



**TMT Wording – DTD**  
Policy wording

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**About this policy**

The Hiscox TMT policy is designed to offer comprehensive cover for technology, media and telecommunication risks. We provide this cover through several specialized coverage modules, all of which fall within one of two categories: I. Cover for Claims Against You, or II. Cover for Your Own Losses. You can identify which of these two categories of cover you have purchased by simply looking at the module heading at the top of each page in Part 3 of this policy. We urge you to read this policy carefully so you understand which module(s) you have purchased, and the full extent of your and our rights and duties under this policy. Please note that all words and phrases that appear in bold-type (except headings) have special meaning and are either defined in the Definitions section under Part 7 of this policy, or in the case of module-specific definitions, defined within each relevant coverage module under Part 3 of this policy.

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**I. Cover for claims against you**

If **you** have purchased a module that provides cover for **claims** against **you**, then **we** will pay on **your** behalf any **claim** that falls within What has to go wrong under that module, What we will pay under that module, and How much we will pay applicable to the entire policy. However, **we** will not make any payment in connection with any **claim** unless **we** are notified of the **claim** in accordance with What you must notify and when under that module, and **you** have paid the premium and applicable **retention**, and **you** are in compliance with Your obligations to us. **We** will not pay for any portion(s) of any **claim** that fall(s) within What we will not pay under that module, or fall(s) within What we will not pay applicable to the entire policy.

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**II. Cover for your own losses**

If **you** have purchased a module that provides cover for **your own losses**, then **we** will indemnify **you** under that module for any **loss** that falls within What has to go wrong under that module, What we will pay under that module, and How much we will pay applicable to the entire policy. However, **we** will not make any payment in connection with any **loss** unless **we** are notified of the **loss** in accordance with What you must notify and when under that module, and **you** have paid the premium and applicable **retention**, and **you** are in compliance with Your obligations to us. **We** will not pay for any **loss** that fall(s) within What we will not pay under that module, or fall(s) within What we will not pay applicable to the entire policy.

**Part 3 – Coverage module(s)**  
**Privacy protection module**  
 Cover for claims against you

**PPM I. What has to go wrong**

A **claim** is first made against **you** during the **policy period**, arising from the acts, errors or omissions of anyone, including but not limited to outsourcers or vendors, and including but not limited to any electronic or non electronic incidents such as phishing or social engineering, for:

- a. **your** actual or alleged breach, violation or infringement of any right to privacy, consumer data protection law, or other legal protection for **personal information**, including but not limited to breach of a person's right of publicity, false light, intrusion upon a person's seclusion, public disclosure of a person's private information, or misappropriation of a person's picture or name for commercial gain;

**personal information** means personally identifiable information, whether oral, in print or electronic form, from or about a natural person, including but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name that reveals a consumer's email address; (d) a telephone number; and (e) **sensitive personal information**.

**sensitive personal information** means information about a natural person that can be used to perform or attempt to perform identify theft against the **data subject** or to conduct fraudulent financial or insurance transactions, whether oral, in print or electronic form, such as the **data subject's**: (i) social security number or individual taxpayer identification number, (ii) drivers license number or state identification number (or other state or federal issued identification card or number), (iii) date of birth, (iv) **employee** identification number, (v) passport number, (vi) financial account information (e.g., account number or credit or debit card number, alone or in combination with any required security code, access code, or password that would permit access to an individual's financial account) sufficient to transact financial charges or debits, (vii) medical insurance policy number, (viii) mother's maiden name, (ix) medical information, (x) account passwords or PIN numbers or other access codes, (xi) unique electronic identification number or routing code, in combination with any required security code, access code or password, (xii) biometric data (such as DNA profile, fingerprint, voice print, retina or iris image or other unique physical representation), (xiii) "nonpublic personal information" as defined by Title V of the Gramm-Leach Bliley Act of 1999 (Public Law 106-102, 113 Stat. 1338), as amended, and any regulation promulgated thereunder, (xiv) "protected health information" as defined by the Health Insurance Portability and Accountability Act of 1996, as amended, and any regulation promulgated thereunder, or (xv) other consumer information which, if subject to unauthorized access, triggers an obligation under applicable federal, state or local statute, rule or regulation, or under a judgment, settlement, consent decree or other legal obligation, to notify the **data subject**.

**data subject** means the natural person to whom **sensitive personal information** relates.

- b. **your** actual or alleged breach of duty to maintain the security or confidentiality of **sensitive personal information** under any federal, state or local statute, rule or regulation, or under any contract, including but not limited to **your** public-facing privacy statement or public-facing privacy policy;
- c. **your** actual or alleged breach of confidentiality, including but not limited to, in respect of commercial information;
- d. unfair competition or deceptive business practices but only when asserted against **you** in conjunction with and based on the same allegations as a **claim** under What has to go wrong (a) and/or (b);
- e. any civil regulatory action brought against **you** by a regulator based on the same allegations as a **claim** under What has to go wrong (a) and/or (b) above, including but not limited to for breach of any regulation promulgated by the Federal Trade Commission;
- f. **your** actual or alleged infringement of any intellectual property rights (but not any patent infringement or trade secret misappropriation), including copyright infringement, trademark infringement, trademark dilution, trade dress infringement, cybersquatting violations, moral rights violations, or any act of passing-off;
- g. any actual or alleged form of defamation committed by **you**, including but not limited to libel, slander, trade libel, or product disparagement; or
- h. **your** actual or alleged negligent transmission of a computer virus, worm, logic bomb or Trojan horse.

## Part 3 – Coverage module(s)

### Privacy protection module

#### Cover for claims against you

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#### PPM II. What you must notify and when

- A. Claims **You must notify us of claims against you as soon as practicable and within the policy period.** Proper notification of **claims** must be sent in accordance with the notification details set forth on the Declarations.
- B. Potential claims **You may notify us of potential claims under this policy.** If **you** do, such notification must be provided as soon as practicable and within the **policy period**, and must to the fullest extent possible identify the particulars 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** 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 it as a **potential claim**, even if that **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 set forth on the Declarations.
- C. Automatic extended reporting period  
If **we** renew this policy, then **we** agree to accept **your** proper notification of **claims** and **potential claims** under this policy up to 30 days after the **policy period** has expired, provided **you** first become aware of the **claim** or **potential claim** during the last 30 days of the **policy period**.  
If **we** cancel or do not renew this policy, then **we** agree to accept **your** proper notification of **claims** and **potential claims** under this policy up to 30 days after the **policy period** has expired, provided **you** first become aware of the **claim** or **potential claim** during the last 30 days of the **policy period** or during the 30 day window immediately following the **policy period**, and such **claim** or **potential claim** directly arises from **business activities** first performed after the **retroactive date** but before the end of the **policy period**.  
The automatic extended reporting periods described in this section do not apply unless **we** are notified of such **claim** or **potential claim** as soon as practicable but no later than 30 days from the date **you** first learned of the **claim** or **potential claim**, and they do not apply to any policy that **we** have cancelled or refused to renew due to **your** non-payment of premium or failure to comply with Your obligations to us.  
It is agreed that the applicable extended reporting period(s) set forth in this section shall be superseded by any conflicting applicable law that provides **you** with a longer extended reporting period.
- arises out of any fraudulent conduct, malicious conduct, conduct intended to cause harm to another person or business, or any willful violation of any law committed by **your employee**; or
  - arises out of any matter that prior to the first day of the **policy period** **you** knew or reasonably ought to have known would be likely to lead to a **claim** against **you** or **your employee**, and that **you** did not disclose to **us** prior to the first day of the **policy period**; or
  - results in whole or in part from any admission of liability by **your employee**.
- D. Payments toward your declaratory relief actions **We** will pay for reasonable attorney's fees incurred by **you** to prosecute **your** own declaratory relief action, provided **you** have paid the applicable **retention**, if:
- a claimant has advised **you**, in writing, that **you** are committing copyright or trademark infringement, or that **you** have or are violating a privacy, data protection or data security requirement;
  - after that claimant has asserted such a written **claim**, and after **you** have filed a declaratory relief action directly in response to that **claim**, the claimant files a counterclaim against **you** alleging copyright or trademark infringement or violation of a privacy, data protection or data security requirement; and
  - the counterclaim is covered under this policy and pending against **you** while **you** are prosecuting **your** declaratory relief action.

**Part 3 – Coverage module(s)**  
**Privacy protection module**  
 Cover for claims against you

- E. Defense arrangements      This is a duty to defend policy. Therefore, **we** have the right and duty to defend **you** against covered **claims**, even if the allegations underlying those **claims** are groundless, false, or fraudulent. However, **we** have no duty to defend **you** against **claims** not covered under this policy.
- If a covered **claim** is made against **you**, then **we** have the right to appoint suitably qualified counsel to defend **you**. However, **you** have the right to appoint **your** own counsel from the pre-approved Hiscox Technology Panel Counsel List without **our** prior consent.
- Our** duty to make a payment under this policy arises only after the applicable **retention** under this policy is fully paid. Any payments made in connection with non-covered **claims** or portions of **claims**, including **defense costs**, will not apply to the erosion of any **retention** under this policy.
- You** may not admit liability in connection with, make any settlement offer with respect to, or settle any **claim** under this policy without **our** prior consent. **We** always have the right to settle covered **claims** on **your** behalf.
- F. Regulatory action sub limit      The maximum **we** will pay for all **claims** under What has to go wrong (e) is **Regulatory sub limit** including civil penalties. **You** must have paid the applicable **retention**. This aggregated **sub limit** is included within the **policy limit** and is not in addition to the **policy limit**.
- However if there is an award of compensatory damages for a **claim** under What has to go wrong (e) the maximum **we** will pay for all compensatory damages under What has to go wrong (e) is the **Regulator Compensatory Award sub limit**. Any payment by **us** toward an award of compensatory damages for such a **claim** is subject to a co-insurance payment by **you** of 25%. For clarity, this means that **you** will pay 25% and **we** will pay 75% of any such award of compensatory damages. This aggregated sub limit is included within the **policy limit** and is not in addition to the **policy limit**.

**PPM IV. What we will not pay**      The following exclusions under part 5 What we will not pay applicable to the entire policy are amended for this module only. **We** will not make any payment, including any **defense cost** payment, toward any portion(s) of any:

- A. (exclusion 4)      **claim** for, alleging, or arising from any governmental 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 shall not apply to the extent that a **claim** falls under part 3 Privacy protection module PPM 1, What has to go wrong (e)
- B. (exclusion 8)      **claim** for, alleging, or arising from any 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; unless it directly arises out of the failure by **you** or anyone on **your** behalf to maintain the security or confidentiality of **sensitive personal information**
- C. (exclusion 10)      **claim** made against **you** by any person or entity that **you** currently employ or formerly employed, including but not limited to **employees**, freelancers, and independent contractors; however, this exclusion will not apply to
- i. any portion of any **claim** solely based on **business activities** performed when such person or entity was not working for **you**; or
  - ii. any **claim** against **you** brought by an **employee** for disclosure of the **employee's sensitive personal information**;
- D. (exclusion 13)      **claim** for which **you** are legally obligated to pay criminal, civil, or regulatory sanctions, fines, penalties, disgorgement of profits, treble damages, and/or multiple damages, including but not limited to those imposed by any federal, state, or local governmental body or by ASCAP, BMI, SESAC, or other similar licensing organization; however **we** will pay an award for civil penalties (but not any criminal fines, disgorgement of profits, treble damages, and/or multiple damages) to the extent insurable at law under the part 3 Privacy protection module PPM 1, What has to go wrong (e).
- E. (exclusion 18)      **claim** or **loss** for, alleging, or arising from any bodily injury, including but not limited to death, mental injury, and mental disease; however, this exclusion does not apply to any portion of any **claim** seeking damages for mental anguish or distress where such damages solely stem from a covered cause of action for defamation, breach of privacy, or negligent publication, or breach of confidence or security of **sensitive personal information**;

**Part 3 – Coverage module(s)**  
**Security costs module**  
 Cover for your own losses

**SCM. What has to go wrong**

- The failure on or after the retroactive date, by you or anyone on your behalf, to maintain the security or confidentiality of sensitive personal information directly
- Security failure
- Serious security failure
- a. triggers **your** obligations under federal, state or local statute, rule or regulation, or under a judgment, settlement, consent decree or other legal obligation, to notify **data subjects** of such failure, or
  - b. leads to unauthorized interaction with **sensitive personal authentication information** by a person other than **you**, which either has, or is likely to, lead to the criminal activity of opening new financial or insurance accounts without the **data subject's** authorization, as determined by taking into account the following evidence, in each case as applicable:
    - i. forensic analysis reports reflecting interaction with **sensitive personal authentication information** by an unauthorized person,
    - ii. reports of suspicious account activity by an independent credit bureau, financial institution, insurance company or health care institution, where such suspicious account activity is reasonably attributed by such credit bureau, financial institution, insurance company or health care institution to the unauthorized interaction in question,
    - iii. evidence of a correlation between the unauthorized interaction in question and identity theft as shown by data breach analysis conducted by an independent outside security consultant,
    - iv. Opinions of law enforcement authorities, such as a law enforcement opinion that the **sensitive personal authentication information** was the target of the unauthorized interaction, or a law enforcement opinion that the **sensitive personal authentication information** has come into the possession of someone who is likely to commit criminal activity with such **sensitive personal authentication information**,
    - v. documented correspondence from a third person who is not authorized to possess the **sensitive personal authentication information** that was the subject of the unauthorized interaction indicating such person's awareness of such person's possession of such **sensitive personal authentication information**, or
    - vi. the intent of the person by which unauthorized interaction with **sensitive personal authentication information** was obtained, which intent is reasonably inferred by **us** from evidence presented by **you** as to the means by which such unauthorized interaction occurred, by whether the person has knowledge of his or her possession of the **sensitive personal authentication information** or of the value of such information, and/or by the identity or nature (if known) of the person by which such unauthorized interaction was obtained.

For the purposes of this module:

**sensitive personal information** shall mean information about a natural person that can be used to perform or attempt to perform identify theft against the **data subject** or to conduct fraudulent financial or insurance transactions, whether oral, in print or electronic form, such as: (i) social security number or individual taxpayer identification number, (ii) drivers license number or state identification number (or other state or federal issued identification card or number), (iii) **data subject's** date of birth, (iv) **employee** identification number, (v) passport number, (vi) financial account information (e.g., account number or credit or debit card number, alone or in combination with any required security code, access code, or password that would permit access to an individual's financial account) sufficient to transact financial charges or debits, (vii) medical insurance policy number, (viii) mother's maiden name, (ix) medical information, (x) account passwords or PIN numbers or other access codes, (xi) unique electronic identification number or routing code, in combination with any required security code, access code or password, (xii) biometric data (such as DNA profile, fingerprint, voice print, retina or iris image or other unique physical representation), (xiii) digital or electronic signatures, (xiv) "nonpublic personal information" as defined by Title V of the Gramm-Leach Bliley Act of 1999 (Public Law 106-102, 113 Stat. 1338), as amended, and any regulation promulgated thereto, (xv) "protected health information" as defined by the Health Insurance Portability and Accountability Act of 1996, as amended, and any regulation promulgated thereto, or (xvi) other consumer information which, if subject to unauthorized access, triggers an obligation under applicable federal, state or local statute, rule or regulation, or under a judgment, settlement, consent decree or other legal obligation, to notify the **data subject**.



## Part 3 – Coverage module(s) Security costs module Cover for your own losses

**sensitive personal authentication information** shall mean **sensitive personal information** whether oral, in print or electronic form, consisting of the social security number, driver's license number or other government issued identification number that can be used (in combination with other information) to open a new line of credit, a new financial account or a new insurance policy.

**data subjects** shall mean the natural persons about whom **sensitive personal information** relates.

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### SCM II. What you must notify and when

We will not make any payment under this section unless **you** first learn of the failure to maintain the security or confidentiality of **sensitive personal information** within the **policy period** and report such failure to **us** as soon as practicable and within the **policy period**.

During the **policy period**, **you** must promptly notify **us** (as specified in the declarations attached to and forming part 1 of this policy) of **your** first awareness of the failure to maintain the security or confidentiality of **sensitive personal information**.

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### SCM III. What we will pay

#### A. Security failure

Under this policy **we** will pay up to the **Security failure sub-limit** for the following costs, which arise from SCM I. What has to go wrong a)

##### 1. Computer forensic costs

all reasonable and necessary **computer forensic costs you** incur with **our** prior written consent, to investigate the security breach.

**Computer forensic costs** shall mean computer forensic analysis conducted by outside forensic experts to determine the scope and extent of unauthorized interaction with sensitive personal information; as well as outside attorneys fees associated with maintaining the attorney-client privilege of forensic reports and findings.

##### 2. Notification costs

all reasonable and necessary **notification costs you** incur with **our** prior written consent, necessary to comply with the data security breach notification requirements of federal, state or local statute, rule or regulation, or of a judgment, settlement, consent decree or other legal obligation.

**Notification costs** shall mean

- a. printing / print house costs
- b. postage costs
- c. costs of procuring address information from data broker, credit bureau or issuing bank
- d. costs of notifications via phone (if required by law)
- e. costs of notification via email
- f. costs of placing ad in statewide media
- g. costs of using a third party call center if **you** do not have one that is qualified for this purpose, to answer inquiries from affected **data subjects** after the date the consumer notices are sent
- h. outside attorney fees to draft text of notifications

##### 3. Credit protection related services

all reasonable **credit protection related services** costs **you** incur with **our** prior written consent, in relation to **sensitive personal information** of a **data subject** at least the age of 18.

**Credit protection related services** shall mean credit monitoring services, credit freezes, or fraud alerts, as appropriate under the circumstances.



## Part 3 – Coverage module(s)

### Security costs module

Cover for your own losses

#### 4. Crisis management expenses

all reasonable and necessary **crisis management expenses you** incur with **our** prior written consent within six (6) months of **your** failure to maintain the security or confidentiality of **sensitive personal information**

**Crisis management expenses** shall mean the fees for a public relations firm used to assist **you** in mitigating material damage to **your** business reputation or re-establishing **your** business reputation after a **security failure**. Any payment **we** agree to make for these fees will not exceed 5% of the **security failure sub-limit**, and will be subject to a maximum of \$25,000

#### B. Serious security failure

Under this policy **we** will pay all reasonable costs incurred with **our** prior written consent up to the **serious security failure sub-limit** of the following costs, which directly arise from SCM I. What has to go wrong b)

##### 1. Credit monitoring services

one year of credit monitoring services, at no greater a cost than \$15 per offer, or \$20 per redemption, which is offered to or redeemed by (as applicable) a **data subject** who is at least the age of 18, and which is redeemed by such **data subject** within 12 months of the date **your** offer of credit monitoring services is made, or

##### 2. Other Credit protection related services

Where credit monitoring services is not provided to a **data subject**, other reasonable and necessary **credit protection related services** for such **data subject**,

for each **data subject** whose **sensitive personal authentication information** has been subject to unauthorized interaction described in SCM I. What has to go wrong b).



## Part 4 – How much we will pay

Applicable to the entire policy

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### I. Our maximum payment

The **policy limit** is the maximum **we** will pay under this policy for any single **claim** (inclusive of **defense costs**), single **loss**, and the maximum **we** will pay for the total aggregate of all **claims** (inclusive of **defense costs**), all **losses**, and all other payments expressly covered by purchased modules.

However, if a policy sub-limit is specified in the Declarations set forth in Part 1 of this policy, then such sub-limit shall apply, but solely to the extent specified under that module. All sub-limits under this policy are included within the **policy limit** and are not in addition to the **policy limit**.

The cover provided by each module is independent of, and does not overlap with, the cover provided in any other module.

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### II. Paying the policy limit

At any stage, **we** can pay **you** the remainder of the **policy limit**, after which **we** will have no further liability to **you** under this policy, either for **defense costs, claim(s)** or otherwise.

At any stage, **we** can pay **you** the remainder of a sub limit, after which **we** will have no further liability to **you** either for **defense costs, claim(s)**, or otherwise.



## Part 5 – What we will not pay

### Applicable to the entire policy

In addition to the What we will not pay section(s) under PART 3 of this policy, **we** will not make any payment, including any **defense cost** payment, toward any portion(s) of any:

1. **claim** for, alleging, or arising from any infringement, use, or disclosure of a patent, or any use, disclosure or misappropriation of a trade secret;
2. **claim** for, alleging, or arising from any fraudulent conduct, dishonest conduct, criminal conduct, malicious conduct, conduct committed in reckless disregard of another's rights (but not in respect of a defamation **claim**), conduct intended to cause harm to another person or business, or any knowing or wilful violation of a law, whether committed by **you** or committed by another whose conduct or violation of the law **you** have ratified or actively condoned; however, this exclusion will not apply unless such conduct, or wilful violation of the law has been established by a final adjudication in any judicial, administrative, or alternative dispute resolution proceeding, or by **your** own admission in a proceeding or otherwise, at which time **you** shall reimburse **us** for all payments made by **us** in connection with such conduct or wilful violation of the law and all of **our** duties in respect of that entire **claim** shall cease;
3. **claim** for, alleging, or arising from any unfair competition, deceptive trade practices, restraint of trade or antitrust statute, legislation or regulation; however, this exclusion will not apply to any covered portion of any **claim** for unfair competition, deceptive trade practices, or false designation of origin where **you** have purchased a module expressly granting such cover under What has to go wrong;
4. **claim** for, alleging, or arising from any governmental 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;
5. **claim** for, alleging, or arising from any:
  - a. liability or breach of any duty or obligation owed by **you** regarding the sale or purchase of any stocks, shares, or other securities, or the misuse of any information relating to them, including breach or alleged breach of any related legislation or regulation, including but not limited to the U.S. Securities Act of 1933 and Securities Exchange Act of 1934, both as amended;
  - b. liability or breach of any duty or obligation owed by **you** regarding any statement or representation (express or implied) contained in **your** accounts, reports or financial statements, or concerning **your** financial viability;
  - c. liability or breach of any duty or obligation owed by **you** regarding financial advice **you** give or the arrangement of any financing or credit by **you**;
  - d. violation of any taxation law or regulation(s);
  - e. breach of any fiduciary duty owed by **you**;
6. **claim** for, alleging, or arising from any:
  - a. 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;
  - b. collusion, extortion, or threatened violence;
7. **claim** for, alleging, or arising from any:
  - a. liability or breach of any duty or obligation owed by **you** in connection with the operation or administration of any health, pension or employee benefit scheme, plan, trust or fund, including but not limited to violation or alleged violation of any related legislation or regulation such as the Employee Retirement Income Security Act of 1974;
  - b. liability or breach of any duty or obligation owed by **you** as an employer, including but not limited to any allegation of discrimination, harassment, or wrongful termination;
  - c. liability or breach of any duty or obligation owed to **you** and/or **your** shareholders by any of **your** director(s), officer(s), trustee(s), or board member(s), including but not limited to any allegation of insider trading or breach of any duty of corporate loyalty;

## Part 5 – What we will not pay

### Applicable to the entire policy

8. **claim** for, alleging, or arising from any 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;
9. **claim** made against **you** by:
  - a. any person or entity falling within the definition of **you**;
  - 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 **you**, or that directly or indirectly owns, manages, controls, or operates **you**, in whole or in part;however, this exclusion will not apply to any portion of any **claim** based on a liability to an independent third party directly arising out of the performance of **your** defined **business activities** but which is brought against **you** via a subsidiary, parent or sister company;
10. **claim** made against **you** by any person or entity that **you** currently employ or formerly employed, including but not limited to **employees**, freelancers, and independent contractors; however, this exclusion will not apply to any portion of any **claim** solely based on **business activities** performed when such person or entity was not working for **you**;
11. **claim** for or arising from **your** provision of any sweepstakes, gambling activities, or lotteries;
12. **claim** for which **you** are legally obligated to pay punitive and/or exemplary damages; however **we** will pay an award of such damages if insurable in the jurisdiction where such award was first ordered;
13. **claim** for which **you** are legally obligated to pay criminal, civil, or regulatory sanctions, fines, penalties, disgorgement of profits, treble damages, and/or multiple damages, including but not limited to those imposed by any federal, state, or local governmental body or by ASCAP, BMI, SESAC, or other similar licensing organization;
14. **claim** or **loss** arising out of any matter that prior to the first date of the **policy period** (or if this policy is a renewal then prior to the first date of the first policy issued to **you** by **us** and from which the current policy forms an unbroken chain of successive policies issued to **you** by **us**), **you** knew or reasonably ought to have known would be likely to lead to a **claim** or **loss**;
15. **claim** or **loss** for or arising from any armed struggle, civil unrest or conflict or any nationalization, confiscation, requisition, expropriation, appropriation, seizure or destruction of property by or under the order of any government or public or local authority;
16. **claim** or **loss** for, alleging, or arising from any act or threatened act of terrorism, including but not limited to the use of force or violence, of any person(s) or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear;
17. **claim** or **loss** for, alleging, or arising from any pollution, contamination or toxic exposure, including but not limited to any pollution, contamination or toxic exposure caused by or arising out of the following: noise, electromagnetic fields, radio waves, nuclear radiation, or radioactive contamination; or the mining, processing, manufacturing, use, testing, ownership, sale or removal of asbestos, asbestos fibres or material containing asbestos; or exposure to asbestos, asbestos fibres or materials containing asbestos; or the provision of instructions, recommendations, notices, warnings, supervision or advice given, or which should have been given, in connections with asbestos, asbestos fibres or structures or materials containing asbestos;
18. **claim** or **loss** for, alleging, or arising from any bodily injury, including but not limited to death, mental injury, and mental disease; however, this exclusion does not apply to any portion of any **claim** seeking damages for mental anguish or distress where such damages solely stem from a covered cause of action for defamation, breach of privacy, or negligent publication;



## Part 5 – What we will not pay

Applicable to the entire policy

19. **claim** or **loss** for, alleging, or arising from any failure or interruption of service provided by an internet service provider, telecommunications provider or other utility provider except when **you** provide those services as part of **your business activities**; or
20. **claim** or **loss** for, alleging, or arising from any damage to, or destruction or loss of use of any tangible property; however, this exclusion does not apply to damage to data, or destruction or loss of use of data;

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## I. Your representations

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

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## II. Your dealings with others

**We** will not make any payment under this policy if **you**, when dealing with **your client** or a third party, admit that **you** are liable (unless **you** have **our** prior written consent), or collude to obtain a recovery under this policy, or prejudice **our** rights of recovery against any party.

**You** must also ensure that **our** rights of recovery, including but not limited to any subrogated rights of recovery, against a third party are not unduly restricted or financially limited by any term in any of **your** contracts.

**You** must also not reveal the amount of cover available under this insurance, unless **you** had to give these details in negotiating a contract with **your** client (including negotiating any request for proposal), **you** are required by law or compelled by a court, or **you** otherwise have **our** prior written consent.

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## III. Providing us with information and assistance

**You** must provide **us** with full and accurate information about any **claim**, **potential claim**, or **loss** that **you** have notified to **us** under this policy. If **you**, or anyone on **your** behalf, tries to deceive **us** by deliberately giving **us** false information in connection with such a notification, **we** immediately shall be relieved of all obligations under this policy with respect to the notification at issue, including **our** duty to defend **you**.

If **we** have accepted notice of any **claim**, **potential 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 which **we** reasonably request to avoid, minimize, or resolve any **claim**, **potential claim**, or **loss**, including paying the **retention** when requested by **us**;
2. notify **us** as soon as practicable of all settlement offers made by a claimant in connection with such **claim(s)** or potential **claim(s)**;
3. give **us** all assistance and cooperation **we** reasonably require to pursue at **our** expense any subrogated right of recovery **we** may have in connection with such **claim**, **potential claim**, or **loss**.

If a situation arises where **we** have a good faith belief that a claimant's monetary offer to settle a covered **claim** is reasonable when **you** do not, then **we** will neither compel **you** to accept the settlement offer nor will **we** cease providing cover for such a **claim** merely because **you** did not accept the offer. However, if **we** recommend that **you** do accept such an offer and **you** elect not to, then **our** maximum payment toward that particular **claim**, following the rejection or expiration of that offer will be outstanding covered **defense costs** incurred up to the date the settlement offer was rejected or expired, plus the amount of the unaccepted settlement offer, minus **your** remaining **retention** on the day the settlement offer is rejected or expires. If this amount is in excess of the **retention**, then at **your** request and subject to **our** discretion **we** will pay this amount to **you** in a lump sum payment in return for **you** fully releasing **us** from all liability with respect to the unsettled **claim**, including **our** duty to defend **you**.

In exchange for this release, **we** will not seek reimbursement for any portion of **our claim** payment to **you**, even if the **claim** is later resolved for less than the amount **we** paid **you**.

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## IV. Notifying us of changes to your business

**You** must promptly tell **us** if **you** materially change **your** business, acquire or merge with another business or if any party acquires **your** business. **We** will only provide cover under this policy for such a change if **we** have given **our** written approval and **you** have agreed to all additional coverage terms and/or additional premium **we** may request to cover the change in risk. However, **you** have no obligation to notify **us** under this section of any entity that falls within subsection (1) of the definition of **acquired entity** under Part 7 of this policy.

**V. Satisfying the retention**

**We** will not make any payment under this policy unless **you** pay the applicable **retention**. **You** may not insure the **retention**, and neither sums paid toward uncovered portions of **claims** nor payments **you** recover from another insurer or indemnitor will erode the **retention**.

If **you** reasonably establish that a series of **claims** against **you** or **losses you** suffer directly arise from:

1. the same original cause, a single source or a repeated or continuing problem in **your** work; or
2. a single or continuing investigation or a common set of facts or state of affairs in relation to a defamatory statement;

then all such notifications that **we** accept and agree are related will be treated as a single **claim** and **you** need only pay a single **retention**. This only applies to **claims** falling within a single module. All of the notifications that are related will be considered as having been made on the date of **your** first proper notification to **us**.

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**I. Definitions**

All phrases and words that appear in bold-type in this policy (excluding headings and those phrases and words expressly defined within Part 3 of this policy), either in singular or plural form, have the meaning that is given to them below:

**Acquired entity**

“Acquired entity” means:

1. any entity that the **Insured** directly or indirectly acquires during the **policy period**, but only to the extent that the entity performs the same **business activities** as the **Insured** and only if the annual revenue or the total book value of the consideration provided in return for such control is less than 10% of the **Insured’s** annual revenue, and no **claim** or **potential claim** exists against such entity that has resulted or is reasonably likely to result in a payment in excess of 50% of the **retention** (including **defense costs**);
2. any entity that the **Insured** acquires during the **policy period** which has an annual revenue of more than 10% of the **Insured’s** annual revenue, but only if **you** have provided **us** with written notification of the acquisition within 30 days of such, and only if **we** have provided **our** written consent to provide coverage to that entity under this policy, such consent never to be unreasonably withheld; and

For purposes of this definition, “acquires” means taking ownership of over 50% of the outstanding voting stock or interest, or assets of any business entity.

**Business activities**

“Business activities” means those activities described as “business activities” on the declarations attached to and forming Part 1 of this policy, and which are performed within the **geographical limit**.

**Claim**

“Claim” means any written assertion of liability or any written demand for financial compensation or injunctive relief made against **you** anywhere in the world.

**Client**

“Client” means any person or entity with whom **you** have contracted to provide services or deliverables that expressly fall within **your business activities**.

**Defense costs**

“Defense costs” means all reasonable and necessary legal costs and fees incurred with **our** prior consent to investigate, settle, defend and/or appeal or respond to an appeal of a covered **claim**, including any premiums on attachment or appeal bonds (however, **we** are under no obligation to apply for or furnish such bonds), pre-judgment and post-judgment interest, but not including any overhead costs, general business expenses, salaries, or wages incurred by **you** or any other person or entity entitled to coverage under this policy.

**Employee**

“Employee” means an individual performing employment duties solely on **your** behalf in the ordinary course of **your business activities**, who is subject to **your** sole control and direction and to whom **you** supply the instrumentalities and place of work necessary to perform such **business activities**. **You** and **your** independent contractors will not be treated as **employees** under this policy.

**Existing subsidiary**

“Existing subsidiary” means each and every entity identified on the application for this policy, but only if:

- a. the **Insured** directly or indirectly owns more than 50% of the assets or outstanding voting shares or interests as of the first day of the **policy period**, and
- b. its annual revenue is included on **your** application for this **policy**.

**Geographical limit**

“Geographical limit” means the limit stated as the “geographical limit” on the declarations attached to and forming Part 1 of this policy.

**Insured**

“Insured” means the entity stated as “the insured” on the declarations attached to and forming Part 1 of this policy.

**Loss**

“Loss” means any financial harm caused to **your** business.

**Policy limit**

“Policy limit” means the amount stated as the “policy limit” on the declarations attached to and forming Part 1 of this policy.

**Policy period**

“Policy period” means the period of time stated as the “policy period” on the declarations attached to and forming Part 1 of this policy.

## Part 7 – General matters

<b>Potential claim</b>	“Potential claim” means any matter reasonably likely to lead to a <b>claim</b> covered under this policy.
<b>Retention</b>	“Retention” means the amount as stated as the “Retention” on the declarations attached to and forming Part 1 of this policy.
<b>Retroactive date</b>	“Retroactive date” means the date stated as the “retroactive date” on the declarations attached to and forming Part 1 of this policy. However, in respect of any <b>claim</b> or <b>potential claim</b> arising out of activities performed by an <b>acquired entity</b> above, “retroactive date” means the date the <b>Insured</b> first took control of such entity, unless otherwise agreed by <b>us</b> in writing.
<b>We/Us/Our</b>	“We,” “Us,” and “Our,” means Syndicate 33 at Lloyd’s, managed by Hiscox Syndicates Ltd. 1 Great St. Helen’s, London EC3A 6HX (Telephone: 020 7448 6000)
<b>You/Your</b>	“ <b>You</b> ” and “ <b>Your</b> ” means: <ol style="list-style-type: none"><li>1. the <b>Insured, existing subsidiaries, and acquired entities</b>, but not including <b>employees</b> or independent contractors of the <b>Insured</b> or any <b>existing subsidiary or acquired entity</b>;</li><li>2. board members, executive officers, in-house counsel, risk managers, chief technology officers, chief information officers, and chief privacy officers of the <b>Insured, existing subsidiaries, and acquired entities</b>; and</li><li>3. a person or entity that takes legal control of the <b>insured, existing subsidiary, or acquired entity</b> upon the insolvency or bankruptcy of the <b>insured, existing subsidiary, or acquired entity</b>.</li></ol>

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### II. Other insurance

Any payment due under this policy is specifically excess of and will not contribute with any other valid insurance, regardless if the insurance is collectible or not, including but not limited to any project-specific or production-specific insurance policy purchased by **you** or any third-party. This policy is not subject to the terms set forth in any other insurance policy.

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### III. Choice of law

This policy, including its construction, application and validity, is governed by the laws of the State of New York without reference to that state’s choice of law principles.

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### IV. Arbitration

Any dispute arising out of or relating to this policy, including but not limited to its construction, application and validity, or any breach thereof, shall be resolved only in binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association (“AAA”) in effect at the time of the dispute, as amended by this policy. No award of punitive damages shall be made in any such arbitration. Each party shall bear its own fees and costs in connection with any such arbitration, but the costs incurred through AAA, including the fees and expenses of the arbitrator, shall be shared equally by the parties unless the arbitration award provides otherwise. All arbitration proceedings shall be held only in a city where either **you** or **we** have a place of business in the United States, at the election of the party commencing arbitration. The decision of the arbitrator or arbitrators is final and binding and any award may be confirmed and enforced in any court of competent jurisdiction.

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### V. Service of suit

In the event **we** fail to pay an amount claimed under this policy, at **your** request, **we** will agree to submit to a court of competent jurisdiction within the United States. **Our** agreement, however, does not mean that **we** waive **our** rights to commence an action in any court of competent jurisdiction in the United States, remove an action to any United States District Court or seek to transfer a case to another court as permitted by the laws of the United States or of any state in the United States. **We** appoint the person named in the declarations to accept service of process on **our** behalf.

The foregoing is not intended to conflict with or override **your** and **our** obligation to arbitrate any dispute arising out of or relating to this policy, as provided by the arbitration provision under Section IV. above. This Service of Suit clause applies only to suits to enforce arbitration awards.

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**VI. Cancellation**

**We** will only cancel this policy if **you** fail to pay the premium by the due date, or intentionally make a material misrepresentation to **us** in regard to any **claim, potential claim, or loss** notified to **us** under the policy, in which case **we** will provide **you** with a notice of cancellation in accordance with applicable law. **We** will return a pro-rata amount of premium unless **we** have accepted any notification of any **claim, potential claim, or loss** before the cancellation takes effect.