

This endorsement, effective at 12:01 AM

forms a part of

Policy number

Issued to:

By:

SECURITY AND PRIVACY LIABILITY COVERAGE ENDORSEMENT

In consideration of the premium charged, and in reliance on the statements in the application(s) attached hereto and made part hereof, it is hereby understood and agreed as follows:

ENDORSEMENT SCHEDULE

Item 1.	Security and Privacy Liability Sublimit of Liability: \$ _____
Item 2.	Retroactive Date:
Item 3.	Regulatory Action Limit of Liability: \$ _____

1. Unless otherwise set forth herein, the terms, conditions and exclusions contained in this endorsement shall apply only to the coverage afforded under this endorsement.
2. Solely with respect to the coverage afforded under this endorsement, Clause I. **INSURING AGREEMENTS**, paragraph A., **ERRORS AND OMISSIONS**, is hereby deleted in its entirety and replaced with the following:

A. SECURITY AND PRIVACY LIABILITY COVERAGE

We shall pay on **your** behalf those amounts, in excess of the retention, **you** are legally obligated to pay as **damages** resulting from a **claim** first made against **you** or any **additional insured** and reported to **us** during the **policy period** or Extended Reporting Period (if applicable) for **your wrongful act**, but only if such **wrongful act** first occurs on or after the **retroactive date** and prior to the end of the **policy period**.

3. Solely with respect to the coverage afforded under this endorsement, Clause I. **INSURING AGREEMENTS**, paragraph B, **DEFENSE**, is hereby amended by appending the following to the end of that paragraph:

IM-A. **Regulatory Actions:** We have the right, but not the duty, to defend any **regulatory action**. We shall pay for **claim expenses** any **insured** incurs with **our** prior written consent in the defense of a **regulatory action** for covered **wrongful acts**.

4. Solely with respect to the coverage afforded under this endorsement, Clause II. **DEFINITIONS**, paragraphs B, E., F., M., O., Q. and R. are respectively deleted in their entirety and replaced with the following:

B. Claim means a demand for money or services, including a **suit** or **regulatory action**, arising from **your wrongful act**.

- E. First inception date** means the inception date of the first Miscellaneous Professional Liability policy that includes a Security and Privacy Liability Coverage Endorsement or other liability policy that (i) provides or provided the same or essentially the same coverage as this endorsement and (ii) was issued by **us** or any other member company of AIG to the **named insured** and continually renewed by **us** or any other AIG member company until the inception date of this policy.
- F. Loss** means the total sum of **damages** and **claim expenses**. “**Claim expenses**,” “**damages**” and “**loss**” shall not mean and this policy shall not cover: (1) compensation, benefits, overhead, charges or expenses of any **insured** or such **insured’s** employees; (2) production costs or the cost of recall, reproduction, reprinting or correction of material by any person or entity; (3) **your** cost of providing, correcting or re-performing or completing any professional services; (4) any costs or expenses incurred by any person or entity to withdraw or recall material, media, medium (including CD’s, DVD’s, cassettes and LP’s), products (including products of others which incorporate **your** products) or professional services from the marketplace, or from loss of use arising out of such withdrawal or recall; (5) civil or criminal fines or penalties imposed against **you**; (6) taxes imposed against **you**; (7) any amounts for which an **insured** is not financially liable or which are without legal recourse to an **insured**; (8) the costs and expenses of complying with any injunctive or other form of equitable relief; (9) the monetary value of any electronic fund transfer or transaction by an **insured** or on **your** behalf, which is lost or diminished during transfer into, out of or between an **insured’s** accounts; (10) liquidated damages; and (11) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- M. Retroactive date** means the date set forth in Item 2. of the Endorsement Schedule.
- O. Suit** means a civil proceeding for monetary, non-monetary or injunctive relief, which is commenced by service of a complaint or similar pleading; provided, however, **suit** shall not include a **regulatory action**. **Suit** includes a binding arbitration proceeding in which **damages** are alleged and to which **you** must submit or do submit with **our** consent.
- Q. Wrongful act** means any actual or alleged negligent act, error or omission that results in a **failure of security** or a **privacy peril**.
- R. You or your** means:
1. the **named insured**;
 2. any **subsidiary** of the **named insured**, but only with respect to **wrongful acts** which occur while it is a **subsidiary** and is otherwise covered by this policy;
 3. any past, present or future officer, director, trustee or employee of the **named insured** or **subsidiary** thereof (and in the event the **named insured** is a partnership, limited liability partnership or limited liability company, then any general or managing partner or principal thereof), but only while acting within the scope of their duties as such; and
 4. any **additional insured**, but only while acting within the scope of his or her duties as such in the provision of **content** for an **organization**.
5. Solely with respect to the coverage afforded under this endorsement, Clause II. **DEFINITIONS** is amended by appending the following definitions at the end of such Clause:

- SP-A. Application** means each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other documents submitted in connection with the underwriting of this policy or the underwriting of any other errors and omissions or media liability policy issued by the **insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time. "**Application**" shall also include any statements, information, representations and attachments made, prepared or provided by **you** with respect to any security assessment conducted in connection with or involving a request for insurance under this policy.
- SP-B. Additional insured** means any natural person or entity (i) that an **organization** has expressly agreed in writing, prior to the commission of a **wrongful act**, to add as an **insured** under this policy, but only for the **wrongful acts** of the **organization**; or (ii) any other person or entity described or listed as such in any endorsement to this policy, and (iii) any employee of any such described or listed entity.
- SP-C. Computer attack** means **unauthorized access, unauthorized use**, receipt or transmission of a **malicious code** or **denial of service attack** which:
- (1) alters, copies, misappropriates, corrupts, destroys, disrupts, deletes, damages or prevents, restricts or hinders access to, a **computer system**;
 - (2) results in the disclosure of private or confidential information stored on a **computer system**; or
 - (3) results in **identity theft**.
- whether any of the foregoing is intentional or unintentional, malicious or accidental, fraudulent or innocent, specifically targeted at **you** or generally distributed, and regardless of whether the perpetrator is motivated for profit.
- SP-D. Class action claim** means any **claim** arising out of a **wrongful act** which resulted in a **privacy peril**:
- (1) brought on behalf of a class or putative class of plaintiffs (whether or not certified as such);
 - (2) otherwise brought on a representative basis; or
 - (3) alleging or arising from the same **wrongful act** or a series of continuous, repeated or related **wrongful acts** as any **claim** described in the preceding subparagraphs SP-D.(1) or SP-D.(2).
- SP-E. Computer system** means computer hardware, software, firmware, and components thereof, including electronic data stored thereon, which are linked together through a network of two or more computers, including such networks accessible through the **Internet**, intranets, extranets or virtual private networks.
- SP-F. Confidential corporate information** means any trade secret, data, design, interpretation, forecast, formula, method, practice, process, record, report or other item of information of a non-**insured** third party, and which is (i) in **your** care, custody or control; (ii) not available to the general public, and is: (iii) provided to **you** under a mutually agreed to written confidentiality/non-disclosure agreement; or (iv) marked "confidential" or otherwise specifically designated in writing as "confidential" by such third party.

SP-G. Denial of service attack means an attack launched by a person(s) that sends an excessive volume of electronic data to a **computer system** in order to deplete such computer system's capacity, and prevents those who are authorized to do so from gaining access to such computer system in a manner in which they are legally entitled. Provided, however, that depletion in **your computer system's** capacity shall not be considered a **denial of service attack** if caused by a mistake in determining capacity needs.

SP-H. Failure(s) of security means:

- (1) the actual failure and inability of the **security of your computer system** to mitigate loss from or prevent a **computer attack**; or
- (2) physical theft of hardware or firmware controlled by an **organization** (or components thereof) on which electronic data is stored, by a person other than an **insured**, from a premises occupied and controlled by an **organization**.

"**Failure of security**" shall also include such actual failure and inability above, resulting from the theft of a password or access code from **your** premises, **your** computer system, or an officer, director or **employee** of the **organization** by non-electronic means in direct violation of an **organization's** specific written **security** policies or procedures.

SP-I. Identity theft means the misappropriation of **private information** that has resulted in, or could result in the wrongful or fraudulent use of such information, including without limitation, fraudulently emulating the identity of an individual or corporation.

SP-J. Information holder means a third party that **you** have provided **personally identifiable information** to and with whom **you** have entered into a contract that requires such party to protect such personally identifiable information.

SP-K. Internet means the worldwide public network of computers commonly known as the **Internet**, as it currently exists or may be manifested in the future.

SP-L. Insured means each of **you** and any **additional insured**.

SP-M. Malicious code means an unauthorized corrupting or harmful piece of code. Malicious code includes, but is not limited to, computer viruses, "Trojan horses," "worms," and "time or logic bombs."

SP-N. Material means content in any form, including written, printed, video, electronic, digital, or digitized content:

(1) in broadcasts, including, but not limited to, television, motion picture, cable, satellite television and radio broadcasts;

(2) in publications, including, but not limited to, newspaper, newsletter, magazine, book and other literary, monograph, brochure, directory, screen play, film script, playwright and video publications;

(3) in advertising; or

(4) displayed on an **Internet** site.

SP-O. Organization means (1) the **named insured**; and (2) each **subsidiary**.

SP-P. Personally identifiable information means any of the following in **your** care, custody or control: (1) information from which an individual may be uniquely and reliably identified or contacted, including without limitation, an individual's name, address, telephone number, social security number, account relationships, account numbers, account balances, account histories and passwords; (2) information concerning an individual that would be considered "nonpublic personal information" within the meaning of Title V of the Gramm-Leach Bliley Act of 1999 (Public Law 106-102, 113 Stat. 1338) (as amended) and its implementing regulations; and (3) information concerning an individual that would be considered "protected health information" within Health Insurance Portability and Accountability Act of 1996 (as amended) and its implementing regulations.

SP-Q. Privacy peril means any actual or alleged:

- (1) unauthorized disclosure by **you** of **private information** or failure by **you** to protect **private information** from misappropriation, including, without limitation, any unintentional violation of **your privacy policy** or misappropriation that results in **identity theft**;
- (2) failure by an **information holder** to protect **personally identifiable information** from misappropriation, provided that any failure to protect such information shall not include any intentional, dishonest, fraudulent, criminal or malicious act, error or omission if committed by:
 - (i) the **information holder**;
 - (ii) any elected or appointed officer, or director of the **information holder**;
 - or,
 - (iii) any employee (other than officers) or independent contractors employed by an **information holder** if any elected or appointed officer of an **information holder** possessed, at any time, knowledge of the intentional, dishonest, fraudulent, criminal or malicious act committed by such employee or independent contractor that caused a direct loss to an **insured** or any other person.
- (3) failure by **you** to disclose or warn of an actual or potential **identity theft**, but only if such **identity theft** resulted directly from SP-Q.(1) or SP-Q.(2) above; or
- (4) violation of any federal, state, foreign or local privacy statute alleged in connection with a **claim** for **damages** from SP-Q.(1), SP-Q.(2) or SP-Q.(3) above.

SP-R. Privacy policy means the organization's policies and practices intended to protect the confidentiality of **private information**, including without limitation, statements in written or electronic form regarding the collection, dissemination or treatment of **personally identifiable information**.

SP-S. "Private information" means:

(1) **personally identifiable information**; or

(2) **confidential corporate information**.

SP-T. Regulatory action means a request for information, civil investigative demand or civil proceeding commenced by service of a complaint or similar pleading, brought by, or on behalf of, a governmental agency that alleges a **privacy peril** as defined in sub-paragraph SP Q(4) of the definition of **privacy peril**, which may reasonably be expected to give rise to a covered suit.

SP-U. Security means hardware, software or firmware whose function or purpose is to mitigate loss from or prevent a **computer attack**. **Security** includes, without limitation, firewalls, filters, DMZ's, computer virus protection software, intrusion detection, the electronic use of passwords or similar identification of authorized users. **Security** also includes **your** specific written policies and procedures intended to directly prevent the theft of a password or access code by non-electronic means.

SP-V. Unauthorized access means the gaining of access to a **computer system** by an unauthorized person or persons.

SP-W. Unauthorized use means the use of a **computer system** by an unauthorized person or persons or an authorized person or persons in an unauthorized manner.

SP-X. Your computer system means a **computer system** under the ownership, operation or control of an **organization**.

6. Solely with respect to the coverage afforded under this endorsement, Clause III. **EXCLUSIONS**, A. (dishonesty exclusion), H. (intellectual property), I. (false advertising), J. (regulatory exclusion), K(contract liability) and S. (personal injury) are deleted in their entirety.

7. Solely with respect to the coverage afforded under this endorsement, Clause III. **EXCLUSIONS** is hereby amended by appending the following at the end of such Clause:

We shall also not cover claims:

SP-A. alleging, arising out of or resulting, directly or indirectly, from:

(1) fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, however caused;

(2) strikes or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions;

(3) electrical or mechanical failures, including any electrical power interruption, surge, brownout or blackout; provided, however, this subparagraph SL-A.(3) shall not apply to electrical or mechanical failures, other than satellite failures, where such failure was the result of **your wrongful act**; or

(4) arising out of or resulting, directly or indirectly, from any failure of telephone lines, data transmission lines or other infrastructure comprising or supporting

the **Internet**, unless such lines or infrastructure were under **your** operational control;

- SP-B. alleging, arising out of or resulting, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law or of **your privacy policy**, or gaining of any profit or advantage to which **you** or any **additional insured** is not legally entitled, if any of the aforementioned is committed by any of **your** or any **additional insured's**:
- (1) directors, officers, trustees, governors, management committee members, members of the management board or partners (or the equivalent positions), whether acting alone or in collusion with other persons; or
 - (2) employees (other than those referenced in sub-paragraph SL-P.(1) above) or independent contractors employed by **you** or any **additional insured** if any of those referenced in sub-paragraph SL-B.(1) above possessed, at any time, knowledge of any dishonest, fraudulent, malicious, or criminal acts committed by such employee or independent contractor that caused a direct loss to an **insured** or any other person;
- SP-C. alleging, arising out of or resulting, directly or indirectly, from any satellite failure;
- SP-D. alleging, arising out of or resulting, directly or indirectly, from any guarantee or express warranty; inaccurate, inadequate, or incomplete description of the price of goods, products or services; or any failure of goods, products or services to conform with an advertised quality or performance; or liquidated damages; or any failure to provide goods or products, or perform services within a specified time period, by a deadline or according to specified milestones; or any **insured's** fees, cost or profit guarantees, cost representations, contract price, or estimates of probable costs or cost estimates being exceeded;
- SP-E. alleging, arising out of or resulting, directly or indirectly, from any (1) false or deceptive advertising or misrepresentation in advertising of **your** products or services, or (2) unfair competition based on such advertising, including, but not limited to, advertising related violations of any local, state or federal consumer protection or privacy laws;
- SP-F. alleging, arising out of or resulting, directly or indirectly, from any: (1) false arrest, detention or imprisonment; (2) libel, slander or defamation of character; (3) wrongful entry or eviction of any physical premises; or (4) malicious prosecution;
- SP-G. against **you** that is brought by or on behalf of:
- (1) the Federal Trade Commission ("FTC"), the Department of Health and Human Services ("HHS"), the Office of Civil Rights ("OCR"), the Federal Communications Commission ("FCC") or any other federal, state or local government agency, or foreign government agency, provided that, in accordance with subparagraph I.B.IM-A. of the policy but not withstanding subparagraphs (5) and (6) of the definition of "**loss**," shall not apply to any **claims expenses** arising out of a covered **regulatory action**; or

- (2) the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers, Broadcast Music, Inc., or any other licensing or rights organizations in such entity's regulatory, quasi-regulatory or official capacity, functions or duties;
- SP-H. alleging, arising out of or resulting, directly or indirectly, from any antitrust violations, restraint of trade, or unfair competition, or violations of the Sherman Act, the Clayton Act or the Robinson-Patman Act, as amended; or any regulation promulgated under the foregoing laws, or any federal, state, local or foreign laws (a) similar to the foregoing laws or (b) regulating the same or similar conduct or services, whether such law is statutory, regulatory or common law;
- SP-I. alleging, arising out of or resulting, directly or indirectly, from any infringement of any patent, copyright, trademark, trade dress, trade name, or service mark;
- SP-J. alleging, arising out of or resulting, directly or indirectly, from any misappropriation of any trade secret by, or with active cooperation, participation, or assistance of, any **insured**, any of **your** former employees, subsidiaries, directors, officers, partners, trustees, or any of **your** successors or assignees;
- SP-K. alleging, arising out of or resulting, directly or indirectly, from any **failure of security** occurring prior to the **first inception date** if, as of the **first inception date**, **you** knew or could have reasonably foreseen that such **failure of security** did or would result in a **claim** against **you**;
- SP-L. alleging, arising out of or resulting, directly or indirectly, from any of the following:
- (1) any shortcoming in **security** that **you** knew about prior to the inception of this policy;
 - (2) **your** failure to take reasonable steps, to use, design, maintain and upgrade **your security**; or
 - (3) the inability to use, or lack of performance of, software: (a) due to expiration, cancellation, or withdrawal of such software; (b) that has not yet been released from its development stage; or (c) that has not passed all test runs or proven successful in applicable daily operations;
- SP-M. arising out of liability **you** assume under any contract or agreement, including but not limited to, any contract price, cost guarantee or cost estimate being exceeded; however, this exclusion does not apply to: (1) liability **you** would have in the absence of such contract or agreement; or (2) with respect to a **privacy peril**, any liability or obligation under a confidentiality or non-disclosure agreement; or
- SP-N. with respect to a **privacy peril**, alleging, arising out of or resulting, directly or indirectly, from:
- (1) the collection of **private information**, including, without limitation (i) such collection by means of electronic "cookies", "spiders", spybots, spambots, spyware, adware, wire-tapping, **malicious code**, key-stroke logging, tracking devices, radio frequency identification tags (RFID tags), bugging or video camera; or (ii) the failure to provide adequate notice regarding: (i) the purposes for which the **private information** is collected and used; (ii) contact information for inquiries or complaints; (iii) those parties to which the **private information** could be disclosed to; (iv) "opt out" choices of the individual or

entity from whom **you** are collecting the **private information**; and (v) the means **you** offer for limiting use or disclosure of the **private information**; provided, however, that this exclusion shall not apply to any otherwise covered **claim** for a **wrongful act** that resulted in a **privacy peril**.

- (2) the integrity of **private information**, including whether the **private information** is: (i) relevant and reliable for the purpose for which it is collected or to be used; (ii) accurate; (iii) complete; or (iv) current;
- (3) **your** provision of, or failure to provide, access to **private information** to those individuals or entities with an actual or alleged right to such access, including, without limitation, failing to provide an individual or entity the ability to correct, amend or delete **private information**;
- (4) **your** distribution of unsolicited marketing, e-mail or advertising, including without limitation unsolicited electronic messages, chat room postings, bulletin board postings, newsgroup postings, "pop-up" or "pop-under" **Internet** advertising or fax-blasting, direct mailing or telemarketing; provided, however, this exclusion shall not apply to any **claim** for a **wrongful act** that resulted in a **privacy peril**; or
- (5) **your** distribution, creation, exhibition, performance, preparation, printing, production, publication, release, display, research or serialization of any **material**, including without limitation, any such **claim** covered under any media liability insurance.

8. Solely with respect to the coverage afforded under this endorsement, Clause IV. **LIMITS OF LIABILITY**, is hereby amended by appending the following:

SP-A. The Security and Privacy Liability Sublimit of Liability set forth in Item 1. of the Endorsement Schedule is the most **we** shall pay for **loss**, in the aggregate, arising from all **claims** covered under this Endorsement. The Security and Privacy Liability Sublimit of Liability is part of and subject to the limits of liability set forth in Item 3. of the Declarations.

The **regulatory action limit of liability** set forth in Item 3. of the Endorsement Schedule is the most **we** will pay as **claims expenses** under this policy, in the aggregate, for all **regulatory actions** combined, regardless of the number of persons, occurrences, regulatory actions or entities covered by this policy, or claimants or regulatory actions brought against any insured. The **regulatory action limit of liability** is part of and subject to the limits of liability set forth in Item 3. of the Declarations.

9. Solely with respect to the coverage afforded under this endorsement, Clause V. **RETENTION**, is hereby amended by appending the following to the end of that Clause:

SPECIAL CLASS ACTION RETENTION

For each **class action claim** arising out of a **wrongful act(s)** which resulted in a **privacy peril**, the **insurer** shall only be liable for the amount of **loss** arising from such **class action claim** that exceeds the applicable Retention amount for such **claim**. Accordingly, the Retention amount for each **class action claim** shall be the greater of one hundred thousand dollars (\$100,000) or two hundred percent (200%) of the

Retention amount set forth in Item 4. of the Declarations.

10. Solely with respect to the coverage afforded under this endorsement, Clause VI. **OTHER PROVISIONS AFFECTING COVERAGE**, is hereby amended by appending the following:

SL-A. SPOUSAL AND LEGAL REPRESENTATIVE EXTENSION

If a **claim** against a natural person **insured** includes a **claim** against: (a) the lawful spouse of such **insured**; or (b) a property interest of such spouse, and such **claim** arises from any actual or alleged **wrongful act** of such **insured**, this policy shall cover **loss** arising from the **claim** made against that spouse or the property of that spouse to the extent that such **loss** does not arise from a **claim** for any actual or alleged act, error or omission of such spouse. This policy shall cover **loss** arising from a **claim** made against the estates, heirs, or legal representatives of any deceased natural person **insured**, and the legal representatives of any natural person **insured**, in the event of incompetence, insolvency or bankruptcy, who was an **insured** at the time the **wrongful acts** upon which such **claim** is based were committed.

11. Solely with respect to the coverage afforded under this endorsement, Clause VI. **OTHER PROVISIONS AFFECTING COVERAGE**, paragraph N., Declarations, is hereby deleted in its entirety and replaced with the following:

N. Declarations

By accepting this policy, **you** agree that the statements in the **application** and Declarations are true, and they are **your** agreements and representations. This policy is issued in reliance upon the truth of those representations.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

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AUTHORIZED REPRESENTATIVE