HISCOX PRO™

Technology Professional Liability Coverage Part

I. What is covered

We will pay up to the **coverage part limit** for **damages** and **claim expenses** in excess of the **retention** for covered **claims** against **you** resulting from the performance of **your technology services** by **you** or anyone on **your** behalf (including **your** subcontractors, outsourcers, or independent contractors) on or after the **retroactive date**, for any actual or alleged:

1. negligent act, error, or omission;
2. negligent misstatement or negligent misrepresentation; or
3. unintentional breach of a written contract with **your client**,

provided the **claim** is first made against **you** during the **policy period** and is reported to **us** in accordance with Section V. Your obligations.

II. Coverage enhancements

We will also make the following payments:

Software copyright sublimit

A. **We** will pay up to $250,000 in the aggregate in **damages** and **claim expenses** for any **claim** against **you** alleging **software copyright infringement**, provided the **claim** is first made against **you** during the **policy period**, it results from **your technology services** performed on or after the **retroactive date**, and it is reported to **us** in accordance with Section V. Your obligations.

This software copyright sublimit will apply to any **claim** alleging **software copyright infringement**, even if the **claim** contains other allegations asserted against **you**, if the additional allegations are based on the same facts, circumstances, situation, event, transaction, or cause as the **claim** for **software copyright infringement**.

You must pay the **retention** stated in the Declarations in connection with any payment **we** make under this subsection A, and any payments **we** make will be a part of, and not in addition to, the **coverage part limit**.

Contractually agreed fees

B. If **your client** refuses to pay **your** contractually agreed fees (including any amount **you** owe to a subcontractor on the date **your client** first refuses to pay) for **your technology services** performed on or after the **retroactive date**, and **you** satisfy **us** that:

1. **you** do not have reasonable grounds to legally compel payment of the amount owed;
2. there is written evidence from **your client** that they intend to make a **claim** against **you** that is reasonably likely to result in **damages** covered by this policy greater than the amount **you** are owed; and
3. **our** payment is reasonably likely to fully and finally resolve all known **claims** and **potential claims** by that **client**,

then **we** will pay the amount **you** are owed, not including any amount for **your** lost profit, mark-up, or tax liabilities.

You must pay the **retention** stated in the Declarations in connection with any payment **we** make under this subsection B, and any payments **we** make will be a part of, and not in addition to, the **coverage part limit**.

If a **claim** is still made against **you** after **we** have paid **your** outstanding fees under this subsection B, **our** obligation to pay any **damages** or **claim expenses** resulting from such **claim** will be reduced by the amount **we** paid.

Supplemental payments

C. **We** will pay reasonable expenses, including loss of wages and a $250 travel per diem, incurred by **you** if **we** require **you** to attend depositions, arbitration proceedings, or trials in connection with the defense of a covered **claim**, but **we** will not pay more than an aggregate of $10,000 per **claim** for such expenses, regardless of the number of **insureds**.

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No **retention** will apply to amounts **we** pay under this subsection C, and such amounts will be in addition to, and not part of, the **coverage part limit**.

III. Who is an insured

For purposes of this Coverage Part, **you**, **your**, or **insured** means a **named insured**, **subsidiary**, **employee**, or **acquired entity**, as defined below:

Named insured

means the individual, corporation, partnership, limited liability company, limited partnership, or other entity identified in Item 1 of the Declarations.

Subsidiary

means any entity of which the **named insured** has majority ownership before or as of the inception of the **policy period**.

Employee

means any past, present, or future:

1. person employed by the **named insured** or **subsidiary** as a permanent, part-time, seasonal, leased, or temporary employee, or any volunteer; or
2. partner, director, officer, or board member (or equivalent position) of the **named insured** or **subsidiary**,

but only while in the course of their performance of **technology services** on behalf of or at the direction of such **named insured** or **subsidiary**.

Acquired entity

means an entity in which the **named insured**, during the **policy period**:

1. acquires substantially all of the assets;
2. acquires the majority of its voting securities, as a result of which it becomes a **subsidiary**; or
3. merges and leaves the **named insured** as the surviving entity.

With respect to an **acquired entity** whose revenues exceed 10% of the annual revenues of the **named insured** at the time of its creation or acquisition, any coverage under this policy will expire 90 days after the effective date of its creation or acquisition unless, within such 90 day period:

1. the **named insured** provides **us** with written notice of such creation or acquisition;
2. the **named insured** provides **us** with information related to such creation or acquisition as **we** may reasonably require;
3. the **named insured** accepts any special terms, conditions, exclusions, or additional premium charge as **we** may reasonably require; and
4. **we** agree by written endorsement to provide such coverage.

This policy will apply to an **acquired entity** only with respect to **your technology services** performed after the acquisition, merger, or creation. If a **claim** results from **technology services** performed both before and after the acquisition, merger, or creation of an **acquired entity**, this policy will apply only to that portion of the **claim** attributable to the **technology services** performed after the acquisition, merger, or creation.

IV. Defense and settlement of claims

Defense

We have the right and duty to defend any covered **claim**, even if such **claim** is groundless, false, or fraudulent.

We have the right to select and appoint counsel to defend **you** against a covered **claim**. **You** may request in writing that **we** appoint defense counsel of **your** own choice, but whether to grant or deny such a request will be at **our** sole discretion.

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Settlement

We have the right to solicit and negotiate settlement of any **claim** but will not enter into a settlement without **your** consent, which **you** agree not to withhold unreasonably. If **you** withhold consent to a settlement recommended by **us** and acceptable to the party who made the **claim**, the most **we** will pay for that **claim** is the sum of:

1. the amount of **our** recommended settlement;
2. **claim expenses** incurred up to the date of **our** recommendation;
3. 50% of all **claim expenses** incurred after **our** recommendation; and
4. 50% of all **damages** in excess of the settlement amount recommended by **us**.

V. Your obligations

Notifying us of claims and coverage enhancements

You must give written notice to **us** of any **claim**, or any other matter covered under Section II. Coverage enhancements, as soon as possible, but in any event, no later than 60 days after the end of the **policy period**.

All such notifications must be in writing and include a copy of the **claim** or other covered matter, and must be submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Notifying us of potential claims

You have the option of notifying **us** of **potential claims** that may lead to a covered **claim** against **you**.

In order to do so, **you** must give written notice to **us** as soon as possible and within the **policy period**, and the notice must, to the greatest extent possible, identify the details of the **potential claim**, including identifying the potential claimant(s), the likely basis for liability, the likely demand for relief, and any additional information about the **potential claim we** may reasonably request.

The benefit to **you** of notifying **us** of a **potential claim** is that if an actual **claim** arises from the same circumstances as the properly notified **potential claim**, then **we** will treat that **claim** as if it had first been made against **you** on the date **you** properly notified **us** of it as a **potential claim**, even if that **claim** is first made against **you** after the **policy period** has expired.

All **potential claim** notifications must be in writing and submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Retention

Our obligation to pay **damages** and **claim expenses** under this Coverage Part is in excess of the **retention**, which **you** must pay in connection with each covered **claim**.

VI. Exclusions – What is not covered

We will have no obligation to pay any sums under this Coverage Part, including any **damages** or **claim expenses**, for any **claim**:

Antitrust/deceptive trade practices

1. based upon or arising out of any actual or alleged:
   a. false, deceptive, or unfair trade practices;
   b. unfair competition, impairment of competition, restraint of trade, or antitrust violations;
   c. violation of the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, all including as may be amended, or any similar foreign, federal, state, or local statutes, rules, or regulations; or
   d. deceptive or misleading advertising.

Assumption of liability

2. based upon or arising out of any actual or alleged liability of others **you** assume under any contract or agreement; however, this exclusion will not apply to any liability **you** would have in the absence of the contract or agreement.

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Bodily injury	3.	based upon or arising out of any actual or alleged **bodily injury**.
Breach of warranty/ guarantee	4.	based upon or arising out of any actual or alleged breach of express warranties or guarantees, except any warranty or guarantee to perform **your technology services** consistent with applicable industry standards or with reasonable skill or care. This exclusion will not apply to any liability **you** would have in the absence of the warranties or guarantees.
Ceased product/service	5.	based upon or arising out of any actual or alleged commercial decision to cease providing a particular product or service.
Chargeback	6.	based upon or arising out of any actual or alleged chargeback, liability, or fee incurred by **you** or **your client** as a result of a merchant service provider, including any credit card company or bank, wholly or partially reversing or preventing a payment transaction.
Client services	7.	resulting solely from an error, flaw, defect, or other problem in **your client's** products or services, and not in **your technology products** which deliver or support such products or services.
Collection of data without knowledge	8.	based upon or arising out of any actual or alleged: a. collection of personally identifiable information by **you** (or others on **your** behalf) without the knowledge or permission of the person to whom the personally identifiable information relates; or b. use of personally identifiable information by **you** (or others on **your** behalf) in violation of applicable law.
Commercial dispute	9.	based upon or arising out of any actual or alleged commercial dispute with **your** business partner or business associate, including but not limited to any reseller, distributor, original equipment manufacturer, third-party sales agent, systems integrator, or joint venturer, but only to the extent such a **claim** is based upon: a. a commission or royalty, or any other term upon which such partner or associate is to be compensated in connection with doing business with **you**, or any compensation or remuneration promised or owed by **you** pursuant to those terms; or b. **your** decision to cease doing business with such a partner or associate.
Cramming/slamming	10.	based upon or arising out of: a. the imposition of charges for services or content in relation to telephone, cell phone, wireless data, cable television, internet, voice over internet protocol (VoIP) or other similar telecommunications services, which charges have not been adequately disclosed or which services or content have not been requested by the consumer; or b. the unauthorized switching of telecommunications carriers, including providers of telephone, cell phone, wireless data, cable television, internet, voice over internet protocol (VoIP) or other similar services.
Criminal proceedings	11.	brought in the form of a criminal proceeding, including but not limited to a criminal investigation, grand jury proceeding, or criminal action.
Employment related liability	12.	based upon or arising out of any actual or alleged: a. obligation under any workers' compensation, unemployment compensation, employers' liability, fair labor standards, labor relations, wage and hour, or disability benefit law, including any similar provisions of any foreign, federal, state, or local statutory or common law; b. liability or breach of any duty or obligation owed by **you** as an employer or prospective employer; or

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c. harassment, wrongful termination, retaliation, or discrimination, including but not limited to adverse or disparate impact.

Excluded costs and damages

13. to the extent it seeks or includes:

a. fines, penalties, taxes, or sanctions against **you**;

b. overhead costs, general business expenses, salaries, or wages incurred by **you**;

c. the return, reduction, or restitution of fees, commissions, profits, or charges for goods provided or services rendered;

d. liquidated or multiple damages;

e. restitution, disgorgement of profits, any advantage to which **you** were not legally entitled, or unjust enrichment;

f. the cost of complying with injunctive relief;

g. special, indirect, or consequential damages; or

h. service credits.

Excluded professional services

14. based upon or arising out of any actual or alleged performance of or failure to perform services as an architect, engineer, accountant, lawyer, insurance agent/broker, registered investment advisor, security broker/dealer, collection agent, title agent, and/or title abstractor.

Excluded statutory violations

15. based upon or arising out of any actual or alleged violation of the following laws:

a. the Securities Act of 1933;

b. the Securities Exchange Act of 1934;

c. any state blue sky or securities laws;

d. the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*;

e. the Employee Retirement Income Security Act of 1974;

f. the Fair Debt Collection Practices Act; or

g. the Fair Credit Reporting Act,

all including as may be amended, or any similar provisions of any foreign, federal, state, or local statutory or common law and any rules or regulations promulgated under such laws.

Exclusivity/non-compete

16. based upon or arising out of any actual or alleged breach of any exclusivity, non-competition, non-solicitation, or other similar commercial terms in **your** contract with a **client**.

Failure to maintain insurance or bonds

17. based upon or arising out of any actual or alleged failure to procure or maintain adequate insurance or bonds.

False or misleading advertising

18. based upon or arising out of any actual or alleged false or misleading advertisement.

Financial services

19. based upon or arising out of:

a. the providing of any financial advice, debt counseling; or credit advice;

b. **your** advice about or selection of any investment manager or investment advisory, custodial, or similar firm;

c. **your** advice, promise, or guarantee about the future performance or value of investments, rates of return, or interest;

d. the fluctuation in the value of any security;

e. the failure of investments to perform as expected or desired;

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f. the attesting to or audit, review, or compilation of audited financial statements; or

g. any actual or alleged performance of or failure to perform tax preparation, audit compilation, or attestation services.

Funds transfer

20. for any actual or alleged loss, theft, or transfer of:

a. **your** funds, monies, or securities;

b. the funds, monies, or securities of others in **your** care, custody, or control; or

c. the funds, monies, or securities in the care, custody, or control of any third party for whom **you** are legally liable,

including the value of any funds, monies, or securities transferred by **you** or others on **your** behalf.

Government investigation/ enforcement

21. based upon or arising out of any actual or alleged governmental investigation or enforcement of any state or federal regulation, including but not limited to any regulation promulgated by the Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission, or ASCAP, BMI, SESAC, or other similar licensing organization.

Governmental billing

22. based upon or arising out of any actual or alleged inaccurate, improper, or fraudulent billings or invoices submitted to a governmental entity, including but not limited to a qui tam action or any action under the False Claims Act, as may be amended, or any similar provisions of any foreign, federal, state, or local statutory or common law.

Hardware design/ manufacture

23. based upon or arising out of **your** design, manufacture, inspection, or reproduction of any hardware.

Infrastructure interruption

24. based upon or arising out of any actual or alleged failure or interruption of service provided by an internet service provider, telecommunications provider, utility provider, or other infrastructure provider; however, this exclusion will not apply to a **claim** by **your client** if **you** are an internet service provider, telecommunications provider, utility provider, or other infrastructure provider.

Insured vs. insured

25. brought by or on behalf of one **insured** or **affiliate** against another **insured** or **affiliate**.

Intellectual property

26. based upon or arising out of any actual or alleged infringement, use, or disclosure of any intellectual property, including but not limited to copyright, trademark, trade dress, patent, service mark, service name, title, or slogan, or any publicity rights violations, cyber squatting violations, moral rights violations, any act of passing-off, or any misappropriation of trade secret; however, this exclusion will not apply to a **claim** covered under Section II. Coverage enhancements, Subsection A. Software copyright sublimit.

Intentional acts

27. based upon or arising out of any actual or alleged fraud, dishonesty, criminal conduct, or any knowingly wrongful, malicious, or intentional acts or omissions, except that **we** will pay **claim expenses** until there is a final adjudication establishing such conduct.

This exclusion will apply to the **named insured** only if the conduct was committed or allegedly committed by any:

a. partner, director, officer, or member of the board (or equivalent position) of the **named insured**; or

b. employee of the **named insured** if any partner, director, officer, member of the board (or equivalent position) of the **named insured** knew or had reason to know of such conduct by the employee.

This exclusion will apply separately to each **insured** and will not apply to any **insured** who did not commit, participate in, acquiesce to, or ratify such conduct committed by another **insured**.

Live trading

28. based upon or arising out of any delay in, failure to complete, or improper electronic transmission of data or instructions for:

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a. the purchase, sale, or exchange of any financial products, investments, or securities, including but not limited to currency, certificates of deposit, stocks, bonds, annuities, commodities, futures contracts, options contracts, guaranteed investment contracts, money market funds, mutual funds, debt instruments, mortgage instruments, or other marketable assets;

b. the registration of such financial products, investments, or securities with federal, state, local, or foreign agencies or regulators; or

c. the deposit, withdrawal, or transfer of funds in payment for such financial products, instruments, or securities.

Medical malpractice

29. based upon or arising out of any actual or alleged medical malpractice or breach of any duties owed as a healthcare provider, including but not limited to the rendering of or failure to render medical services, treatment, diagnosis, or advice.

Misappropriation of funds

30. based upon or arising out of the actual or alleged theft, misappropriation, commingling, or conversion of any funds, monies, assets, or property.

Pollution/environmental

31. based upon or arising out of any actual, alleged, or threatened discharge, dispersal, release, or escape of **pollutants**, including any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **pollutants**.

Prior acts/notice/knowledge

32. based upon or arising out of any:

a. **claim** or **potential claim** that was the subject of any notice given under any other policy of which this policy is a renewal or replacement;

b. **claim** or **potential claim** that was the subject of, or is related to, any prior or pending litigation, **claim**, written demand, arbitration, administrative or regulatory proceeding or investigation, or licensing proceeding that was filed or commenced against **you** and of which **you** had notice prior to the **policy period**; or

c. other matter **you** had knowledge of prior to the **policy period**, and **you** had a reasonable basis to believe could result in a **claim**.

However, if this policy is a renewal or replacement of a previous policy **we** issued that provided materially identical coverage, and is part of an unbroken chain of successive policies issued by **us**, the **policy period** referred to in paragraphs b and c, above, will be the policy period of the first such policy **we** issued.

Privacy

33. based upon or arising out of any actual or alleged:

a. unauthorized acquisition, access, use, or disclosure of, improper collection or retention of, or failure to protect any non-public personally identifiable information or confidential corporate information that is in **your** care, custody, or control; or

b. violation of any privacy law or consumer data protection law protecting against the use, collection, or disclosure of any information about a person or any confidential corporate information.

Privacy policy violations

34. based upon or arising out of any actual or alleged:

a. failure to have or appropriately display a privacy policy;

b. failure of **your** privacy policy to comply with any federal, state, local, or foreign statutes, ordinances, regulations, or other laws;

c. breach of **your** privacy policy; or

d. changing of the terms of **your** privacy policy.

Property damage

35. based upon or arising out of any actual or alleged **property damage**; however, this exclusion will not apply to damage to data, or destruction or loss of use of data.

Repair/replace/recall

36. based upon or arising out of any actual or alleged repair, upgrade, correction, recall, replacement, withdrawal, removal, or disposal costs incurred by **you** or others.

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Return of fees	37.	for the return or offset of fees or charges for goods or services already provided or contracted to be provided by **you**; however this exclusion will not apply to: a. a return or offset of fees or charges which is a contractual measure of **your** liability to **your client**; or b. the extent the return or offset of fees or charges is less than the amount for which **you** would otherwise have been liable.
Scareware	38.	based upon or arising out of any actual or alleged provision or transmission of Scareware, including but not limited to software that produces false or alarming warning messages.
Subsidiary outside control of named insured	39.	a. based upon or arising out of **technology services** performed by or on behalf of a past or present **subsidiary** while the **named insured** does not have majority ownership or management control of it; or b. made against a **subsidiary** or anyone acting on its behalf while the **named insured** does not have majority ownership or management control of it.
Sweepstakes/gambling/ lotteries	40.	based upon or arising out of any: a. actual or alleged provision of any sweepstakes, gambling activities, or lotteries; or b. price discounts, prizes, awards, money, or valuable consideration given in excess of a total contracted or expected amount, including but not limited to over redemption or under redemption of coupons, discounts, awards, or prizes.
Third party technology product defect	41.	based upon or arising out of any actual or alleged defect in any **technology products** that is solely caused by a third party, including but not limited to any third party software supplier, manufacturer, or originator; however, **we** will pay **claim expenses** until there is an admission or final adjudication that the defect at issue is solely caused by a third party, at which time **our** duty to defend **you** will end.
Unsolicited telemarketing	42.	based upon or arising out of any actual or alleged violation of any federal, state, local, or foreign statutes, ordinances, or regulations relating to unsolicited telemarketing, solicitations, emails, faxes, text messages, or any other communications of any type or nature, including but not limited to the Telephone Consumer Protection Act, CAN-SPAM Act, or any “anti-spam” or “do-not-call” statutes, ordinances, or regulations.
Virtual currency	43.	based upon or arising out of any actual or alleged virtual currency, including but not limited to virtual goods exchanged in connection with an Internet game or virtual economy.

VII. Definitions

The following definitions apply to this Coverage Part. Additional definitions are contained in Section III. Who is an insured, and in the General Terms and Conditions, Section VI. Definitions applicable to all Coverage Parts.

Affiliate means any person or entity related to any **insured** through common ownership, control, or management as follows:

1. any person or entity:
   a. which wholly or partly owns, operates, controls, or manages the **named insured**;
   b. which was operated, controlled, or managed by the **named insured**; or
   c. in which any **insured** has an ownership interest of 15% or more,

   at anytime during or after the performance of the **technology services** giving rise to the **claim**; or
2. any entity for which any **insured** is an officer or director at the time the **claim** is made.

Affiliate does not include a **subsidiary**.

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Bodily injury means physical injury, sickness, disease, death, humiliation, mental injury, mental anguish, emotional distress, suffering, or shock sustained by a person.

Claim means any written assertion of liability or any written demand for financial compensation or non-monetary relief.

Claim expenses means the following sums incurred in excess of the **retention** and with **our** prior consent:

1. all reasonable and necessary fees, costs, and expenses (including the fees of attorneys and experts) incurred in the investigation, defense, or appeal of a **claim**; and
2. premiums on appeal bonds, attachment bonds, or similar bond, but **we** will have no obligation to apply for or furnish any such bonds.

Client means any person or entity for whom **you** perform **technology services**.

Damages means the following amounts incurred in excess of the **retention**:

1. a monetary judgment or monetary award that **you** are legally obligated to pay (including pre- or post-judgment interest and awards of claimant's attorney fees); or
2. a monetary settlement negotiated by **us** with **your** consent.

Damages includes punitive damages to the full extent they are insurable under the law of any applicable jurisdiction that most favors coverage.

Pollutants means any solid, liquid, gaseous, biological, radiological, or thermal irritant or contaminant, including smoke, vapor, asbestos, silica, dust, nanoparticles, fibers, soot, fumes, acids, alkalis, chemicals, nuclear materials, germs, mold, and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

Potential claim means any acts, errors, or omissions of an **insured** or other circumstances reasonably likely to lead to a **claim** covered under this policy.

Property damage means physical loss of, physical damage to, or destruction or loss of use of any tangible property.

Retention means the amount stated as such under the Technology Professional Liability Coverage Part section of the Declarations.

Software copyright infringement means infringement of the copyright to any software or source code.

Technology products means computer or telecommunications hardware, software, firmware, or related electronic equipment.

Technology services means only those services identified as Covered Professional Services under the Technology Professional Liability Coverage Part section of the Declarations.

You, **your**, or **insured** means a **named insured**, **subsidiary**, **employee**, or **acquired entity**, as defined in Section III. Who is an insured.

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