledge of or should have known of any circumstances which might have resulted in a **claim**; and
- (3) The **wrongful incident** or any **affiliated wrongful incident** has not been the subject of any notice given under any previous coverage form.

Subject to any applicable limit of insurance, we will also pay **claim expenses** in connection with such covered **claim**.

B. Defense and Settlement

We, in **your** name and on **your** behalf, shall have the right and duty to investigate, defend and conduct settlement negotiations in any **claim**. **We** shall also have the right to appoint counsel and to make such investigation and defense of a **claim** as we deem necessary. Alternatively, **we** may, at **our** discretion, give **our** written consent to the defense of any such **claim** by the **insured**. **Our** obligation to defend any **claim** or pay any **damages** or **claim expenses** shall be totally fulfilled and extinguished if the limits of insurance have been exhausted.

We shall not settle any **claim** without **your** consent, such consent not to be unreasonably withheld. However, should **you** refuse to consent to any settlement recommended by **us** and acceptable to the claimant, and elect to further contest the **claim**, **our** liability for such **claim** shall not exceed the amount for which the **claim** could have been settled, including **claim expenses** incurred up to the date of such refusal, plus fifty percent (50%) of any additional **damages** and **claim expenses** incurred after **your** refusal to consent to a settlement recommended by **us** up to **our** limit of insurance. It is expressly understood by **you** that fifty percent (50%) of any **damages** and/or **claims expenses** incurred after **your** refusal to consent to any settlement amount in excess of any settlement amount recommended by **us** shall be borne by **you** at **your** own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until the settlement amount exceeds the deductible amount stated in ITEM 4. in the Declarations and unless the settlement amount is:

1. An all monetary settlement;
2. The parties agree to keep the settlement confidential; and
3. The settlement amount is fully funded by **us**.

C. Supplementary Payments

We will pay up to one thousand dollars (\$1,000) per **individual insured** per day, for each day any such **individual insured** is required to appear at a trial, hearing or arbitration proceeding involving a **claim** against **you**, subject to a five thousand dollar (\$5,000) per **individual insured** sublimit of liability ("Trial Sublimit of Liability"). The Trial Sublimit of Liability shall be in addition to the limits of insurance as shown in ITEM 4. in the Declarations.

SECTION II – DEFINITIONS

The following words and phrases appearing in bold font have special meaning whenever used in this policy:

- A. Advertisement** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
1. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 2. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
- B. Affiliated wrongful incident** means any **wrongful incident** which is logically or causally connected by reason of any common fact, circumstance, situation, transaction or event.
- C. Bodily injury** means physical injury, sickness, disease, disability, mental anguish, mental injury or emotional distress sustained by a person, including death resulting therefrom at any time.
- D. Claim** means a written demand received by **you** for money or non-monetary relief or services, including the service of suit or institution of arbitration proceedings involving **you** arising from any alleged **wrongful incident**. **Claim** shall also include any request to toll the statute of limitations relating to a potential **claim**, or threat or initiation of a suit seeking injunctive relief involving an alleged **wrongful incident**.
- E. Claim expenses** means fees charged by any lawyer designated by **us** and all other reasonable and necessary fees, costs, and expenses resulting from the investigation, adjustment, defense, and appeal of a **claim**, if incurred by **us**. **Claim expenses** shall also include:
1. Premiums on bonds to release attachments and appeal bonds, limited to that portion of such bonds that does not exceed the limits of insurance of this policy, but without any obligation by **us** to apply for or furnish such bonds;
 2. Costs taxed against **you** in any suit except for any contempt citations;
 3. Interest (prejudgment and post-judgment), but only for that portion of the judgment which does not exceed the applicable limits of insurance, and only until **we** have tendered to the court or paid to **you our** portion of such judgment as does not exceed **our** limit of insurance thereon; and
 4. Reasonable expenses incurred by **you** at **our** request in assisting in the investigation and defense of any **claim**, other than loss of earnings.

Claim expenses shall not include:

- a. Any amounts incurred in defense of any **claim** for which any other insurer has a duty to defend, regardless of whether or not such other insurer undertakes such duty;
- b. Salaries, wages, overhead or benefit expenses associated with any **insured** except as specified in **SECTION I – COVERAGE, C. Supplementary Payments** above; or
- c. Salaries, wages, overhead or benefit expenses associated with **your** employees.

- F. Client** means any contractor, including contracting governmental entities, who hire **you** as their subcontractor.
- G. Computer systems** mean computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:
1. Operated by and either owned by or leased to the **insured** organization; or
 2. Operated by a third-party service provider and used for the purpose of providing hosted computer application services to the **insured** organization or for processing, maintaining, hosting or storing the **insured** organization's electronic data, pursuant to written contract with the **insured** organization for such services.
- H. Coverage territory** means anywhere in the world.
- I. Damages** mean a monetary judgment, award or settlement, including punitive and exemplary damages where insurable by law. When determining the insurability of punitive or exemplary damages, **we** agree to abide by the law that most favors coverage for such punitive and exemplary damages including, but not limited to, where the policy is issued, the **named entity's** state of incorporation, the **named entity's** principal place of business, or where the alleged **wrongful incident** took place.
- Damages** does not include the multiple part of multiplied damages, discounts, coupons, prizes, fines, taxes, sanctions or statutory penalties, including those based upon legal fees whether imposed by law, court or otherwise. However, this paragraph does not apply to any **claim** arising out of a **network security and privacy regulatory responsibility wrongful incident**.
- J. Denial of service** means unauthorized or unexpected interference or malicious attack by any person(s) or entity(ies) that restricts or prevents access.
- K. Domestic partner** means any person qualifying as a domestic partner under any federal, state or local laws or under **your** employee benefit plan.
- L. Executive officer** means any past, present, or future duly elected or appointed director, officer, trustee, governor or **manager** of **yours**. **Executive officer** also means:
1. Management committee members for joint ventures; or
 2. **Your** official, who is holding a position that is equivalent to an executive officer position if **you** are organized and operated in a **foreign jurisdiction**.
- M. Foreign jurisdiction** means anywhere outside the United States of America.
- N. Individual insured** means:
1. Any current or future partner, director, officer, member or employee of **yours** while acting within the scope of their duties as such;
 2. Any former or retired partner, director, officer, member or employee of **yours**, but only for those **technology services** rendered on behalf of the **named entity** prior to the date of separation or retirement from such entity(ies);
 3. The lawful spouse or **domestic partner** of an **individual insured**, but only for actual or alleged **wrongful incidents** of such **individual insured** for which said spouse or **domestic partner** may be liable as the spouse or **domestic partner** of such **individual insured**;

4. The heirs, executors, administrators, assignees, and legal representatives of each **insured** in the event of such **insured's** death, incapacity or bankruptcy as respects the liability of each **insured** as is otherwise covered herein;
 5. Any individual who is holding a position equivalent to a position listed in Items **1., 2., 3.,** or **4.** above if the **named entity** or its **subsidiary** organized and operated in a **foreign jurisdiction**; or
 6. Members or stockholders of the **named entity** or its **subsidiaries**, but only as respects their liability as members or stockholders.
- O. Manager** means any natural person manager, member of the Board of Managers, or equivalent **executive officer** of **yours** if **you** are a limited liability company.
- P. Malicious code** means unauthorized and corrupting or harmful computer code, including but not limited to computer viruses, spy ware, Trojan horses, worms, logic bombs, bots and mutations of any of the preceding, intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.
- Q. Media and advertising** means:
1. Media communications, including but not limited to the display, broadcast, dissemination, distribution or release of **media materials** to the public by the **named entity**; or
 2. Gathering, collecting or recording of **media materials** for inclusion in any **advertisement** in the ordinary course of the **named entity's** business.
- R. Media materials** mean information in the form of words, sounds, numbers, images or graphics in print, electronic, broadcast form but does not mean computer software.
- S. Named entity** means the proprietor, firm or organization specified in ITEM 1. in the Declarations.
- T. Network security and privacy regulatory responsibility** means costs to comply with a **privacy regulation**, where the **insured** has been notified of an actual or alleged breach of such **privacy regulation** by a regulatory agency.
- U. Over-redemption** means prizes, discounts, vouchers, coupons or other valuation consideration given or claimed in addition to the contracted or budgeted amount.
- V. Personally identifiable information** means any individual's name used in combination with any one or more of the following, whether in electronic or paper format:
1. Social security number;
 2. Driver's license number or any other state identification number;
 3. Non-public medical or healthcare data including protected health information;
 4. Any account number, or credit or debit card number in combination with any required password, access or other security code that would permit access to the financial account; or
 5. Non-public personal information as defined in any **privacy regulation**.

- W. Policy period** means the period beginning with the inception date of this policy to the expiration date as set forth in ITEM 3. in the Declarations, or such earlier termination date, if any.
- X. Privacy regulation** means the following statutes and regulations associated with the confidentiality, access, control and use of **personally identifiable information**, including but not limited to:
1. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), known as 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;
 2. Gramm-Leach-Bliley Act of 1999 (G-L-B), 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;
 3. State Attorneys General and Federal Trade Commission enforcement actions regarding the security and privacy of consumer information;
 4. Governmental privacy protection regulations or laws, as they currently exist now or in the future, associated with the control and use of personal information, including but not limited to requirements to post privacy policies, adopt specific privacy controls, or inform customers of actual or suspected breaches of security that have or may impact their personal information;
 5. Privacy provisions of consumer protection laws, such as the Federal Fair Credit Reporting Act (FCRA);
 6. Children's Online Privacy Protection Act or similar laws as they exist now or in the future; and
 7. EU Data Protection Act or other similar privacy laws worldwide as they exist now or in the future.
- Y. Property damage** means physical injury to or destruction of tangible property, including all resulting loss of use of such property or loss of use of tangible property that is not physically injured.
- Z. Subsidiary** means:
1. A corporation or other entity of which the **named entity** owns, on or before the inception of the **policy period**, more than fifty percent (50%) of the issued and outstanding voting stock, either directly or indirectly through one or more of its **subsidiaries** or which the **named entity** has the right to elect, appoint or designate more than fifty percent (50%) of such entity's board of directors, trustees, or **managers** and which is set forth in the application or, if the entity is a limited partnership, the **named entity** or one of its **subsidiaries** must serve as the general partner.
 2. A corporation or other entity which becomes a **subsidiary** during the **policy period** and whose revenues total less than fifteen percent (15%) of the total consolidated revenues of the **named entity** as disclosed by **you** on the most recently completed application as of the inception date of this **policy period**; or
 3. A corporation or other entity which becomes a **subsidiary** during the **policy period** other than a corporation or other entity described in Paragraph 1. above, but only upon the condition that within ninety (90) days of its becoming a **subsidiary**, the **named entity** shall have provided **us**

with a completed application and all materials requested by **us** relating to the addition of such new **subsidiary**. Coverage, as shall be afforded to the new **subsidiary**, is conditioned upon the **named entity** paying when due any additional premium required by **us** relating to such new **subsidiary**. Failure to provide the requested information within the ninety (90) days or failure to pay the additional premium when requested will result in the denial of coverage to said **subsidiary** under this policy.

A corporation or other entity becomes a **subsidiary** when the **named entity** owns more than fifty percent (50%) of the issued and outstanding voting stock, either directly or indirectly through one or more of its **subsidiaries** or serves as a general partner for a limited partnership. A corporation ceases to be a **subsidiary** when the **named entity** ceases to own more than fifty percent (50%) of the issued and outstanding voting stock, either directly or indirectly through one or more of its **subsidiaries** or is removed or ceases to act as a general partner of a limited partnership. Coverage for **claims** made against any **subsidiary** or the **insureds** of such **subsidiary** occurring after the effective time that such **subsidiary** became a **subsidiary** and prior to the time that such **subsidiary** ceased to be a **subsidiary**.

- AA. Underwriter** means the stock insurance company shown in the Declarations of this policy.
- BB. Technology product** means a computer or telecommunications hardware or software product, or related electronic product that is created, manufactured or developed by the **insured** organization for others, or distributed, licensed, leased or sold by the **insured** organization to others, for compensation including software updates, service packs and other maintenance releases provided for such products.
- CC. Technology professional services** mean any technology services other than those excluded in **SECTION II – EXCLUSIONS** below.
- DD. We, us and our** mean the insurance company shown in the Declarations (a stock insurance company).
- EE. Wrongful incident** means any of the following with respect to **your technology professional services; your product; media and advertising; or network security and privacy regulatory responsibilities**:
1. Negligent acts, errors or omissions;
 2. Failure to perform the function or serve the intended purpose;
 3. Breach of warranties or representations relating to fitness, quality, suitability or performance;
 4. Failure to prevent unauthorized access to unauthorized use of a **client's** network by a third-party;
 5. Failure to prevent identity theft by a third-party;
 6. Failure to prevent introduction of **malicious code** by a third-party;
 7. Inability of an authorized third-party to gain access to **client's** network, including **denial of service** or **malicious code**;
 8. Unintended transmission by **you** to a **client** of any **malicious code**;
 9. Defamation, libel, slander, product disparagement or trade libel;

10. Invasion of an individual's right of privacy or publicity, including false light, intrusion upon seclusion, commercial misappropriation of likeness, and public disclosure of private facts;
11. Plagiarism or misappropriation of ideas under an implied contract;
12. Infringement, misappropriation or violation of any copyright, trademark, trade name, trade dress, title, slogan, service mark or service name;
13. Domain name infringement or improper deep-linking or framing; or
14. Piracy, but only when it directly relates to infringement of copyright or trademark.

FF. You, your, insured mean:

1. The **named entity**;
2. Any **subsidiary**;
3. Any independent contractor while acting on **your** behalf; and
4. Any **individual insured**.

GG. Your product means:

1. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - a. **You**;
 - b. Others trading under **your** name; or
 - c. A person or organization whose business or assets **you** have acquired; and
2. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products;

Your product includes warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your** product; and the providing of or failure to provide warnings or instructions.

SECTION III – EXCLUSIONS

This policy does not apply to any **claim** or **claim expenses**:

A. Personal Conduct

Arising out of, resulting from, based upon or in consequence of, any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, commingling, misappropriation or misuse of funds; or intentional wrongdoing, including the intentional misappropriation of trade secrets by an **insured** if a final adjudication in the underlying proceeding establishes that such act, omission, commingling, misappropriation, misuse or intentional wrongdoing was committed, or gaining of any profit or advantage to which **you** are not legally entitled. However, **we** will defend a **claim** alleging the foregoing until there is a final adjudication in the underlying proceeding that establishes such conduct.

No **wrongful incident** of any **individual insured**, nor any fact pertaining to any **individual insured**, shall be imputed to any other **insured** for the purposes of determining the applicability of this exclusion.

B. Bodily Injury / Property Damage

For **bodily injury** or **property damage** including death, sickness, disease, emotional distress, mental anguish, of any person, or property damage. However, this exclusion shall not apply to **bodily injury** or **property damage** that occurs as a direct result of a **wrongful incident**.

C. Uninsurable Costs

Arising out of, resulting from, based upon or in consequence of any costs of corrections, costs of complying with non-pecuniary relief, fines or penalties imposed by law or other matters which may be deemed uninsurable under the law pursuant to which this policy may be construed.

D. Professional Services

Arising out of, resulting from, based upon or in consequence of the rendering or failure to render the following professional services:

1. Legal or accounting services including payment processing software or services;
2. Services by an **insured** whose business is advertising. For the purposes of this Paragraph 2., the placing of frames, borders or links, or advertising, for **you** or others anywhere on the internet, is not by itself, considered the business of advertising;
3. Architect and civil or structural engineering services;
4. Developmental risk (pre-release phase of technology);
5. Third-party administrator or actuarial services;
6. Insurance or real estate services; or
7. Any healthcare or healthcare-related advice or instruction including any medical, surgical, dental, x-ray or nursing services treatment, advice or instruction or any professional services that cannot lawfully be performed by an individual without a government or regulatory license issued to such individual.

E. Satellite Failure

Arising out of, resulting from, based upon or in consequence of the failure of any satellite.

F. Electronic Fund Transfer

Arising out of, resulting from, based upon or in consequence of the monetary value of any electronic fund transfer that is lost or damaged during transfer into or between accounts.

G. Over-Redemption

Arising out of, resulting from, based upon or in consequence of, directly or indirectly any actual or alleged **over-redemption** or violation of any law relating to sweepstakes, contests, games of chance, special offers or coupons, gaming or gambling.

H. Support or Maintenance

Arising out of, resulting from, based upon or in consequence of the intentional discontinuance or cessation of the provision, support or maintenance of any of **your** products; except for otherwise covered **wrongful incidents** occurring prior to the intentional discontinuance or cessation.

I. Unsolicited Communication

Arising out of, resulting from, based upon or in consequence of any act or alleged violation of any federal or state anti-spam statute or regulation, including the CAN-SPAM Act of 2003, as amended; or any actual or alleged violation of any federal or state statute or regulation prohibiting the dissemination of unsolicited electronic communications to multiple third parties, including any violation of the Telephone Consumer Protection Act of 2001.

J. Mechanical or Electrical Failure and Service Interruptions

Based on or arising out of mechanical or electrical failure of **your product** caused by a third-party, acting independently of the **insured**, including any such failure caused by:

1. Electrical power interruption or surge, brownout, blackout, short circuit, over voltage, introduction or power fluctuations;
2. Planned or unplanned service interruption caused by or at the direction of any entity, other than **you**, that provides third parties with access to the internet or provides third parties with any services available on the internet; or
3. Interruption, surge, brownout, blackout, short circuit, over voltage, introduction or power fluctuations to any governmental or private utilities or elements of infrastructure, including gas, water, or telephone (online, wireless or other).

K. Disciplinary Proceeding with Sub-Limit for Defense

Arising out of any disciplinary proceeding against any **insured**; however, **we** will defend **you** for said disciplinary proceeding up to a sublimit of liability ("Disciplinary Proceeding Sublimit") of ten thousand dollars (\$10,000). The Disciplinary Proceeding Sublimit shall be part of, not in addition to, the limits of insurance as shown in ITEM 4. in the Declarations and shall in no way serve to increase the limits of insurance. Defense for disciplinary proceedings will still be subject to all other terms and provisions in this policy.

L. Failure to Maintain Insurance or Bond

Arising out of, resulting from, based upon or in consequence of, directly or indirectly, any failure by **you** to effect or maintain any insurance or bond.

M. Patent Infringement

Arising out of, resulting from, based upon or in consequence of, directly or indirectly, any infringement of patent.

N. Securities and Blue Sky Laws

Arising out of, resulting from, based upon or in consequence of, directly or indirectly, any violation of the Securities Act of 1933 as amended, the Securities Exchange Act of 1934 as amended, any state Blue Sky or Securities Law or any rules, the Investment Act of 1940, the Sarbanes-Oxley Act of 2002, regulations or amendments issued in relation to such acts, or any similar state, federal or foreign statutes or regulations.

O. Insured vs. Insured

Arising out of, resulting from, based upon or in consequence of, directly or indirectly, any **claim** brought by any **insured** against another **insured**.

P. Prior or Pending Litigation (Continuity Date)

Arising out of, resulting from, based upon or in consequence of, directly or indirectly, any prior or pending litigation as of the Continuity Date of this policy, as well as all future **claims** or litigation based on the prior or pending litigation derived from the same or essentially the same facts (actual or alleged) that gave rise to the prior or pending litigation.

Q. Employment Practices

Arising out of, resulting from, based upon or in consequence of, directly or indirectly, any employment practices or any discrimination against any person or entity based on any protected basis, including but not limited to: race, creed, color, religion, ethnic background, national origin, age, handicap, disability, sex, sexual orientation or pregnancy.

R. Absolute Pollution

Arising out of, resulting from, based upon or in consequence of, directly or indirectly, any discharge, dispersal, release or escape of any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, danders, spores, fungi, germs, soot, fumes, asbestos, acids, alkalis, chemicals and waste (including, but not limited to, materials to be recycled, reconditioned, or reclaimed and nuclear materials) into or upon land, the atmosphere or any water-course or body of water or any cost or expense arising out of any direction, request or voluntary action to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any pollutants.

S. Owned and Affiliated Entities

Arising out of, resulting from, based upon or in consequence of, directly or indirectly, any **technology professional services** performed for any entity in which any **insured** is a principal, partner, officer, director or owns or controls more than ten percent(10%) of the issued and outstanding stock of such entity.

T. Fee Disputes

For any disputes involving **your** fees or charges.

U. Prior Notice

Arising out of, resulting from, based upon or in consequence of, directly or indirectly, any **wrongful incident** committed prior to the **policy period** and subsequent to the retroactive date for which **you** gave notice under any prior insurance policy or which **you** had any basis to believe might reasonably be expected to give rise to a **claim** under this policy.

V. Intellectual Property

Arising out of, resulting from, based upon or in consequence of, directly or indirectly out of copyright, patent, trade dress, trade name, trade secret, trade mark, or other intellectual property rights or laws.

W. Developmental Risk

Arising out of, resulting from, based upon or in consequence of directly or indirectly, any errors and omissions **wrongful incident** committed before or during the pre-release phase of your technology products or services and that happens during the pre-release phase of your technology products or service.

X. Breach of Guarantee or Warranty

Arising out of, resulting from, based upon or in consequence of directly or indirectly, for any breach of any guarantee or warranty including any express warranty or representation, guarantee of cost savings, profits, or return on investment (ROI), and/or cost guarantees.

Y. Failure to Protect Computer Systems

Arising out of, resulting from, based upon or in consequence of directly or indirectly, for any failure of **computer systems** to be protected, failure of goods to conform to advertising, and/or failure to make licensing fee or royalty payments.

SECTION IV – LIMITS OF INSURANCE

Regardless of the number of: (a) **insured's** under this policy; (b) persons or entities who allege **damages**, or (c) **claims** made or suits brought, **our** liability is limited as follows:

- A.** **We** shall be liable to pay that portion of any **damages** in excess of the applicable deductible as stated in ITEM 4. in the Declarations for any one **claim** up to the Technology Errors and Omissions Each Claim Limit of Insurance shown in ITEM 4. in the Declarations. The applicable deductible shown in ITEM 4. in the Declarations shall apply to each and every **claim**, including **claim expenses**, and such deductible shall be borne by **you**. The deductible shall be uninsured and be at **your** own risk.
- B.** **Our** maximum aggregate liability for all **damages** arising out of all **claims** made and reported during the **policy period** shall be the Technology Errors and Omissions Policy Aggregate Limit of Insurance stated in ITEM 4. in the Declarations. The limit of insurance during any extended reporting period added to this policy shall be the remaining portion, if any, of the aggregate limit of insurance provided by this policy as stated in ITEM 4. in the Declarations.
- C.** **Claims** based on or arising out of the **wrongful incident** and any **affiliated wrongful incident** shall be considered a single **claim** and shall be considered first made during the **policy period** or the extended reporting period (if applicable), of the policy in which the earliest **claim** arising out of such act(s) or circumstance(s) was first made and all **damages** shall be subject to the same per **claim** limit of insurance.
- D.** Payment by **us** of **claim expenses** incurred with any **claim**, shall serve to reduce the limit of insurance stated in ITEM 4. in the Declarations.

SECTION V – GENERAL CONDITIONS**A. Policy Territory**

This policy shall extend to any **wrongful incident**, including those that contain passive content on a personal jurisdictional website, committed in the **coverage territory**.

All premiums, limits, retentions, **damages**, **claim expenses** and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is

rendered, settlement is denominated or another element of **damages** or **claim expenses** under this policy is stated in a currency other than United States dollars, payment under this policy shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **damages** or **claim expenses** is due, respectively.

B. Extended Reporting Period

1. If **we** refuse to renew this policy for reasons other than non-payment of premium or **you** cancel or refuse to renew this policy for reasons other than non-payment of premium, **we** will provide to you a ninety (90) day automatic extension of the coverage granted by this policy, at no additional charge, for any **claim** first made against **you** and reported to **us** during the ninety (90) day automatic extension period but only as respects **wrongful incidents** committed after the retroactive date (if any) stated in the Declarations and prior to the termination of the policy by date of cancellation or non-renewal. In the event **you** purchase replacement coverage for this policy or an extended reporting period under Paragraph 2. below, said ninety (90) day automatic extension period will terminate upon the effective date of said replacement coverage or the extended reporting period.
2. If **we** refuse to renew this policy for reasons other than non-payment of premium, or if **you** cancel or refuse to renew this policy for reasons other than non-payment of premium, **you** shall have the right to purchase the extended reporting period, for fifty percent (50%) of the annual premium for twelve (12) months, unless modified by endorsement.

This extension will provide coverage granted by this policy for any **claim** first made against **you** and reported to **us** during the extended reporting period. This extended reporting period only applies to **wrongful incidents** committed after the retroactive date stated in the Declarations and prior to the date of cancellation or non-renewal. **You** must apply for this extension in writing and pay the appropriate premium prior to the expiration of the ninety (90) day automatic extension period under 1. above.

3. All premium paid with respect to an extension period shall be deemed to be fully earned as of the first day of the extension period. For the purpose of this clause, any change in premium, retention, limit of insurance or other terms on renewal shall not constitute a refusal to renew.

Limits of insurance available during any extended reporting period shall not exceed the balance of the limits of insurance in effect at the time the policy terminated. In the event similar insurance is in force covering any **claims** first made during the ninety (90) day automatic extension period or during any extended reporting period, coverage provided by this policy shall be excess of any such other insurance.

C. Notice and Claim Reporting Provisions

1. Notice hereunder shall be given in writing to the **underwriter** at the following:

Email address:

Claimsreport@phlyins.com

Or mailing address:

Philadelphia Insurance Companies
One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004

2. The date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice. Any notice to **us** shall specify the part(s) of this policy under which the notice is being given and shall be treated as notice only under such specified part(s).
 - a. **You** shall, as a condition precedent to **our** obligations under this policy, give written notice to **us** as soon as practicable during the **policy period**, or during the extended reporting period (if any) of any **claim** made against **you**.
 - b. If during the **policy period**, or during the extended reporting period (if any), but not during the automatic extension, **you** become aware of any circumstance which could reasonably be expected to give rise to a **claim**, and if **you** give written notice to **us** regarding all particulars of said circumstances, any **claim** then arising out of such **wrongful incident** will be considered to have been first made for purposes of providing us notice of the matter only at the time of the original notice. Such written notice of any circumstance must include:
 - (1) The specific circumstances which could reasonably be expected to give rise to a **claim**;
 - (2) The **damages** which have or may result from such circumstances; and
 - (3) How **you** first became aware of such circumstances.

Notwithstanding the above, no **damages** or **claim expenses** incurred prior to the time that a matter qualifies as an actual **claim** under the policy will be covered. There is no retroactive coverage for any **damages** or **claim expenses** incurred prior to the time a matter qualifies as an actual **claim** regardless of whether such **damages** or **claim expenses** would have been incurred after the matter became a **claim**.

D. Your Duties in the Event of a Claim

1. Pursuant to **C. Notice and Claim Reporting Provisions**, **you** shall give written notice containing particulars sufficient to identify the **insured**, time, place and underlying circumstances of the **claim** to **us**.
2. **You** shall admit no liability, make no payments, assume no obligation and incur no expense related to such **claim** without **our** written consent.
3. When a **claim** is made against **you**, **you** shall immediately forward to **us** every demand, notice, summons, or other process received by **you** or **your** representatives.
4. **You** shall cooperate with **us** and, upon **our** request, assist in making settlement and in the conduct of suits. **You** shall attend hearing, trials and depositions and shall assist in securing and giving evidence and in obtaining the attendance of witnesses.
5. **You** shall not demand to or agree to arbitration of any **claim** without **our** written consent. Such consent shall not be unreasonably withheld.

E. Subrogation

If **we** pay any amount hereunder as **damages, claims expense** or any combination thereof, **we** shall be subrogated to **your** rights of recovery against any person, firm or organization. **You** shall execute and deliver instruments and papers and do whatever is necessary to secure such rights. **You** shall not waive or prejudice such rights prior to or subsequent to any **claim**.

F. Changes

Notwithstanding anything to the contrary, no provision of this policy may be amended, waived or otherwise changed except by endorsement issued by **us** to form part of this policy.

G. Action Against Us

1. No action shall lie against **us** unless, as a condition precedent thereto, there shall have been compliance with all terms of this policy, and until the amount of **your** obligation to pay shall have been finally determined either by judgment entered in a court of law against **you** or by **your** written agreement with the claimant or claimant's legal representative and **us**.
2. Any person or the legal representatives thereof who has secured such a judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or entity shall have any right under this policy to join **us** as a party to any action against **you** to determine **your** liability, nor shall **we** be impeded by **you** or **your** legal representatives. **Your** bankruptcy or insolvency or that of **your** successor in interest shall not relieve **us** of **our** obligations hereunder.

H. Change in Control

If during the **policy period**:

1. The **named entity** merges into or consolidates with another entity such that the **named entity** is not the surviving entity; or
2. Another entity, person, or group of entities and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by said other entity(ies) or persons) of more than fifty percent (50%) of the outstanding securities representing the rights to vote for the election of the **named entity's** directors;

(Either of the above events hereinafter referred to as the "Transaction") then coverage shall continue until the later of the termination of the **policy period** or such other date to which **we** may agree, but only with respect to **wrongful incidents** which occurred prior to the transaction and are otherwise covered by this policy. All premiums shall be considered fully earned as of the date of the transaction.

I. Cancellation or Non-Renewal

1. This policy may be canceled by the **named entity** by surrender thereof and selection of a future date to us at the address stated in the Declarations or by mailing to **us** written notice stating when thereafter such cancellation shall be effective. If this policy is canceled by **you**, **we** shall retain the customary short-rate portion of the premium.
2. The policy may be canceled by **us** for non-payment of premium by mailing to the **named entity** at the address shown in the Declarations written notice stating when such cancellation shall become effective. Notice will not be less than ten (10) days and earned premium shall be computed pro-rata.
3. In the event **we** refuse to renew this policy, **we** shall mail to the **named entity**, at the address shown in the Declarations, not less than forty-five (45) days prior to the expiration of this policy, written notice of non-renewal. Such notice shall be conclusive of cancellation on all **insureds**.
4. The mailing of notice of cancellation or non-renewal as aforementioned shall be sufficient notice of the intent to cancel or non-renew. The effective date of cancellation or non-renewal specified in the notice shall terminate this **policy period**.

J. Conformity to Statutes

Terms of this policy which are in conflict with the statutes of the state wherein this policy is issued are hereby amended to conform to such statutes.

K. Assignment

Assignment of interest under this policy shall not bind **us** unless **our** consent is endorsed hereon.

L. Authorization Clause

By acceptance of this policy, **you** agree that the statements in the application are **your** agreements and representations and that this policy is issued in reliance upon the truth of such representations. This policy embodies all existing agreements between **you** and **us** relating to this insurance.

M. Other Insurance

This insurance is excess over any other valid and collectable insurance available to **you** except as respects such insurance written to apply specifically in excess of this insurance.

N. Liability Coverage Disputed and Reservation of Rights

If a controversy or dispute arises with regard to whether coverage exists with respect to a **claim** submitted by **you** under the coverage sections of this policy, **we** may elect to provide a defense under a reservation of rights whereby **we** reserve **our** rights to deny and reject any **claim** for **damages**. In the event a final adjudication in the underlying proceeding establishes that any act, omission, commingling, misappropriation, misuse or intentional wrongdoing was committed, or gaining of any profit or advantage to which **you** are not legally entitled with respect to such a **claim**, **you** shall reimburse **us** upon demand all sums and monies paid by **us** to defend and/or settle such **claim**.

O. False or Fraudulent Claims

If any **insured** shall commit fraud in presenting any **claim** as regards to amounts or otherwise, this insurance shall become void as to such **insured** from the date such fraudulent **claim** is presented.

P. Headings

The descriptions in the headings of this policy and any endorsements attached hereto are solely for convenience, and form no part of the terms and conditions of coverage.

Q. Currency

Payments for **damages**, **claim expenses** and supplementary payments will be in the currency of the United States of America. At **our** sole option, **we** may make these payments in a different currency. Any necessary currency conversion for the payment of damages will be calculated based on the rate of exchange published in the next Wall Street Journal subsequent to the date of judgment or settlement. Any necessary currency conversion for the payment of **claim expenses** or Supplementary Payments will be calculated based on the rate of exchange published in the Wall Street Journal immediately preceding the date the payment is processed.

R. Bankruptcy

Bankruptcy or insolvency of the **insured** or of the **insured's** estate will not relieve **us** of **our** obligations under this policy.

SPECIMEN