

## Smart Tech E&O Coverage Endorsement

In consideration of the premium charged, it is hereby understood and agreed that the Policy is amended as follows:

1. Item 5. of the Declarations is amended by the addition of the following:

**F. Technology and Professional Services Liability**

2. Item 6. of the Declarations is amended by the addition of the following:

**A. Third Party Insuring Agreements**

Insuring Agreement	Limit of Liability	Retention
Technology and Professional Services Liability	\$X,XXX,XXX Each Claim/\$X,XXX,XXX Aggregate	\$XX,XXX for each Claim

**C. Maximum Policy Aggregate Limit: \$X,XXX,XXX**

3. The Declarations is amended by the addition of the following:

**Retroactive Date:** <<>>

4. Third Party Insuring Agreements, Item I. is amended by the addition of the following:

**F. Technology and Professional Services Liability**

**Damages and Defense Expenses** which the **Insured** is legally obligated to pay as a result of a **Claim** arising from a **Technology and Professional Services Wrongful Act** that first takes place on or after the applicable **Retroactive Date**.

5. Exclusions, paragraph 3., is deleted in its entirety and replaced by:

**3. Insured. vs Insured**

Any **Claim** made by or on behalf of:

- A. an **Insured** against another **Insured**. This exclusion shall not apply to any **Claim** brought by an **Employee** outside of the **Control Group** as a result of a **Privacy Breach** or **Security Breach**; or,
- B. any business enterprise in which an **Insured** has greater than **15%** ownership interest or made by any parent company or other entity which owns more than 15% of the entity specified in Item 1 of the Declarations page;

6. For the purposes of the coverage provided under the Technology and Professional Services Liability Insuring Agreement described in this Endorsement, Exclusion 7. Breach of Contract is deleted and replaced with the following:

**Breach of Contract**

Any breach of any express, implied, actual or constructive contract, warranty, guarantee or promise. However, this exclusion shall not apply to:

- a. Any liability or obligation an **Insured** would have had in the absence of such contract, warranty, guarantee or promise and which would have been insured by this **Policy**;
  - b. A breach of the **Insured's** privacy policy; or
  - c. An otherwise covered **Claim** under Insuring Agreement I. D. PCI DSS Assessment Expenses;
  - d. With respect to the coverage provided by Technology and Professional Services Liability, any unintentional breach of a written contract to provide **Technology Services**, **Technology Products**, or **Professional Services** provided, however this exception shall not apply to liability assumed in any hold harmless or indemnity agreement;
7. For the purposes of the coverage provided by the Technology and Professional Services Liability Insuring Agreement described in this Endorsement, the Exclusions section is amended by the addition of the following:

The **Company** shall not be liable for any **Claim, Damages, Defense Expenses or Loss** based upon, arising out of, or any way attributable to:

- a. Breach of:
  - i. An express warranty or representation, except for an agreement to perform within a reasonable standard of care or skill consistent with applicable industry standards;
  - ii. Any other contractual obligation which goes beyond an express or implied duty to exercise a degree of care or skill as is consistent with applicable industry standards; or
  - iii. A guarantee or any promise of cost savings, profits, or return on investment;
- b. Delay in delivery or performance, or failure to deliver or perform at or within an agreed upon period of time, however this exclusion shall not apply if such delay or failure to deliver or perform is the result of a **Technology Services Wrongful Act**, provided that the **Insured** has made diligent efforts to deliver the applicable **Technology Products** or perform the applicable **Technology Services**;

- c. Inaccurate, inadequate, or incomplete description of the price of goods, products, or services;
- d. Cost guarantee, cost representation, or contract price estimate of probable costs or cost estimate actually or allegedly being exceeded;
- e. Commercial decision by the **Insured** to cease providing any product or services, but only if the **Insured** is contractually obligated to continue providing such products or services;
- f. Provision of any sweepstakes, gambling activities, lotteries, price discounts, prizes, awards, money, or valuable consideration given in excess of a total contract or expected amount;
- g. Any idea, trade secret, or confidential information that came into possession of any person or entity before such person or entity became an employee, board member, trustee, director, or officer of the **Named Insured**;
- h. Unauthorized or surreptitious collection of any information by the **Insured**, or failure to provide adequate notice that such information is being collected, or failure to comply with any legal requirement to provide individuals with the ability to assent or withhold assent for such collection;
- i. Loss, theft, or transfer of funds, monies, or securities in the **Insured's** care, custody, or control, or in the care, custody, or control of any third party for whom the **Insured** is legally liable; or unfair competition, false or misleading advertising, or violation of consumer protection laws;
- j. Any act, error, omission, incident or event committed or occurring prior to the **Retroactive Date**;
- k. Any actual or alleged violation of the federal Fair Debt Collection Practices Act (FDCPA);
- l. Any costs or expenses incurred or to be incurred by an **Insured** or others for the withdrawal, recall, inspection, repair, replacement, reproduction, removal or disposal of: (a) **Technology Products** including, but not limited to, any products or other property of others that incorporate **Technology Products**; (b) work product resulting from or incorporating the results of **Professional Services** or **Technology Services**; or (c) any products or other property on which **Professional Services** or **Technology Services** have been performed;

8. For the purposes of the coverage provided under the Technology and Professional Services Liability Insuring Agreement described in this Endorsement, the Definition of **Damages** is amended by the addition of the following:

**Damages** shall not include:

- h. Costs incurred by the **Insured** to correct, re-perform, or complete any service, including any **Technology Services** or **Professional Services**;
  - i. Liquidated damages in a written contract or agreement in excess of liability that would otherwise arise from a **Technology and Professional Services Wrongful Act**;
  - j. Discounts, coupons, prizes, awards, or other incentives offered by the **Insured**;
  - k. Any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**;
9. For the purposes of the coverage provided under the Technology and Professional Services Liability Insuring Agreement described in this Endorsement, the following Definitions are added as follows:

**Privacy Injury**

Any unauthorized disclosure or access to **Protected Personal Information** by any means, including, but not limited to, phishing or other social engineering techniques or failure to take reasonable steps to protect against unauthorized disclosure or access to non-public personal information or non-public corporate information in violation of any **Privacy Regulations** or laws prohibiting unfair methods of competition, unfair or deceptive trade practices, or consumer fraud.

**Professional Services**

Services performed for others by or on behalf of the **Insured** for a fee or other consideration, but does not include any work or activities performed by or on behalf of the **Insured** as an accountant, architect, surveyor, health care provider, lawyer, insurance or real estate agent or broker, or civil or structural engineer.

**Retroactive date**

The date specified as the Retroactive Date in the Declarations.

**Technology and Professional Services Wrongful Act:**

- a. Any actual or alleged act, error, omission, neglect, misstatement, unintentional breach of duty or written contract, or **Privacy Injury** by the **Insured**, or any person for whom the **Insured** is legally liable, in rendering **Technology Services** or **Professional Services**;

- b. Any actual or alleged act, error, omission, neglect, misstatement, or unintentional breach of contract by the **Insured**, or any person for whom the **Insured** is legally liable, that results in the failure of **Technology Products** to perform as intended.
- c. Any actual or alleged infringement of copyright title, slogan, trademark, trade name, service mark or service name, but only with respect to software, computer code and computer firmware;
- d. Any actual or alleged act, error, omission, neglect, or misstatement, or unintentional breach of contract that results in 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.

### **Technology Products**

Computer or telecommunications hardware or software products, or related components or products, including peripherals, that are created, manufactured, developed, sold, or distributed by the **Insured** for a fee or other consideration, including software updates, service packs, and other maintenance releases for such products.

### **Technology Services**

Computer and electronic information technology services performed by, or on behalf of, an **Insured** for others for a fee; including: (1) analysis or design of computer or information technology systems; (2) website design; (3) information technology staffing services; (4) information technology project management; (5) computer systems integration; (6) conversion of computer systems, computer networks or electronic systems; (7) data backup and processing; (8) email services; (9) software as a service (SaaS), platform as a service (PaaS), network as a service (NaaS), data and application hosting; (10) computer security consulting and training; (11) custom software programming; (12) computer and software systems installation; (13) computer and software support, and (14) computer network management services.

10. General Conditions, paragraph 9., Innocent Insured, subparagraph b. is deleted in its entirety and replaced by:

- b. Whenever coverage this Policy would be excluded, suspended, or lost because of the Deliberate Acts Exclusion (Exclusions, paragraph 2.) then such insurance as would otherwise be afforded under this Policy shall converge and be payable with respect to those natural person **Insureds** who did not personally commit, personally participate in committing, personally acquiesce, or remain passive after having personal knowledge thereof, provided that the **Insured** entitled to the benefit of this provision shall comply with Claims Conditions 2. Notice of Claim or Circumstance promptly after obtaining knowledge of the failure of any other Insured to comply therewith.