

Technology, Cyber, Data Risk, and Media Insurance

Coverage under this policy for **claims** is provided on a claims made and reported basis, and applies to **claims** first made against **you** and reported to **us** during the **policy period**. Coverage under this policy for **breach costs**, **cyber extortion costs**, **business interruption costs**, and **data recovery costs** is provided on an incident discovered and reported basis, and applies to incidents first discovered by **you** and reported to **us** during the **policy period**.

In consideration of the premium charged and in reliance on the statements made and information provided to **us**, including but not limited to the statements made and information provided in and with the application, which is made a part of this policy, as well as subject to the policy limit, the **waiting period**, **retention**, and all of the terms, conditions, limitations, and exclusions of this policy, **we** agree with the **named insured** as follows:

I. Insuring agreements

Technology liability

We will pay on **your** behalf:

- A. **damages** and **claim expenses** in excess of the **retention** if the performance of **technology services** by **you** or others on **your** behalf (including **your** subcontractors, outsourcers, or independent contractors) on or after the **retroactive date** results in a **claim** first made against **you** during the **policy period** for any actual or alleged:
1. **breach of contract**;
 2. **indemnity**;
 3. **negligence**;
 4. **fraud**;
 5. **breach of confidentiality**;
 6. **invasion of privacy**;
 7. **intellectual property infringement**;
 8. **unfair practices**;
 9. **defamation**; or
 10. unintentional infliction of emotional distress, but only when asserted in conjunction with and based on the same allegations as a **claim** for negligent publication, **invasion of privacy**, or **defamation**.

Cyber

- B. **loss** incurred by **you** in excess of the **retention** resulting from a **data breach**, **security failure**, or **extortion threat** that first occurs on or after the **retroactive date** and is discovered by **you** during the **policy period**.

Loss means:

1. **breach costs**;
2. **claim expenses**, **damages**, and **PCI fines and assessments** because of a **claim** made against **you**;
3. **claim expenses** and **penalties** because of a **regulatory proceeding** initiated against **you**;
4. **cyber extortion costs**;
5. **business interruption costs**; and
6. **data recovery costs**.

Media liability

- C. **damages** and **claim expenses** in excess of the **retention** if **your advertising** of **your technology services** or **professional services** on or after the **retroactive date** results in a **claim** first made against **you** during the **policy period** for any actual or alleged:
1. **intellectual property infringement**;

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- Miscellaneous professional liability
2. unintentional infliction of emotional distress based on harm to the character or reputation of any person or entity;
 3. **breach of a license**;
 4. **invasion of privacy**;
 5. **defamation**;
 6. **unfair practices**; or
 7. **negligence** or negligent publication, but only when arising from the substance of any communication, including but not limited to language, data, facts, fiction, music, photographs, images, artistic expression, or visual or graphic materials.
- D. **damages** and **claim expenses** in excess of the **retention** if the performance of **professional services** by **you** or others on **your** behalf (including **your** subcontractors, outsourcers, or independent contractors) on or after the **retroactive date** results in a **claim** first made against **you** during the **policy period** for any actual or alleged **negligence**.

II. Coverage enhancements

Contractual fees

We will also make the following payments, which will reduce the policy limit of liability and the applicable Each Claim limit of liability:

- A. 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** or **professional 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 covered **damages** under Insuring Agreement A. Technology liability or D. Miscellaneous professional liability greater than the amount that **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 in excess of the **retention**, not including any amount for **your** lost profit, mark-up, or tax liabilities.

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

Declaratory relief

- B. 1. If a claimant has advised **you**, in writing, that **you** are committing copyright or trademark infringement; and
2. directly in response to that written assertion, **you** file a declaratory relief action and the claimant files a counterclaim against **you** alleging copyright or trademark infringement; and
3. the counterclaim is covered under this policy and pending against **you** while **you** are prosecuting **your** declaratory relief action,

then **we** will pay reasonable attorney fees **you** incur in excess of the **retention** to prosecute that declaratory relief action.

Pre-claim assistance

- C. If **you** first become aware during the **policy period** of a potential **claim** that is reasonably likely to result in covered **damages** under Insuring Agreement A. Technology liability or D. Miscellaneous professional liability, then **we** will pay reasonable and necessary fees, costs, and expenses **we** incur to investigate or monitor such potential **claim**. **Our** obligation to make any payments under this subsection will cease when a **claim** is made against **you** arising out of the same circumstances as the potential **claim** **we** investigated or monitored.

No **retention** will apply until such potential **claim** becomes an actual **claim**, at which point the **retention** will apply.

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Service credits

- D. If **your client** makes a **claim** against **you** that is covered under Insuring Agreement A. Technology liability, and providing service credits to the **client** as part of or as the entire settlement will fully and finally resolve all known **claims** and potential **claims** by that **client**, then **we** will also pay for the value of **your** service credits (less any profit or mark-up), but only if the service credits are agreed to by **us** as part of the settlement.

III. Defense and settlement of claims

- A. **We** will have the right and duty to defend any covered **claim** or **regulatory proceeding**, even if such **claim** or **regulatory proceeding** is groundless, false, or fraudulent.
- B. **We** will have the right to appoint defense counsel upon being notified of such **claim**. Defense counsel will be mutually agreed between **you** and **us**, which agreement will not be unreasonably withheld. However, in the absence of such agreement, **our** decision will be final.
- C. Notwithstanding paragraph B., **we** will have no obligation to pay **claim expenses** until **you** have satisfied the applicable **retention**.
- D. **Our** duty to defend will terminate upon the exhaustion of the applicable limit of liability stated in Item 4 of the Declarations.
- E. **We** will have the right to solicit and negotiate settlement of any **claim**. **We** will not, however, enter into a settlement unless **you** and **we** agree, which agreement will not be unreasonably withheld.
- F. **You** must notify **us** immediately of any settlement demands or offers. **We** agree that **you** may settle any **claim** where the total **loss**, **claim expenses**, and **damages** does not exceed the **retention**, provided the entire **claim** is resolved and **you** obtain a full release on behalf of all **insureds**.
- G. If **you** refuse to agree to any settlement recommended by **us** and acceptable to the claimant, then **our** liability for such **claim** will not exceed the sum of:
1. the amount for which such **claim** could have been settled, less the **retention**, plus **claim expenses** incurred up to the date of such refusal; and
 2. 50% of any **claim expenses** incurred after the date such settlement was refused by **you**, plus 50% of any **damages**, **PCI fines and assessments**, and **penalties** above the amount for which the **claim** could have settled.

IV. Definitions

Additional Insured

means any person or organization **you** have agreed in a written contract or agreement to add as an additional insured to a policy providing the type of coverage afforded by Insuring Agreement A. Technology liability or D. Miscellaneous professional liability, provided the contract or agreement:

1. is currently in effect or becomes effective during the **policy period**; and
2. was executed before the **technology services** or **professional services** out of which the **claim** arises were performed.

Advertising

means online, digital, or electronic promotion by broadcast, transmission, dissemination, telecast, cablecast, podcast, streaming, publication, republication, or by use of a website or social media.

Breach costs

means the following costs incurred in response to an actual or suspected **data breach**:

1. legal costs:
reasonable and necessary costs for an attorney to provide advice to the **insured organization** in connection with its investigation of a **data breach**, to assist with the preparation of notifications to the regulators and affected individuals, and to determine and pursue **your** indemnification rights under a written agreement with a third party;
2. computer forensic costs:
reasonable and necessary costs for a computer forensic analysis conducted by outside forensic experts to:

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- a. investigate the cause of a **data breach** and determine the information impacted; and
- b. stop or contain a **data breach**, provided all costs under this paragraph 2. b. will be limited to fees for time incurred by such outside forensic expert;
3. notification costs:
reasonable and necessary costs to notify individuals, regulators, or others as required by law, and to voluntarily notify individuals affected by a **data breach**;
4. call center costs:
reasonable and necessary costs to operate a call center to answer questions from affected individuals;
5. identity protection services:
reasonable costs to provide affected individuals with one year (or more as required by law) of services to monitor, restore, and/or protect an individual's credit or identity; and
6. crisis management and public relations costs:
reasonable costs:
 - a. for a public relations or crisis management consultant to assist the **insured organization** in reestablishing its business reputation and to respond to media reports regarding a **data breach**;
 - b. for an attorney to advise the **insured organization** on reducing the likelihood of or costs of any **claim** otherwise covered by this policy; and
 - c. to issue statements via email or the **insured organization's** website regarding a **data breach** to individuals whose information was not impacted by such **data breach**.

You may incur legal costs under paragraph 1, provided by a firm on **our** breach response providers list without **our** prior written consent. All other **breach costs** require **our** prior written consent.

You may request in writing the right to retain privacy counsel that is not on the breach response providers list. **We** will only consider such a request if the firm has not yet been retained to perform services in connection with the **data breach**, and whether to grant such request will be at **our** sole discretion.

Breach costs will not mean, and **we** will have no obligation to pay, any of **your** own costs, salaries, or overhead expenses.

Breach of confidentiality

means breach of any duty of confidentiality or unauthorized interception or recording of images or sound in violation of any civil anti-wiretap statute.

Breach of contract

means the unintentional breach of a written contract with **your client**.

Breach of a license

means breach of a license **you** have acquired to use a third-party's trademark and/or copyrighted material, but only to the extent **your** use inadvertently exceeds express limitations in the license regarding the territory, duration, or media in which the material may be used and only if such breach is asserted in conjunction with and based on the same allegations as a **claim** for copyright infringement or trademark infringement.

Business interruption costs

means **income loss** and **extra expense** actually sustained during the **period of restoration** directly due to the total or partial interruption of the **insured organization's** business for a period greater than the **waiting period**.

Business interruption costs does not mean:

1. legal costs or expenses;
2. costs to update, upgrade, enhance, or replace any computer system or program to a level beyond that which existed prior to the **event**;
3. any amounts due to unfavorable business conditions; or
4. costs to identify or remove software program errors or vulnerabilities.



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Claim

means a written assertion of liability or any written demand for financial compensation or injunctive relief.

In addition, with respect to Insuring Agreement B. Cyber only, **claim** also means:

1. a **regulatory proceeding**;
2. **breach of contract**;
3. **contractual indemnity - breach costs**; or
4. **contractual indemnity - third-party**.

Claim expenses

means the following that are incurred by **us** or by **you** with **our** prior written consent:

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

Claim expenses will not mean and **we** will not be obligated to pay:

1. overhead costs, general business expenses, salaries, or wages incurred by **you**; or
2. the defense of any criminal investigation, criminal grand jury proceeding, or criminal action.

Client

means any person or entity with whom **you** have entered into a written contract to provide services or deliverables that expressly fall within **your technology services** or **professional services**.

Contractual indemnity - breach costs

means any actual or alleged triggering of **your** obligations under a contractual agreement to indemnify **your client**, a merchant bank, or a payment processor for **breach costs** that would be covered by Insuring Agreement B. Cyber if **you** had incurred them, but only to the same extent as though **you** had incurred them.

Contractual indemnity - third party

means any actual or alleged triggering of **your** obligations under a contractual agreement to indemnify **your client**, a merchant bank, or a payment processor for **damages** or **claim expenses** that would be covered by Insuring Agreement B. Cyber if they arose from a **claim** against **you**, resulting from **your** actual or alleged:

1. violation of any privacy law or consumer data protection law protecting against disclosure of **personally identifiable information** or confidential corporate information;
2. breach of common law duty relating to **personally identifiable information** or confidential corporate information; or
3. unintentional breach of a written contract or public facing privacy policy relating to **personally identifiable information** or confidential corporate information,

but only to the same extent as though they arose from a **claim** against **you**.

Cyber extortion costs

means the following costs incurred with **our** prior written consent in response to an **extortion threat**:

1. the ransom paid or, if the demand is for goods or services, the fair market value at the time of surrender; and
2. reasonable and necessary fees and expenses incurred by a representative appointed by **us** to provide **you** with assistance.

Damages

means a monetary judgment or monetary award that **you** are legally obligated to pay (including pre- or post-judgment interest and claimant's attorney fees) or a monetary settlement agreed to by **you** and **us**.

Damages will not mean:

1. fines, civil or criminal penalties, taxes, or sanctions;
2. **penalties**;
3. **PCI fines and assessments**;

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4. any punitive, exemplary, or multiple damages; however, **we** will pay punitive or exemplary damages to the extent insurable in any applicable jurisdiction that most favors coverage;
5. the return or reduction of fees, commissions, profits, or charges for goods provided or services rendered; however, **we** will pay such amounts if asserted as **damages** in connection with an otherwise covered **claim** under Insuring Agreement A. Technology liability;
6. restitution, disgorgement of profits, or unjust enrichment;
7. the cost of complying with injunctive relief;
8. amounts **you** agree to indemnify; however, **we** will pay such amounts to the extent they are explicitly covered under Insuring Agreement A. Technology liability or B. Cyber;
9. any coupons, discounts, prizes, or other incentives, unless agreed in advance by **us** in **our** discretion; provided any such amounts will not include any profits to **you**;
10. any liquidated damages, but only to the extent such damages exceed the amount for which **you** would have been liable in the absence of the liquidated damages agreement; or
11. any service credits, except as provided under Section II. Coverage enhancements, D. Service credits.

Data asset	means any electronic data or software of the insured organization .
Data breach	means the acquisition, access, or disclosure of personally identifiable information or confidential corporate information by a person or entity, or in a manner, that is unauthorized by the insured organization .
Data recovery costs	means reasonable and necessary expenses incurred by you with our prior consent to: 1. regain access to a data asset; or 2. replace, restore, or repair a data asset from back-ups, originals, or other sources. If a data asset cannot reasonably be accessed, recovered, or repaired, then data recovery costs will not exceed the reasonable and necessary expenses incurred by the insured organization to reach that determination. Data recovery costs will not mean: 1. amounts to identify or remediate software program errors or vulnerabilities; 2. the economic value of any data asset, including trade secrets; 3. costs to restore, update, or replace any data asset to a level beyond which existed prior to the event; or 4. costs to research or develop any data asset.
Defamation	means any form of defamation, including but not limited to libel, slander, trade libel, product disparagement, or injurious falsehood.
Event	means a data breach , extortion threat , or security failure .
Extortion threat	means a threat from a third party to commit an intentional attack against the insured organization's website or computer systems or publicly disclose confidential corporate information or personally identifiable information misappropriated from the insured organization if money, securities, or other property of value is not paid.
Extra expense	means reasonable and necessary costs incurred by the insured organization to minimize the interruption of the insured organization's business that are over and above the cost that the insured organization ordinarily would have incurred to conduct its business had no event occurred.
Fraud	means any fraud or dishonesty of your employees, but only if the actual or alleged fraud or dishonesty was not committed or allegedly committed by any:



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1. board member, trustee, director, or officer (or equivalent position) of the **insured organization**; or
2. employee of the **insured organization** if any board member, trustee, director, or officer (or equivalent position) of the **insured organization** knew or had reason to know of such conduct by the employee.

Income loss

means the sum of the following:

1. Net Income (Net Profit or Loss before income taxes) that would have been earned; and
2. continuing normal operating expenses incurred, including payroll.

Indemnity

means an indemnification obligation owed by **you** to a **client** under a written contract.

Intellectual property infringement

means intellectual property infringement (but not any patent infringement), including but not limited to misappropriation of trade secret, copyright infringement, trademark infringement, trademark dilution, trade dress infringement, publicity rights violations, cybersquatting violations, moral rights violations, any act of passing-off, or any misappropriation of formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic material, or artwork.

However, with respect to Insuring Agreement C. Media liability, **intellectual property infringement** will not include misappropriation of trade secret.

Invasion of privacy

means false light, intrusion upon a person's seclusion, or misappropriation of a person's picture, name, or voice for commercial gain.

Merchant services agreement

means any agreement between the **insured organization** and a credit or debit card company, credit or debit card processor, financial institution, or independent sales organization allowing the **insured organization** to accept payment by credit card, debit card, or prepaid card.

Named insured

means the entity named in Item 1 of the Declarations.

Negligence

means any negligent, act, error, or omission, breach of any duty to use reasonable care, or negligent misrepresentation.

PCI fines and assessments

means all amounts **you** are legally obligated to pay under a **merchant services agreement** following a **data breach** or **security failure** impacting credit, debit, or prepaid card information, including:

1. contractual fines or penalties for non-compliance with the PCI Data Security Standards ("PCI DSS");
2. monetary assessments (including for operational expenses, card reissuance fees, and fraud recoveries) and case management fees; and
3. fees for a mandatory audit following a **data breach** to show that the **insured organization** is PCI DSS compliant.

Penalties

means any monetary amounts imposed in a **regulatory proceeding** to the extent insurable by law; however, **penalties** will not mean any: costs to comply with injunctive relief; costs to establish or improve security or privacy practices; or audit, reporting, or compliance costs.

Period of restoration

means the time period that:

1. begins on the date and time that the interruption of the **insured organization's** business first occurred; and
2. ends on the earlier of the date and time that the interruption of the **insured organization's** business: (i) ends; or (ii) could have ended had **you** acted with due diligence and dispatch.

In no event will the **period of restoration** exceed 60 days.

Personally identifiable information

means the following, in any form:

1. non-public individually identifiable information as defined in any federal, state, local, or foreign statute, rule, or regulation, including but not limited to protected health information as defined



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by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and any rule or regulation promulgated thereunder; or

2. an individual's: social security number or taxpayer identification number; driver's license number or state identification number; passport number; or financial account number or credit or debit card number.

Policy period

means the period of time stated in Item 2 of the Declarations, including any optional extended reporting period under Section VIII, when purchased.

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, and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

Professional services

means only those services identified as Covered Professional Services under the "Specified Terms for Professional Liability Insuring Agreement" section of the Declarations.

Regulatory proceeding

means a request for information or assertion of liability by a governmental entity in its official capacity.

Retention

means:

1. with respect to all **claims** or **loss** other than **business interruption costs**, the amount(s) stated in Item 5 of the Declarations.
2. with respect to **business interruption costs**, the greater of: (i) the amount of **business interruption costs** incurred during the **waiting period**; or (ii) the **retention** amount stated in Item 5 of the Declarations.

Retroactive date

means the date stated in Item 3 of the Declarations. Provided, in the event a **subsidiary** is acquired during the **policy period**, the **retroactive date** for such **subsidiary** will be the date the **named insured** acquired effective control of the entity.

Security failure

means any failure by **you** or by others on **your** behalf (including the **insured organization's** subcontractors, outsourcers, or independent contractors) in securing the **insured organization's** computer system.

Subsidiary

means:

1. any entity in which, on or prior to the effective date of the **policy period**, either directly or indirectly through one or more **subsidiaries**, the **named insured** owns more than 50% of the issued and outstanding voting securities or the right to elect or appoint such entity's board of directors or equivalent management structure ("effective control"); and
2. any entity of which the **named insured** acquires effective control during the **policy period**, and whose revenues:
 - a. do not exceed 10% of the current annual revenues of the **named insured**; or
 - b. exceed 10% of the current annual revenues of the **named insured**, but only if within 90 days of such acquisition the **named insured**:
 - i. provides **us** with written notice of such acquisition and any information **we** require in connection therewith; and
 - ii. pays any additional premium and accepts any special terms, conditions, and exclusions in connection therewith.

However, with respect to a **subsidiary** described in paragraph 2. of this definition, the policy will only cover **claims** or **loss** resulting from acts, errors, omissions, incidents, or events occurring while the **named insured** had effective control of such **subsidiary**.

An entity ceases to be a **subsidiary** once the **named insured** no longer has effective control of such entity, either directly or indirectly through one or more **subsidiaries**, and this policy will not respond to **loss** incurred by or **claims** made against such entity after it ceases to be a **subsidiary**.



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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 "Specified Terms for Technology Liability Insuring Agreement" section of the Declarations, and includes the supply, provision, or delivery of technology products .
Unfair practices	means unfair competition, deceptive business practices, or false designation of origin, but only when asserted in conjunction with and based on the same allegations as a claim for intellectual property infringement .
Waiting period	means the number of hours stated in Item 6 of the Declarations.
We/us/our	means the Underwriters identified on the Declarations as issuing this policy.
You/your/insured	means: 1. the named insured and any subsidiaries (together, the "insured organization"); 2. a board member, trustee, director, or officer (or equivalent position) of the insured organization, but only with respect to the performance of his or her duties as such on behalf of the insured organization; 3. an employee of the insured organization, including any part-time, temporary, or leased employee, but only with respect to the performance of his or her duties as such on behalf of the insured organization; 4. if the named insured is a partnership, limited liability partnership, or limited liability company, a general or managing partner, principal, or owner, but only with respect to the performance of his or her duties as such on behalf of the named insured; 5. any person who previously qualified as an insured under paragraphs 2., 3., or 4. above, but only with respect to the performance of his or her duties as such on behalf of the insured organization; 6. the estate, heirs, executors, administrators, assigns, and legal representatives of any insured in the event of such insured's death, incapacity, insolvency, or bankruptcy, but only to the extent that such insured would otherwise be provided coverage under this policy; 7. the spouse or domestic partner of any insured identified in paragraphs 2., 3., or 4. above, but solely with respect to any act, error, or omission of an insured other than the spouse or domestic partner; and 8. any additional insured, but solely for their liability arising out of the insured organization's technology services or professional services and not for any liability arising out of the sole negligence of the additional insured.

V. Exclusions

This policy does not apply to and **we** will have no obligation to pay any **loss, damages, claim expenses**, or any other amounts:

Bodily injury	1. based upon or arising out of any actual or alleged bodily injury, sickness, or disease, including death, humiliation, mental injury, mental anguish, emotional distress, suffering, or shock; however, this exclusion will not apply to: a. any loss otherwise covered under Insuring Agreement B. Cyber; or b. a claim for emotional distress otherwise covered under part 10. of Insuring Agreement A. Technology liability or part 2. of Insuring Agreement C. Media liability.
Chargeback	2. 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; however, this exclusion will not apply to any loss under Insuring Agreement B. Cyber.

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Collection of data without knowledge

3. based upon or arising out of any actual or alleged:
 - a. collection of information by **you** (or others on **your** behalf) without the knowledge or permission of the persons to whom such information relates; however, this exclusion will not apply if no board member, trustee, director, or officer (or equivalent position) of the **insured organization** knew or had reason to know of such conduct; or
 - b. use of **personally identifiable information** by **you** (or others on **your** behalf) in violation of law.

Competitor trade secrets/confidential information

4. based upon or arising out of any actual or alleged disclosure, misuse, or misappropriation of any ideas, trade secrets, or confidential information that came into the possession of any person or entity before such person or entity became an employee, board member, trustee, director, or officer (or equivalent position) of the **insured organization**; however, this exclusion will not apply to any **loss** otherwise covered under Insuring Agreement B. Cyber.

Conduct

5. based upon or arising out of any actual or alleged fraud, dishonesty, criminal conduct, or any knowingly wrongful, malicious, or intentional acts or omissions; however **we** will pay **claim expenses** until there is a non-appealable adjudication establishing such conduct.

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

- a. board member, trustee, director, or officer (or equivalent position) of the **named insured**; or
- b. employee of the **named insured** if any board member, trustee, director, or officer (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**.

However, this exclusion will not apply to a **claim** for **fraud** otherwise covered under part 4. of Insuring Agreement A. Technology liability.

Employer liability

6. 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;
 - c. harassment, wrongful termination, retaliation, or discrimination, including but not limited to adverse or disparate impact; or
 - d. liability or breach of any duty or obligation owed to the **insured organization** and/or its shareholders by any of the **insured organization's** current or former board members, trustees, directors, or officers (or equivalent position) in their capacity as such.

However, parts a and b of this exclusion will not apply to any **loss** otherwise covered under Insuring Agreement B. Cyber.

False or misleading advertisement

7. based upon or arising out of any actual or alleged false or misleading advertisement; however, this exclusion will not apply to any **claim**:
 - a. resulting from a **data breach**; or
 - b. otherwise covered under Insuring Agreement A. Technology liability or C. Media liability and that is based on **your** alleged unauthorized use of another's trademark.

Fund transfer

8. for any actual or alleged loss, theft, or transfer of **your** funds, monies, or securities, or the funds, monies, or securities of others in **your** care, custody, or control, or 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.

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Governmental
investigation/enforcement

9. 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; however, this exclusion will not apply to any **claim** otherwise covered under Insuring Agreement B. Cyber.

Infrastructure interruption

10. 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. a **data breach** involving data that was stored in the cloud, on remote servers, or at a co-location or data hosting service; or
 - b. a **claim by your client** if **you** are an internet service provider, telecommunications provider, utility provider, or other infrastructure provider.

Insured vs. insured

11. based upon or arising out of any **claim** made by or on behalf of:
- a. any **insured**;
 - b. any entity in which **you** directly or indirectly hold more than a 15% ownership interest, or that **you** directly or indirectly manage, control, or operate, in whole or in part; or
 - c. any person or entity that directly or indirectly holds more than a 15% ownership interest in the **insured organization**, or that directly or indirectly owns, manages, controls, or operates the **insured organization**, in whole or in part.

However, this exclusion will not apply to a **claim** brought by an employee alleging injury resulting from a **data breach**.

Intellectual property

12. based upon or arising out of any actual or alleged infringement, use, misappropriation, or disclosure of any intellectual property, including but not limited to patent, trade secret, copyright, trademark, trade dress, service mark, service name, title, or slogan, or any publicity rights violations, cybersquatting violations, moral rights violations, or any act of passing-off; however, this exclusion will not apply to any:
- a. **loss** resulting from a **data breach** committed by a third party;
 - b. **loss** resulting from a **security failure**; or
 - c. **claim** otherwise covered under part 7. of Insuring Agreement A. Technology liability or part 1. of Insuring Agreement C. Media liability.

Licensing organization

13. based upon or arising out of any actual or alleged investigation or enforcement by the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music Incorporated (BMI), Society of European Stage Authors and Composers (SESAC), or other similar licensing organization; however, this exclusion will not apply to any **claim** otherwise covered under Insuring Agreement B. Cyber.

Ownership of content/
material/services

14. based upon or arising out of any actual or alleged disputes with any of **your** present or former directors, officers, trustees, partners, joint venturers, employees, agents, or independent contractors concerning ownership of or the exercise of rights relating to information, content, material, or services supplied to **you** by any of them.

Pending/prior litigation/
notice

15. based upon or arising out of:
- a. any prior or pending litigation, **claim**, written demand, arbitration, administrative or regulatory proceeding, or investigation which was filed or commenced against **you** and of which **you** had notice prior to the first date of the **policy period**;
 - b. any actual or alleged matter that prior to the first date of the **policy period** **you** knew or reasonably ought to have known would be likely to lead to a **claim** or **loss**; or
 - c. any **claim**, potential **claim**, or **loss** which has been the subject of any written notice given under any other policy before the effective date of this policy.

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

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	issued by us , the policy period referred to in parts a. and b., above, will be the policy period of the first such policy we issued.
Pollution	16. 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 .
Property damage	17. based upon or arising out of any actual or alleged damage to, or destruction or loss of use of, any tangible property; however, this exclusion will not apply to: - damage to data, or destruction or loss of use of data; or - a data breach or security failure resulting from damage to or destruction of tangible property.
Racketeering	18. based upon or arising out of any actual or alleged collusion, extortion, threatened violence, or violation of racketeering or conspiracy law, including but not limited to violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act and all amendments to this Act or any rules or regulations promulgated under it; however, this exclusion will not apply to cyber extortion costs .
Redemption	19. based upon or arising out of any actual or alleged price discounts, prizes, awards, money, or valuable consideration given in excess of a total contracted or expected amount, including over redemption or under redemption of coupons, discounts, awards, or prizes; however, this exclusion will not apply to any loss otherwise covered under Insuring Agreement B. Cyber.
Related or continuing event	20. based upon or arising out of any related or continuing acts, errors, incidents, or events where the first act, error, incident, or event first occurred prior to the retroactive date .
Repair/replace/recall	21. 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; however, this exclusion will not apply to: extra expense; data recovery costs incurred to repair, restore, or repair a data asset from back-ups, originals, or other sources; or - a claim alleging the loss of use of technology products otherwise covered under Insuring Agreement A. Technology liability.
Securities/taxation/ fiduciary	22. based upon or arising out of any actual or alleged: - violation of any federal, state, local, or foreign securities law, including but not limited to the U.S. Securities Act of 1933 and Securities Exchange Act of 1934, both as amended, or any similar law; - violation of any taxation law or regulation; or - breach of any fiduciary duty owed by you. However, this exclusion will not apply to an otherwise covered claim resulting from a data breach involving personally identifiable information, provided that no board member, trustee, director, or officer (or equivalent position) of the insured organization participated or colluded in such data breach.
Spam	23. based upon or arising out of any actual or alleged violation of any federal, state, local, or foreign statutes, ordinances, regulations, or other laws regarding or relating to unsolicited telemarketing, solicitations, emails, faxes, text messages, mobile video 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.
Surrender of ransom	24. with respect to cyber extortion costs only, based upon or arising out of: the surrender of a ransom at the location where the illegal threat and ransom demand was

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	first made, unless brought to such location after receipt of the ransom demand for the sole purpose of paying such ransom demand; or
	b. a fraudulent or criminal act committed by or in collusion with a board member, trustee, director, or officer (or equivalent position) of the insured organization .
Sweepstakes/gambling/lotteries	25. based upon or arising out of any actual or alleged provision of any sweepstakes, gambling activities, or lotteries; however, this exclusion will not apply to any loss otherwise covered under Insuring Agreement B. Cyber.
Unfair competition/trade practices	26. based upon or arising out of any actual or alleged unfair competition, deceptive trade practices, restraint of trade, or antitrust violation; however, this exclusion will not apply to an otherwise covered claim : a. resulting from a data breach or security failure; or b. under Insuring Agreement A. Technology liability or C. Media liability.
Excluded business interruption costs and data recovery costs	27. with respect to business interruptions costs and data recovery costs only, based upon or arising out of: a. any bodily injury, sickness, or disease, including death, humiliation, mental injury, mental anguish, emotional distress, suffering, or shock; b. any seizure, confiscation, nationalization, destruction, or loss of use of computer systems or data assets due to any action by a governmental authority; c. the bankruptcy, financial impairment, or insolvency of the insured organization or other person or entity; d. ordinary wear and tear or gradual deterioration of the physical components of a computer system; e. physical cause or natural peril, including but not limited to fire, wind, water, flood, subsidence, earthquake, or act of God; f. any liability to third parties or contractual penalties; or g. any data breach involving information that is not under the insured organization's direct control, or any security failure or extortion threat against an entity that is not an insured.
Excluded technology liability claims	28. with respect to Insuring Agreement A. Technology liability only, based upon or arising out of any actual or alleged: a. breach of any exclusivity, non-competition, non-solicitation, or other similar commercial terms in your contract with a client; b. 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, this exclusion will not apply to: i. claim expenses we pay on your behalf to defend such claims but only until (if ever) there is a finding in any legal proceeding (including any arbitration) or any admission that the defect at issue is solely caused by a third party, at which time our duty to defend you will end and you will reimburse us for all claim expenses that we have paid toward that claim; or ii. any amount you satisfy us that you are legally able to recover under a written contract; c. commercial decision to cease providing a particular product or service; or d. 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:

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- i. 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;
 - ii. **your** decision to cease doing business with such a partner or associate.
- Excluded media liability claims
29. with respect to Insuring Agreement C. Media liability only, based upon or arising out of any actual or alleged:
- a. breach of contract, liability of others that **you** assume under any contract or agreement, or breach of any written, oral, express, or implied warranties or guarantees; however, this exclusion will not apply to any **claims** arising from **your** agreement to hold harmless or indemnify a party against any liabilities directly resulting from content supplied to them by **you**, but only if such obligation was assumed by **you** prior to any such liability being incurred; or
 - b. obligation to pay any licensing fee or royalty.
- Excluded misc. professional liability claims
30. with respect to Insuring Agreement D. Miscellaneous professional liability only, based upon or arising out of any actual or alleged:
- a. breach of contract; however, this exclusion will not apply to liability **you** would have in the absence of such contract or agreement;
 - b. liability of others that **you** assume under any contract or agreement;
 - c. breach of express warranties or guarantees, including but not limited to any agreements to refund, repurchase, or indemnify any person or entity; however, this exclusion will not apply to any:
 - i. warranty or guarantee to perform **your professional services** consistent with applicable industry standards or with reasonable skill or care; or
 - ii. liability **you** would have in the absence of the warranties or guarantees; or
 - d. failure to procure or maintain adequate insurance or bonds.

VI. Retention and limit of liability

- A. The policy limit of liability stated in Item 4 of the Declarations will be the maximum amount **we** will be liable to pay for all **loss, damages, claim expenses**, and other amounts under the policy, regardless of the number of **claims** or **events**.
- B. The Each Claim or Event limits of liability stated in Item 4 of the Declarations will be the maximum amount **we** will be liable to pay for any single **claim** or **loss** under each Insuring Agreement. If the same **claim** or **loss** triggers more than one Insuring Agreement, **we** will only be liable to pay for such **claim** or **loss** under one Insuring Agreement, which will be the Insuring Agreement that provides the most favorable coverage. The Each Claim or Event limits of liability are a part of, and not in addition to, the policy limit of liability.
- C. **We** will not be responsible for payment of any **loss, damages, or claim expenses** until the **retention** amount(s) stated in Item 5 of the Declarations has been satisfied. Such **retention(s)** must be paid by **you** and cannot be insured.
- D. With respect to **business interruption costs**, the **retention** will be the greater of: (i) the amount of **business interruption costs** incurred during the **waiting period**; or (ii) the **retention** amount stated in Item 5 of the Declarations.
- E. **We** may at **our** sole discretion advance payment of **claim expenses, damages, or losses** within the **retention** amount on **your** behalf, but **you** will reimburse **us** for any such amounts as soon as **we** request such reimbursement.

VII. Notice

- A. **You** must notify **us** of **claims** as soon as practicable once such **claim** is known to any board member, trustee, director, officer, in-house counsel, risk manager, chief technology officer,

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chief information officer, or chief privacy officer of the **insured organization**, but in any event no later than: (i) the end of the **policy period**; or (ii) 30 days after the end of the **policy period** for **claims** made against **you** in the last 30 days of the **policy period**. Proper notification of **claims** must be sent in accordance with the notification details in Item 7 of the Declarations.

- B. **You** may notify **us** of any matter reasonably likely to lead to a **claim** covered under this policy. Such notification must be provided as soon as practicable and within the **policy period**, and must, to the full extent possible, identify the particulars of the potential **claim**, including identifying the potential claimant(s), the likely basis for alleged liability, the likely demand for relief, and any additional information about the potential **claim** that **we** reasonably request. If such a potential **claim** notification is made to **us**, then **we** will treat any **claim** arising from the same particulars as that notification as if it had first been made against **you** on the date **you** properly notified **us** of the potential **claim**, even if the **claim** is first made against **you** after the **policy period** has expired. Proper notification of potential **claims** must be sent in accordance with the notification details in Item 7 of the Declarations.
- C. **You** must promptly notify **us** of an **event** once such **event** is first discovered by **you**, but in any event no later than: (i) the end of the **policy period**; or (ii) 30 days after the end of the **policy period** for an **event** first discovered by **you** in the last 30 days of the **policy period**. Proper notification of **events** must be sent in accordance with the notification details in Item 7 of the Declarations.

VIII. Optional extended reporting period

- A. If **we** or the **named insured** cancel or non-renew this policy, then the **named insured** will have the right to purchase for an additional premium an optional extended reporting period. Provided, however, the right to purchase an optional extended reporting period will not apply if:
 1. this policy is canceled by **us** for non-payment of premium;
 2. the total premium for this policy has not been fully paid; or
 3. **you** have purchased replacement coverage.
- B. The optional extended reporting period will apply only to any **claims** that:
 1. are first made against **you** and reported to **us** during such optional extended reporting period; and
 2. result from acts, omissions, or **events** occurring on or after the **retroactive date** but prior to the effective date of cancellation or non-renewal.
- C. The additional premium and effective dates will be stated in the purchased extended reporting period endorsement.
- D. Notice of election and full payment of the additional premium for the optional extended reporting period must be received within 30 days after the effective date of cancellation or non-renewal. In the event the additional premium is not received within the 30 days, any right to purchase the optional extended reporting period will lapse and no further optional extended reporting period will be offered.
- E. The limits of liability applicable during any purchased optional extended reporting period will be the remaining available policy limit under the canceled or non-renewed policy. There will be no separate or additional limit of liability available for any purchased optional extended reporting period and the purchase of any optional extended reporting period will in no way increase the policy limit or any policy sublimit.

IX. Related claims and losses

For purposes of this policy:

1. all **claims** arising from any common nexus of fact, circumstance, situation, event, transaction, or cause, or series of related facts, circumstances, situations, events, transactions, or causes will be considered a single **claim** made against **you** on the date the first such **claim** was made;

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2. all **events** arising from any common nexus of fact, circumstance, situation, event, transaction, or cause, or series of related facts, circumstances, situations, events, transactions, or causes will be considered a single **event** first discovered on the date the first such **event** was discovered by **you**; and
3. all **claims** or **losses** arising from the same or related **events** will be considered a single **claim** or **loss** first made against or incurred by the **insured** on the date the first **event** was discovered by the **insured**.

X. Conditions applicable to cyber extortion costs

The following are conditions precedent to the payment by **us** of any **cyber extortion costs** under this policy:

1. **you** must inform, or allow **us** to inform, the appropriate law enforcement authorities where the illegal threat and ransom demand was made;
2. **you** must keep **us** fully informed of all developments concerning the **extortion threat** and must obtain **our** agreement regarding the timing and manner of any ransom payment prior to making any ransom payment;
3. **you** must demonstrate to **us** that the ransom has been surrendered under duress and that before agreeing to its payment **you** have taken all reasonable efforts to determine that the threat is genuine and not a hoax; and
4. at least one trustee, director, or officer (or equivalent position) of the **named insured** must agree to the ransom payment.

XI. Conditions applicable to business interruption costs

The following are conditions precedent to the payment by **us** of any **business interruption costs**:

1. **You** must complete and sign a written, detailed, and affirmed proof of loss within 90 days after **your** discovery of the interruption of the **insured organization's** business (unless such period has been extended by **us** in writing) which will include, at a minimum, the following information:
 - a. a full description of the circumstances surrounding the **business interruption costs**, including, without limitation, the time, place, and cause of the **loss**;
 - b. a detailed calculation of any **business interruption costs**; and
 - c. all underlying documents and materials that reasonably relate to or form part of the basis of the proof of such **business interruption costs**.
2. Any costs incurred by **you** in connection with establishing or proving **business interruption costs**, including but not limited to preparing a proof of loss, will be **your** obligation, and are not covered under this policy.
3. In determining the amount of **income loss** covered under part 5. of Insuring Agreement B. Cyber, due consideration will be given to the prior experience of **your** business, and to the probable business **you** could have performed had no **event** occurred. Provided, such **income loss** will not include income that would likely have been earned as a result of an increase in volume of business due to favorable business conditions caused by the interruption of any other entity's business. **Income loss** will be calculated on a daily basis.

XII. Cancellation

- A. This policy may be canceled by the **named insured** by giving advance written notice to **us** at the address on the Declarations stating when thereafter such cancellation will be effective.
- B. This policy may be canceled by **us** only if the **insured** fails to pay the premium within 30 days of the inception of the **policy period**. In such cases, **we** will mail to the **named insured** by registered, certified, or other first class-mail, at the **named insured's** address stated in Item 1 of the Declarations, written notice stating when the cancellation will be effective, such date not to be less than ten days thereafter.
- C. The mailing of such notice will be sufficient proof of notice and this policy will terminate at the date and hour specified in such notice.

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- D. If this policy is canceled by the **named insured**, **we** will retain the customary short rate portion of the premium.
- E. Payment or tender of any unearned premium by **us** will not be a condition precedent to the effectiveness of the cancellation, but such payment will be made as soon as practicable.

XIII. Duty to cooperate

- A. **You** must provide **us** with full, timely, and accurate information about all matters, **claims**, and **losses** notified to **us** under this policy. If **you**, or anyone on **your** behalf, tries to deceive **us** by deliberately giving false information in connection with a notification, **we** will immediately be relieved of all obligations under this policy with respect to the notification at issue, including the duty to defend **you**.
- B. If **we** have accepted notice of any matter, **claim**, or **loss** under this policy, then **you** must:
 1. give **us**, or anyone appointed by **us**, at **your** expense, all the assistance, cooperation, and information which **we** reasonably require under this policy, and **you** must do anything **we** reasonably request to avoid, minimize, or resolve any matter, **claim**, or **loss**, including paying the **retention** when requested by **us**; and
 2. notify **us** as soon as practicable of all settlement offers made by a claimant in connection with any **claim** or potential **claim**.
- C. **You** will not make any payment, incur any expense, admit any liability, or assume any obligation without **our** prior consent, except as follows:
 1. **extra expenses**;
 2. as provided in Section III. Defense and settlement of claims, F.; or
 3. as provided in the definition of **breach costs**.

XIV. Change in ownership

You must notify **us** as soon as practicable if **you** merge with or are acquired by another business. In that event, coverage under this policy will continue until the end of the **policy period**, but only with respect to **claims** arising from acts, omissions, or **events** occurring prior to such merger or acquisition.

XV. Appraisal

If **we** and the **named insured** do not agree on the amount of **business interruption costs**, either party may make a written demand for an appraisal of the **business interruption costs**. If such demand is made, each party will select a competent and impartial appraiser. The appraisers will then jointly select an umpire. If the appraisers cannot agree on an umpire, they may request that such selection be made by a judge of a court having jurisdiction. Each appraiser will separately state the amount of **business interruption costs**. If the appraisers do not agree on the amount of the **business interruption costs**, they will submit their differences to the umpire. Agreement by the umpire and at least one of the appraisers regarding the amount of the **business interruption costs** will be binding on **you** and **us**. Each party will pay their respective chosen appraiser and will equally share the costs of the umpire.

XVI. Other insurance

Any payment due under this policy is specifically excess of and will not contribute with any other valid and collectible insurance unless such other insurance is specifically written as excess insurance over the limit of liability of this policy. However, with respect to **breach costs** only, this policy will be primary.

XVII. Subrogation

In the event of any payment by **us** under this policy, **we** will be subrogated to all of **your** rights of recovery to such payment. **You** will do everything that may be necessary to secure and preserve such subrogation rights, including but not limited to the execution of any documents necessary to



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allow **us** to bring suit in **your** name. **You** will do nothing to prejudice such subrogation rights without first obtaining **our** written consent.

Any recovery will first be paid to **us** up to the amount of any **loss, damages, claim expenses**, or other amounts that **we** have paid. Any remaining amounts will be paid to **you**.

XVIII. Alteration and assignment

No change in, modification of, or assignment of any interest under this policy will be effective unless made by written endorsement to this policy signed by **our** authorized representative.

XIX. Representations

You agree that all representations (whether oral or written) made and all materials submitted in connection with the application for this policy are true, accurate, and not misleading, and were relied upon by **us** and were material to **our** decision to issue this policy. If **we** learn that such representations or submitted materials were untrue, inaccurate, or misleading in any material respect, **we** are entitled to treat this policy as if it had never existed.

XX. Bankruptcy and insolvency

Your bankruptcy or insolvency will not relieve **us** of **our** obligations under this policy.

XXI. Sanctions

This policy will not be deemed to provide coverage and **we** will not be liable to pay any **claim** or **loss** or provide any benefit under the policy to the extent that the provision of such coverage, payment of such **claim** or **loss**, or provision of such benefit would expose **us** to any sanction, prohibition, or restriction under United Nations resolutions or the trade or economic sanctions, laws, or regulations of the European Union, United Kingdom, or United States of America.

XXII. Headings

The titles of paragraphs, sections, provisions, or endorsements of or to this policy are intended solely for convenience and reference, and are not deemed in any way to limit or expand the provisions to which they relate and are not part of the policy.