



**NETPROTECT FOR DESIGN PROFESSIONALS
NETWORK SECURITY AND PRIVACY LIABILITY ENDORSEMENT
(FOR USE WITH THE PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY POLICY)**

In consideration of the additional premium of _____, it is agreed that the *Professional Liability and Pollution Incident Liability Policy* is amended as follows:

1. Section I, **COVERAGE AGREEMENTS**, item A. is amended to include the following:

We will pay all amounts in excess of the Deductible up to the Limit of Liability set forth in paragraph 3. below, that **you** become legally obligated to pay as **damages** and **claim expenses** as a result of a **wrongful act** that results in a **Netprotect claim** anywhere in the world, provided that:

1. on the Knowledge Date set forth in paragraph 3. below, none of **your** officers, directors, principals, partners, or insurance managers knew of any act, error, omission, or event that could reasonably be expected to become the basis of that **Netprotect claim**;
2. the **Netprotect claim** is for a **wrongful act** that occurred on or before the Prior Acts Date set forth in paragraph 3. below.

2. _____ If this box is checked, coverage for a **wrongful act** that results in a **Netprotect claim** arising out of a **laptop computer compromise** is provided. If no "X" is shown to indicate coverage, such coverage is not provided by this Endorsement.

3. The KNOWLEDGE DATE and PRIOR ACTS DATE applicable to a **Netprotect claim** are as follows:

KNOWLEDGE DATE: _____

PRIOR ACTS DATE: _____

4. Solely with respect to the coverage provided in this Endorsement, the following Items on the Declarations page are amended to include the following:

a. ITEM 5. DEDUCTIBLE

The following Deductible amount applies separately to any **Netprotect claim**, and is in addition to any applicable Deductible amount shown in Item 5.a-d. on the Declarations Page

\$ _____ is the Deductible per **Netprotect claim**.

b. ITEM 6. LIMIT OF LIABILITY

The following Limits of Liability apply to amounts **you** become legally obligated to pay as **damages** and **claim expenses** for a **Netprotect claim**. These Limits of Liability are separate from the Limits of Liability shown in Item 6.a. and 6.b. on the Declarations Page.

\$ _____ Per **claim** Limit of Liability for **damages** and **claim expenses**

\$ _____ Aggregate Limit of Liability per **policy year** for **damages** and **claim expenses**

\$ _____ **Outsourced network claim** Sublimit in the Aggregate for **damages** and **claim expenses**.



5. Section II, **SUPPLEMENTARY PAYMENTS**, is amended to include the following new paragraph:
- We will reimburse **you** for all reasonable and necessary fees, costs and expenses incurred by **you** during the **policy year** and consented to by us (such consent not to be unreasonably withheld), up to a maximum of \$ _____ per **policy year**, in order to effect compliance with:
 - a. a **security breach notice law**;
 - b. A statute or regulation referenced under the definition of **privacy injury or identity theft** where the **Named Insured** has been notified of an actual or alleged breach of such law by a regulatory agency.

This limit is part of, and not in addition to, the Aggregate Limit of Liability provided in Paragraph 4. b., above.

6. Solely with respect to a **Netprotect claim**, Section III. **DEFINITIONS** is amended as follows:
- a. The following definitions are deleted in their entirety and replaced by the following:
 - D. **Claim** means a demand for money or services naming **you** and arising from a **wrongful act**.
 - R. **Property damage** means:
 - 1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - 2. Loss of use of tangible property that is not physically damaged which is caused by an **occurrence**.

Tangible property does not include electronic data. As used in this definition, electronic data means information, facts or programs in digital form stored, processed or transmitted on or by a **network** or computing devices or digital storage media connected thereto.
 - T. **Wrongful act** means:
 - 1. any actual or alleged error, omission, neglect or breach of duty that results in a **security breach**; or,
 - 2. if indicated as purchased in Paragraph 2. of this Endorsement, any actual or alleged error, omission, neglect or breach of duty resulting in a **laptop computer compromise**;

However, a **wrongful act** cannot arise from dishonest, fraudulent, malicious, or criminal conduct committed by **you** or at **your** direction or with **your** prior knowledge.
 - b. The following definitions are added:
 - **Application** means all signed applications and supplemental applications for this Policy and for any policy providing the same or similar coverage in an uninterrupted series of policies issued by us or any entity controlling, controlled by or under common control with us, of which this policy is a renewal or replacement, including but not limited to, any materials or information submitted or required to be submitted therewith whether orally or in writing.
 - **Computer virus** means unauthorized computer code that is designed and intended to transmit, infect and propagate itself over one or more **networks**, and cause:
 - 1. computer code or programs to perform in an unintended manner;
 - 2. the deletion or corruption of electronic data or software; or
 - 3. the disruption or suspension of a **network**.



- **Damages** means civil awards, settlements and judgments (including any award of pre-judgment interest) which **you** are legally obligated to pay as a result of a covered **Netprotect claim**. **Damages** shall not include:
 1. The return or restitution of **your** profits, royalties, taxes, fees, expenses or costs.
 2. Criminal, civil, administrative or regulatory relief, fines or penalties;
 3. Any amounts for which there is no legal recourse against you including those which you are not legally obligated to pay;
 4. Injunctive or declaratory relief;
 5. Matters which are uninsurable as a matter of law; or
 6. Plaintiff's attorney fees or expenses associated with items **1** through **5** above.

Damages shall include punitive, exemplary and multiple damages to the extent permitted by law. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages.

- **Denial of service attack** means an attack executed over one or more **networks** or the **internet** that is specifically designed and intended to disrupt the operation of a **network** and render a **network** inaccessible to authorized users.
- **Electronic infection** means the transmission of a **computer virus** on a **network**, including without limitation, such transmission to or from the **Named Insured's network**.
- **Electronic information damage or theft** means the **unauthorized access** to, destruction of, addition to, deletion, alteration, removal, disclosure or copying of, any:
 1. third-party's information residing on the **Named Insured's network**;
 2. information residing on the **network** of any third party.
- **Internet** means the worldwide public network of computers as it currently exists or may be manifested in the future, but **internet** does not include the **Named Insured's network**.
- **Laptop computer compromise** means the loss or theft of a laptop computer that is:
 1. used by **you** for a business purpose, and
 2. contains **non-public Personal Information** or **non-public business account information**; whether or not such laptop is lost or stolen from **your** premises or from any third party's premises.
- **Netprotect claim** means a **claim** alleging **network damage**, violation of any **security breach notice law**, **privacy injury**, and **identity theft**. A **Netprotect claim** does not include a **claim** arising out of the rendering or failing to render **professional services**.
- **Network** means a system of interconnected devices and software thereupon, operated by or for the benefit of a single party, whose collective purpose is to store, process, receive or exchange digital information within or among locations. Provided however that **Network** shall not include:
 1. the **internet**, telephone company networks, or other public infrastructure network; or,
 2. any individual device and its resident software and data when such device is not interconnected with other devices.
- **Network damage** means:
 1. the unscheduled and unplanned inability of an authorized user to gain access to a **network**;
 2. **electronic information damage or theft**;
 3. The suspension or interruption of any **network**;
 4. **electronic infection**;
 5. **denial of service attack**.



- **Non-public business account information** means bank and credit account information of other business entities that is not available to the general public, including account numbers, balances and transaction statements.
- **Non-public personal information** means personal information not available to the general public from which an individual may be identified, including without limitation, an individual's name, address, telephone number, social security number, account relationships, account numbers, account balances, and account histories.
- **Occurrence** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- **Outsourced network claim** means a **Netprotect claim** arising out of a security breach on any part of the **Named Insured's network** that is operated by a third party on the **Named Insured's** behalf. **Outsourced network claims** shall be subject to the **outsourced network claim** sublimit of liability as stated in Paragraph 4. b. above.
- **Privacy injury and identity theft** means any unauthorized disclosure or inability to access, or inaccuracy with respect to **non-public personal information** or **non-public business account information** in violation of:
 1. the **Named Insured's privacy policy**; or
 2. any federal, state, foreign or other law, statute or regulation governing the confidentiality, integrity or accessibility of **non-public personal information** or **non-public business account information**, including but not limited to the Health Insurance Portability and Accountability Act of 1996, Gramm-Leach-Bliley Act, Children's Online Privacy Protection Act, or the EU Data Protection Act.
- **Privacy policy** means policies in written or electronic form that:
 1. govern the collection, dissemination, confidentiality, integrity, accuracy or availability of **non-public personal information** or **non-public business account information**; and,
 2. you provide to the **Named Insured's** customers, employees or others who provide you with **non-public personal information** or **non-public business account information**.
- **Security breach** means the failure of the **Named Insured's network** hardware, software, or firmware, the function or purpose of which is to:
 1. identify and authenticate parties prior to accessing the **Named Insured's network**;
 2. control access to the **Named Insured's network** and monitor and audit such access;
 3. protect against **computer viruses**;
 4. defend against **denial of service attacks** upon you or co-option of the **Named Insured's network** to penetrate a **denial of service attack**;
 5. ensure confidentiality, integrity and authenticity of information on the **Named Insured's network**.
- **Security breach notice law** means any statute or regulation that requires an entity storing **non-public personal information** or **non-public business account information** to provide notice to specified individuals of any actual or potential **security breach** with respect to such **non-public personal information** or **non-public business account information**, including but not limited to Sections 1798.29 and 1798.82 - 1798.84 of the California Civil Code (formerly S.B. 1386).
- **Unauthorized access** means any accessing of the **Named Insured's network** or information residing on the **Named Insured's network** by unauthorized persons.

7. Solely with respect to a **Netprotect claim**, Section IV. **EXCLUSIONS** is amended as follows:

- a. Exclusion I and K are deleted in their entirety and replaced by the following:



- I. brought by **you** or on **your** behalf against another of **you** covered by this Policy, except to the extent that such **claim**:
1. is in the form of a cross **claim**, third-party **claim** or otherwise for contribution or indemnity which is part of and results directly from a **claim** which is not otherwise excluded under this Policy; or
 2. is by an employee and alleges **privacy injury and identity theft** resulting from the unauthorized disclosure of such employee's **non-public personal information**;
- K. arising out of:
1. any **wrongful act** or any matter, fact, situation, transaction, or event, for which notice was given by **you** under any professional liability, pollution insurance or network liability coverage prior to the effective date of this Policy; or
 2. any other **wrongful act**, whenever occurring, which is logical or causally connected by any common fact, situation, transaction, or event to the **wrongful act**, specified in K.1. above.

b. The following exclusions are added:

- arising out of any:
 1. War, including undeclared or civil war;
 2. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 3. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these;
- based upon or arising out of
 1. **unauthorized access**, **electronic infection** or a **denial of service attack** or other attack of **your network** by a domestic or foreign governmental authority; or
 2. action or order by any domestic or foreign law enforcement, administrative, regulatory or judicial bodies or other governmental authority, to ban, limit or restrict access to intercept, confiscate, monitor or analyze **your network** or any data, software or other information stored or processed on, or transmitted to or from, **your network**, whether authorized by **you** or not, including without limitation, interception, monitoring, or analysis by the NSA, CIA or FBI, or under Foreign Intelligence Surveillance Act, the USA Patriot Act or any other domestic or foreign law, regulation or order;
- based upon or arising out of **bodily injury** or **property damage**, except that this exclusion does not apply to the wrongful infliction of emotional distress arising out of **privacy injury and identity theft**.
- based on or arising out of price discounts, prizes, awards, coupons or any other valuable consideration given in excess of the total contracted or expected amount;
- based on or arising out of the inaccurate, inadequate or incomplete description of the price of goods, products or services or failure of goods, products or services to conform with an advertised quality or performance, or **your** cost guarantees, cost representations, contract price, estimates of probable costs or cost estimates being exceeded, intentional misrepresentation in advertising, false advertising or unfair or deceptive business practices;
- based on or arising out of project planning, including but not limited to, mistakes in determining capacity needs;



- based on or arising out of the failure to implement, maintain, enforce or follow, in whole or part, any Risk Control identified in the Risk Control Self Assessment questions set forth in the **Application**;
- based on or arising out of any **laptop computer compromise** where:
 1. information contained on the laptop was not encrypted using a Federal Information Processing Standard (FIPS) 140-2 compliant whole disk encryption solution;
 2. the encryption keys used in the encryption described in 1. above were not generated and distributed in a manner that precludes access to such keys by unauthorized personnel;
 3. the encryption described in item 1. above does not include a key recovery mechanism that ensures that encrypted information can only be decrypted and accessed by authorized personnel; or,
 4. any such encryption key recovery mechanism in item 3. above does not require approval by **your** senior management to authorize recovery of keys by anyone other than the key owner.
- based on or arising out of the inability to use or lack of performance of software programs:
 1. due to expiration, cancellation, withdrawal or failure to maintain or support;
 2. that have not yet been released from their development stage, passed all test runs or proven successful in applicable daily operations; or
 3. that result from the **Named Insured's** modification of software programs in violation of any software license agreement, including but not limited to, violation of license provisions regarding modification that invalidate a warranty.
- based on or arising out of any theft of computer or video game points, earnings, awards or other intangible property related to computer or video games;
- based on or arising out of:
 1. service interruption by or of any entity that provides third parties with access to the **Internet**, any telecommunications service provider or any application service provider; or
 2. partial or total electrical failure including electrical power interruption, surge, brownout or blackout; or interruption or outages to any other utilities or elements of infrastructure, including gas, water, telephone (on-line, wireless or other), cable or satellite services; including, but not limited to, planned outages or reductions in service involving items identified in subsections 1. and 2. above.
- based on or arising out of any false arrest, detention, imprisonment, malicious prosecution, wrongful entry or conviction, trespass, eavesdropping or other invasion of the right of private occupancy;
- based on or arising out of breach of any duty which a director or officer owes to a corporation or other legal entity for which such director or officer serves or by which he is employed;
- by or on behalf of or for the benefit of or involving any licensing organization, including but not limited to the American Society of Composers, Authors and Publishers ("ASCAP"), SESAC or Broadcast Music, Inc. ("BMI");
- based up or arising out of
 1. the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**;
 2. any nuclear reaction, radiation or contamination;
 3. any request, demand, order or statutory or regulatory requirement that **you** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, **pollutants**, nuclear reaction, radiation or contamination; or
 4. by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way



responding to, or assessing the effects of **pollutants**, nuclear reaction, radiation or contamination.

8. Solely with respect to a **Netprotect claim**, Section V. **LIMITS OF LIABILITY / DEDUCTIBLE** is amended as follows:

a. Item A. Limits of Liability, Paragraphs 1 & 2 are deleted in their entirety and replaced by the following:

1. The Limit of Liability shown under the first bulleted paragraph of Paragraph 4. b. in this Endorsement is the maximum we will pay for any **Netprotect claim** first made against **you** and reported to us during the **policy year**.
2. The aggregate Limit of Liability shown under the second bulleted paragraph of Paragraph 4. b. in this Endorsement is the maximum we will pay for all **Netprotect claims** first made against **you** and reported to us during the **policy year**.

All Limits of Liability apply as excess over any Deductible amount. The **policy year** Limits of Liability as set forth above may not be aggregated or transferred, in whole or in part, to provide any additional coverage with respect to **claims** first made or deemed made during any other **policy year**. If the Limits of Liability as specified above for any **policy year** are exhausted, our obligation for that **policy year** shall be deemed completely fulfilled and extinguished.

b. Item B. Deductible is deleted in its entirety and replaced by the following:

B. Deductible

You shall have the obligation to pay up to the Deductible amount shown in Paragraph 4 a. in this Endorsement resulting from a **Netprotect claim**, including but not limited to **claim expenses**, for all **Netprotect claims** first made during the **policy year**.

c. Item E. Risk Mitigation Credit, is deleted in its entirety.

9. Solely with respect to a **Netprotect claim**, Section VI. **CONDITIONS**, Part B. and C. are deleted in their entirety and replaced with the following:

B. **Your Duties in the Event of a Netprotect claim**

1. As a condition precedent to the obligations of us under this Endorsement, **you** must give us written notice as soon as practicable during the **policy period**, or any **extended reporting period**, if applicable, of any **Netprotect claim** made against **you**. All **Netprotect claims** must be reported to us at:

Claims: First Notice Systems
Phone: 1-877-262-2727 (1-877-CNA-ASAP)
Fax: 800-953-7389

2. **You** must also:

- a. immediately forward all documents received in connection with the **Netprotect claim** to us;
- b. fully cooperate with us or our designee in the investigation, the making of settlements, the conduct of suits or other proceedings, or enforcing any right of contribution or indemnity against another who may be liable to **you** in connection with a **Netprotect claim**;
- c. attend depositions, hearings and trials;
- d. assist in securing and giving evidence obtaining the attendance of witnesses; and
- e. refuse, except at **your** own cost, to admit any liability, assume any **damages**, voluntarily make any payments, or incur any **claim expenses**.



C. **Your Duties in the Event of a Potential Netprotect Claim, Potential Violation of a Security Breach Notice Law or Privacy Injury or Identity Theft:**

If, during the **policy period**, you become aware of any act or omission that may reasonably be expected to be the basis of a **Netprotect claim** against any of you, or of any facts, events or circumstances that may lead to a violation of a **security breach notice law** or any statute or regulation referenced in the definition of **privacy injury or identity theft**, you must give written notice to us pursuant to the communication methods provided in paragraph 9. B. 1., above, as soon as practicable prior to the expiration of the **policy period**. Such notice must state the reasons for anticipating a **claim**, with full particulars, including but not limited to:

1. The names of any potential claimants and a description of the act or omission which forms the basis of the potential **claim**;
2. The identity of any of you allegedly responsible for such specific act or omission;
3. The consequences which have resulted or may result from such specific act or omission;
4. The nature of the potential monetary **damages** or non-monetary relief which may be sought in consequence of such specific act or omission; and
5. The circumstances by which you first became aware of such **wrongful act**.

If such notice is given, then any **Netprotect claim** that is subsequently made against any of you and reported to us shall be deemed to have been made at the time such written notice was received by us. For purposes of a **security breach** or **laptop computer compromise**, which may reasonably give rise to a future **Netprotect claim**, as soon as practicable means no later than twenty-four hours after you discover such **security breach** or **laptop computer compromise**.

Until the date a **NetProtect claim** is made, we may pay for all costs or expenses you incur, at our sole discretion, as a result of investigating a potential **Netprotect claim** that you report in accordance with this Paragraph C., **Your Duties in the Event of a Potential Netprotect Claim, Potential Violation of a Security Breach Notice Law or Privacy Injury or Identity Theft**.

10. Solely with respect to the coverage provided by this Endorsement, Section VI. **CONDITIONS** is amended to add the following conditions:

- **Notice to or Knowledge of Agent**

Notice to or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or prohibit us from asserting any right under the provisions of this Policy, nor shall the terms of this Policy be waived or changed except by written endorsement issued to form a part of this policy.

- **Notice of Material Change**

The **Named Insured** agrees to notify us as soon as possible, but in no event later than 30 days after a material change, of any such material change with respect to: (1) the answers in the **Application** submitted; (2) the nature, volume, value or sensitivity of the information stored, processed or transmitted on **your network**; or, (3) **your** ability to maintain, implement, follow and enforce any Risk Control identified in the Risk Control Self Assessment questions set forth in the **Application**. We reserve the right to re-underwrite this Endorsement and re-price premiums based on these changes. In the event that the **Named Insured** fails to notify us of a material change as set forth above, and a **claim** results from that material change, we reserve the right to deny coverage of any such **claim**.

- **Application**

You represent and acknowledge that the statements contained on the Declarations and in the **Application**, and any materials submitted or required to be submitted therewith (all of which shall be maintained on file by us and be deemed attached to and incorporated into this Policy as if physically attached), are **your** representations, are true and: (i) are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy; and (ii) shall be deemed material to the acceptance of this risk or the hazard assumed by us under this Policy. This Policy is issued in reliance



upon the truth of such representations. This Policy shall be null and void if the **Application** contains any misrepresentation or omission made with the intent to deceive, or which materially affects either the acceptance of the risk of the hazard assumed by us under this Policy.

- Concealment, Misrepresentation or Fraud

This Policy is void in any case of fraud by **you** as it relates to this Policy at any time. It is also void if any of **your** officers, directors, principals, partners, or insurance managers, at any time, intentionally conceals or misrepresents a material fact concerning this Policy or a **claim** under this Policy.

- Inspections and Surveys

1. We have the right but are not obligated to do the following, on our own or through our independent contractors:

1. make remote electronic scan inspections of all or any part of **your network**;
2. give **you** reports on the conditions we find;
3. recommend changes to **your network** and business practices;
4. conduct loss control and prevention activity.

2. Any inspections, surveys, reports, or recommendations relate only to insurability and the premiums to be charged. We do not make security or privacy inspections. We do not undertake to perform the duty of any person or organization to provide for the security of **your network** or the privacy of information thereupon. Furthermore, we do not warrant that **your network** is secure or private or in compliance with laws, regulations, codes or standards, domestic or foreign.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any computer forensic, security, privacy consulting, rating, advisory service or similar organization which makes insurance inspections, surveys, reports or recommendations on our behalf.

11. Solely with respect to the coverage provided by this Endorsement, section **VI. CONDITIONS**, paragraph **P. Liberalization**, and **G. Participating Provision** are deleted in their entirety.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of the Policy, at the hour stated in said Policy and expires concurrently with said Policy unless another effective date is shown below.

By Authorized Representative _____
(No signature is required if issued with the Policy or if it is effective on the Policy Effective Date)