



TMT WORDING
TMT USA/WORLDWIDE
DUTY TO DEFEND

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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.

**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.

**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)

**TECHNOLOGY PROTECTION MODULE
COVER FOR CLAIMS AGAINST YOU**

**TPM I.
WHAT HAS TO
GO WRONG**

The performance of **business activities** on or after the **retroactive date** by **you** or anyone on **your** behalf, including **your** subcontractors and outsourcers, results in a **claim** first made against **you** during the **policy period** for any actual or alleged:

- a. unintentional breach of a written contract brought by a **client**;
- b. negligence or breach of any duty to use reasonable care, including but not limited to negligent transmission of a computer virus, worm, logic bomb or Trojan horse or negligence in connection with a denial of service attack, or negligent misrepresentation;
- c. intellectual property infringement (but not any patent infringement or trade secret misappropriation), including but not limited to copyright infringement, trademark infringement, trademark dilution, trade dress infringement, publicity rights violations, cyber squatting 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;
- d. 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** under WHAT HAS TO GO WRONG (c) above;
- e. breach of any duty of confidentiality, invasion of privacy or violation of any other legal protections for personal information, including but not limited to false light, intrusion upon a person's seclusion, public disclosure of a person's private information, misappropriation of a person's picture, name, voice or identity for commercial gain, unauthorized interception or recording of images or sound in violation of any civil anti-wiretapping statute; or
- f. defamation, including but not limited to libel, slander, trade libel, product disparagement, or injurious falsehood.

**TPM 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 in 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

PART 3 – COVERAGE MODULE(S)

**TECHNOLOGY PROTECTION MODULE
COVER FOR CLAIMS AGAINST YOU**

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 in 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 this policy or do not offer renewal terms for 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 superceded by any conflicting applicable law that provides **you** with a longer extended reporting period.

**TPM III.
WHAT WE WILL
PAY**

A. Payments toward defense costs

We will pay covered **defense costs** on **your** behalf, and covered **defense costs** on behalf of **your employees** with **your** prior consent subject to TPM III. C. below provided **you** have paid the applicable **retention**.

B. Payments toward claim resolution

We will pay the amount agreed by **you** and **us** through good faith negotiation, mediation or some other form of alternative dispute resolution to settle a **claim** or satisfy a judgment or arbitration award against **you** or **your employee(s)** subject to TPM III. C. below, including any judgment or award ordering the payment of claimant's attorney fees and costs. Such amounts to be paid by **us** shall not include or be calculated based on any of **your** overhead expenses, lost costs or profits, salaries or wages, or any future cost of doing business, including but not limited to the cost of any future license or royalty.

C. Payments toward claims against your employees

Subject to **your** written request following **your** review of a **claim** against an **employee**, **we** will pay sums as described in TPM III. A. and B. above on behalf of **your employee** due to a **claim** being made against him or her that directly arises from the performance of **your business activities**. The only payments **we** will make toward a **claim** against

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**TECHNOLOGY PROTECTION MODULE
COVER FOR CLAIMS AGAINST YOU**

your employee under this policy are payments to which **you** would be entitled under this policy if the same **claim** against **your employee** had been made against **you**. However, **we** will not deny cover for payments toward a **claim** against **your employee** due to any failure by **you** to comply with WHAT YOU MUST NOTIFY AND WHEN where the failure is solely attributable to **your employee's** failure to notify **you** of the **claim** against him or her as soon as practicable.

We will not pay for any portion of any **claim** against **your employee** that:

- a. arises out of 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 committed by **your employee**; 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 **you** or **your employee's** 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;
- b. 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**; or
- c. results in whole or in part from **your employee's** admission of liability in a proceeding or otherwise.

D. Payments toward your own declaratory relief actions

We will pay reasonable attorney's fees on **your** behalf in excess of the amount of the **retention** to prosecute **your** own declaratory relief action if:

- a. a claimant has advised **you**, in writing, that **you** are committing copyright or trademark infringement;
- b. 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; and
- c. the counterclaim is covered under this policy and pending against **you** while **you** are prosecuting **your** declaratory relief action.

E. Payments toward your outstanding fees

If **your client** refuses to pay **your** contractually agreed fees (including any amount **you** are legally liable to pay a sub-contractor at the date **your client** first refuses to pay), and **you** satisfy **us** that:

- a. **you** do not have reasonable grounds to legally compel payment of the amount owed; and
- b. there is written evidence from **your client** that they intend to make a legitimate **claim** against **you** for an amount covered by this policy that is greater than the amount **you** are owed;

then **we** will pay the amount **you** are owed in excess of the amount of the **retention** (excluding any amount for **your** lost profit, mark-up and liability for taxes or its equivalent) if **you** satisfy **us** that **our** payment is reasonably likely to fully and finally resolve all known **claims** and **potential claims** by that **client**.

PART 3 – COVERAGE MODULE(S)

TECHNOLOGY PROTECTION MODULE COVER FOR CLAIMS AGAINST YOU

If subsequently a **claim** is still made against **you** following **our** payment of **your** outstanding fees, then these payments will be a credit against any amounts payable by **us** in the defense and/or resolution of that **claim**. Any credit that may remain after that **claim** is resolved may be applied against any amounts payable by **us** in the defense and/or resolution of any other **claim** subject to coverage under this policy.

F. 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.

TPM IV. WHAT WE WILL NOT PAY

In addition to PART 5: WHAT WE WILL NOT PAY APPLICABLE TO THE ENTIRE POLICY, **we** will not make any payment toward portions of any **claim** (including **defense costs**) under this module:

- A. alleging or arising from:
 - i. any contractual liability where at the time such contract was entered **you** were aware or reasonably ought to have been aware that there were not sufficient technical, logistical, or financial resources to perform the contract as promised, including **your** promise to meet a certain performance standard under a service level agreement;
 - ii. any breach of a warranty or guarantee; however, this exclusion will not apply to the following:
 - a. **your** warranty or guarantee that **you** will use reasonable care and skill in the performance of a contract;
 - b. **your** warranty or guarantee that any software, hardware, firmware, or related services falling within **your business activities** will not infringe another's intellectual property rights;
 - c. any implied warranty or similar statutory term requiring any software, hardware, or firmware falling within **your business activities** to meet a certain standard of quality, safety or fitness, even if **you** have expressly warranted that such software, hardware, or firmware will meet the legally required standard to which **you** are subject;

PART 3 – COVERAGE MODULE(S)

**TECHNOLOGY PROTECTION MODULE
COVER FOR CLAIMS AGAINST YOU**

- d. **your** warranty or guarantee that any software, hardware, firmware, or related services falling within **your business activities** will substantially conform to any material, written specifications and performance standards forming part of the contract between **you** and **your client**; or
 - iii. any breach of any exclusivity, non-competition, non-solicitation, or other similar commercial terms in **your** contract with a **client**;
 - B. resulting in an award for consequential, special or indirect damages, or loss of claimant's profits. However, this exclusion will not apply to:
 - i. breach of a warranty made by **you** that any software, hardware, firmware, or related services falling within **your business activities** will not infringe another's intellectual property rights;
 - ii. breach of an express contractual provision that is solely triggered by the disclosure of **your client's** confidential information;
 - iii. a court's award of consequential, special or indirect damages resulting from **your** contractual disclaimer of such damages being deemed unenforceable by the same court issuing the award;
 - iv. any portion of such an award that falls within and is subject to a monetary cap on damages contained in **your** contract with a **client**, or
 - v. any contract between **you** and a governmental entity that has insisted, in writing, that it retain the right to recover consequential damages as a precondition to the execution of the contract;
 - C. for, alleging or arising from any defect in any software, hardware, firmware, or associated network cabling 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: (1) covered **defense costs 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** shall reimburse **us** for all **defense costs** that **we** have paid toward that **claim**, or (2) any amount **you** satisfy **us** that **you** are legally able to recover under a written contract;
 - D. for, alleging, or arising from any costs or expenses involved in the repair, upgrade, correction, recall or replacement of any software, hardware, firmware, or associated network cabling, or any costs or expenses relating to **your** legal obligation to comply with an injunction; however, this exclusion will not apply to any portion of a judgment requiring **you** to pay direct damages to **your client** for breach of contract;
 - E. for, alleging, or arising from any false or misleading advertisement about **your** goods or services that is published or broadcast to the general public or a specific marketing segment for the purpose of promoting any aspect of your business; however, this exclusion will not apply to any covered portion of any **claim** based on **your** alleged unauthorized use of another's trademark where **you** have purchased a module expressly granting cover for trademark infringement or false designation of origin under WHAT HAS TO GO WRONG;

PART 3 – COVERAGE MODULE(S)

**TECHNOLOGY PROTECTION MODULE
COVER FOR CLAIMS AGAINST YOU**

- F. for, alleging, or arising from **your** commercial decision to cease providing a particular product or service but only if **you** are contractually obligated to continue providing such product or service;
- G. for, alleging, or arising from any self-replicating, malicious code that was not specifically targeted to **your** system; however, this exclusion will not apply to any covered portion of any **claim** for negligent transmission of a computer virus, worm, logic bomb, or Trojan horse; or
- H. for, alleging, or arising from any 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:
 - 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.

PART 4 – HOW MUCH WE WILL PAY APPLIABLE TO THE ENTIRE POLICY

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.

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;

**PART 5 – WHAT WE WILL NOT PAY
APPLICABLE TO THE ENTIRE POLICY**

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;
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;

**PART 5 – WHAT WE WILL NOT PAY
APPLICABLE TO THE ENTIRE POLICY**

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;
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;

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.

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.

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**.

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**.

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.
Potential claim	“Potential claim” means any matter reasonably likely to lead to a claim covered under this policy.
Retention	“Retention” means the amount as stated as the “Retention” on the declarations attached to and forming Part 1 of this policy.
Retroactive date	“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 claim or potential claim arising out of activities performed by an acquired entity above, “retroactive date” means the date the Insured first took control of such entity, unless otherwise agreed by us in writing.
We/Us/Our	“We,” “Us,” and “Our,” means Hiscox, Inc. 357 Main Street, Armonk, NY 10504 Telephone (914) 273-7400
You/Your	“ You ” and “ Your ” means: <ol style="list-style-type: none">1. the Insured, existing subsidiaries, and acquired entities, but not including employees or independent contractors of the Insured or any existing subsidiary or acquired entity;2. board members, executive officers, in-house counsel, risk managers, chief technology officers, chief information officers, and chief privacy officers of the Insured, existing subsidiaries, and acquired entities; and3. a person or entity that takes legal control of the insured, existing subsidiary, or acquired entity upon the insolvency or bankruptcy of the insured, existing subsidiary, or acquired entity.

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.

**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.

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.

**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.

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.