



CYBER LIABILITY AND FIRST PARTY LOSS (INCLUDING PRIVACY) ENDORSEMENT - SOUTH DAKOTA

In consideration of the additional premium, the Professional Liability Coverage Part of the policy is amended as follows:

I. The **COI/Dec** is amended to add the following Coverage Schedule for Cyber Liability and First Party Loss:

CYBER LIABILITY AND CYBER FIRST PARTY LOSS (Network Security, Privacy Regulatory Proceeding, Privacy Event, and Network Extortion):

Cyber Liability and Cyber First Party Loss Aggregate Limit: \$ _____

NOTE: COVERAGE IS PROVIDED ONLY FOR THOSE COVERAGES FOR WHICH A LIMIT OF LIABILITY APPEARS BELOW. IF NO LIMIT OF LIABILITY IS SHOWN FOR A COVERAGE, SUCH COVERAGE IS NOT PROVIDED BY THIS POLICY.

NETWORK SECURITY & PRIVACY REGULATORY PROCEEDING LIABILITY (CYBER LIABILITY)

Limit applicable to all **claims** in the aggregate: \$ _____

Limit applicable to each **claim** (including a **privacy regulation proceeding**): \$ _____

Deductible applicable to each **claim** (excluding a **privacy regulation proceeding**): \$ _____

Privacy regulation fines and redress amounts in the aggregate: \$ _____

Deductible applicable to each **claim** that is a **privacy regulation proceeding**: \$ _____

FIRST PARTY LOSS

A. Privacy Event

Limit applicable to all **privacy event response costs**: \$ _____

Deductible applicable to each **privacy event**: \$ _____

B. Network Extortion

Limit applicable to all **extortion payments**: \$ _____

Deductible applicable to each **extortion demand**: \$ _____

Retroactive Date: _____

II. Section I, Insuring Agreement of the Professional Liability Coverage part is amended to add the following:

A. Network Security and Privacy Regulatory Proceeding Insuring Agreements

If the insuring agreement has been purchased,

1. Network Security Liability

We will pay on behalf of the **named insured, damages** up to the applicable Limit of Liability arising from a **claim** alleging a **security wrongful act** that took place on or after the applicable **retroactive date**, provided the **claim** is first made against the **named insured** and reported during the **policy period** and is not subject to **prior knowledge** or **prior notice**.

2. Privacy Regulatory Proceeding



We will pay on behalf of the **named insured, privacy regulation fines and redress amounts** up to the applicable Limit of Liability arising from a **privacy regulation proceeding** alleging a **privacy wrongful act** that took place on or after the applicable **retroactive date**, provided the **claim** is first made against the **named insured** and reported during the **policy period** and is not subject to **prior knowledge** or **prior notice**.

With respect to coverages included above, we will pay **defense costs** in connection with a covered **claim**. Such **defense costs** are part of the applicable Limit of Liability.

B. First Party Loss Insuring Agreements

If the insuring agreement has been purchased, we will pay or reimburse the **named insured** for:

1. Privacy Event

privacy event response costs up to the applicable Limit of Liability resulting directly from a **privacy event** the **named insured** first **discovered** during the **policy period**;

2. Network Extortion

extortion payments up to the applicable Limit of Liability made in direct response to an **extortion demand** first made against the **named insured** during the **policy period**.

The supplementary benefits set forth in Section II of the General Terms and Conditions and Section II of the Professional Liability Coverage Part do not apply to any **claim** coverage, including any **privacy regulation proceeding** coverage, provided by this endorsement.

III. Solely with respect to the coverage afforded by this endorsement, Section III of the General Terms and Conditions, Definitions, is amended as follows:

A. The definition of **damages** is amended to also include **privacy regulation fines and redress amounts**.

B. The definition of **network** is deleted and replaced with the following:

Network means any computers, all peripheral or integrated storage, communications input or output devices (including mobile devices), or related network or operating systems, application software or website that are:

- (i) owned, operated by, controlled by or leased by the **named insured**; or
- (ii) under the ownership, operation, or control of an **IT provider**, or operated on behalf of, or for the benefit of, the **named insured** by an **IT provider**.

C. The definition of **personal information** is deleted and replaced with the following:

Personal information means any private or confidential information in the care, custody, or control of the **named insured** (or a third party provider acting on behalf of the **named insured**), provided such information may be used alone or with other information to uniquely identify: (i) a natural person, including without limitation, an individual's name, address, telephone number, social security number, account relationships, account numbers, account balances and account histories; (ii) any protected health information; or (iii) non-public personally identifiable information as defined in any **data privacy law**. **Personal information** includes, but is not limited to, **confidential health information**.

IV. Solely with respect to the coverage afforded by this endorsement, Section III, Coverage Part Definitions of the Professional Liability Coverage Part, is amended as follows:

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Effective Date:

Insured Name:



A. The definition of **claim** is deleted and replaced with the following:

Claim means:

- (i) a written demand for monetary **damages** or non-monetary relief, including injunctive or declaratory relief, alleging a **privacy wrongful act** or **security wrongful act**;
- (ii) a civil proceeding or any alternative dispute resolution proceeding, alleging a **privacy wrongful act** or **security wrongful act**; or
- (iii) solely with respect to privacy regulation proceeding insuring agreement, a **privacy regulation proceeding**.

Claim does not include any:

- (a) subpoena, request for medical records, patient incident report, variance report, or any other report made for loss prevention purposes;
- (b) **governmental or representative entity matter**; or
- (c) criminal complaint or criminal proceeding, regardless of the allegations made against any **insured**.

A **claim** will be deemed first made on the earliest of the date on which the **claim** is served upon, or first received by, any **insured**, or when any **insured** first receives a written or oral demand for **damages**.

B. The definition of **prior knowledge** is deleted and replaced with the following:

Prior knowledge means any **privacy wrongful act**, **security wrongful act**, or **first party loss** that first occurred, arose, or took place before the applicable **retroactive date** and any **insured** knew of such matter, fact, circumstance, situation, transaction, event, or **privacy wrongful act**, **security wrongful act** or **first party loss** prior to the **policy period**.

C. The definition of **prior notice** is deleted and replaced with the following:

Prior notice means any **privacy wrongful act**, **security wrongful act**, or **first party loss** that:

- (i) has been the subject of any notice accepted under any cyber policy or comparable policy, coverage section, or coverage part of which this endorsement is a direct or indirect renewal or replacement; or
- (ii) was the subject of, or is related to, any prior or pending litigation, **claim**, demand for **first party loss**, written demand, arbitration, administrative or regulatory proceeding or investigation, or licensing proceeding that was filed or commenced against you and of which you had notice prior to the **policy period**.

D. **Wrongful act** also includes a **privacy wrongful act** and a **security wrongful act**.

E. The following definitions are added:

Agent means:

- (i) with respect to a **governmental entity**, an individual acting in his/her/their capacity as its appointed or elected official; or



- (ii) with respect to a **representative entity**, an individual acting in his/her/their capacity as its director or officer.

Business operations mean the **named insured's** day to day core business functions conducted for the purpose of income generation.

Confidential health information means information pertaining to a patient or client that has been received or created by you or provided by you to another, subject to protection pursuant to the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to an individual's health, or health care treatment information, including the fact that any such individual has been treated by any provider.

Cryptocurrency means any virtual or digital currency in which cryptography or other encryption security techniques are used to regulate the generation of units of currency and/or verify the transfer of funds, operating independently of a central bank.

Data breach means any: (i) unauthorized disclosure, modification, use, or access of **protected information**; (ii) loss, destruction or theft of **protected information**; or (iii) violation or failure to comply with any **data privacy law**.

Data privacy law means any law, rule, or regulation in any domestic or international jurisdiction, including but not limited to HIPAA, that governs the: (i) use, confidentiality, collection, or control of **protected information**; (ii) implementation of policies or procedures with respect to **protected information**; or (iii) notification of an actual or suspected **data breach** to impacted, or potentially impacted, persons or entities or to the appropriate authorities.

Discovered or **discovery** means when the **named insured** acquired knowledge that would lead a reasonable person to believe a covered loss or covered damage has occurred or will occur, whether or not the amount or details of such loss or damage are known.

Extortion demand means any credible threat, or series of threats, to:

- (i) disrupt, attack, deface, or cause a **security breach** (including ransomware) of the **named insured's network** or data;
- (ii) access, disclose, or destroy **protected information**;
- (iii) alter, destroy, corrupt, disrupt, damage, or delete the **named insured's** data; or
- (iv) restrict or inhibit access to the **named insured's network**,

provided such threat is, or threats are, made against the **named insured** for an **extortion payment**.

Extortion payment means all reasonable and necessary: (i) payments of **money** or **cryptocurrency** by, or on behalf of, the **named insured** to satisfy an **extortion demand**; and (ii) expenses incurred by the **named insured** in direct response to an **extortion demand**.

First party loss means **privacy event response costs** and extortion payments under the First Party Insuring Loss Insuring Agreements set forth in II B of this endorsement.

Governmental entity means any federal, state, local, tribal, or foreign governmental entity, agency, body, program, or like authority.



Governmental or representative entity matter means any **proceeding**, or written or oral demand, brought, in whole or in part, by or on behalf of any **governmental entity** or **representative entity** or any **agents** thereof:

- (i) arising out of any actual or alleged injury or damage to its citizens, residents, or members; and
- (ii) seeking to recover, in whole or in part, costs or expenses paid by, or to be incurred by, such entity.

HIPAA fines and penalties means fines and penalties for failure to comply with the requirements and standards of HIPAA, including fines and penalties imposed by the Department of Health and Human Services or its designees.

HIPAA notification costs mean amounts incurred by the **named insured** to comply with a statutory mandate requiring notification to patients or clients in compliance with HIPAA.

IT provider means any third party entity which provides:

- (i) hosted computer resources including “cloud computing” to the **named insured**; or
- (ii) information technology services required by the **named insured** to operate a **network** under such entity’s ownership, operation, or control,

pursuant to a written contract between such entity and the **named insured**. **IT provider** does not include any **insured**, any public utility, internet service provider, or securities exchange.

Privacy event means any **security breach** or **data breach**.

Privacy event response costs mean reasonable and necessary fees, costs, and expenses incurred by the **named insured** for services rendered by **response vendors** to:

- (i) retain legal counsel to investigate, respond, and negotiate compliance in response to a **privacy event**;
- (ii) retain a computer forensics firm to investigate the cause of a **privacy event** and the extent of any **protected information** disclosure;
- (iii) provide compulsory and/or voluntary notification to impacted or potentially impacted individuals or entities whose **protected information** may have been subject to a **data breach**;
- (iv) provide notification to any other entity as required by law;
- (v) set up a call center to respond to inquiries about the **privacy event**;
- (vi) provide credit monitoring, identity monitoring, identity restoration or protection services, to impacted, or potentially impacted individuals, in response to the **data breach**; or
- (vii) provide such other mitigation or remediation services in response to a **privacy event**, subject to Section VI Assistance and Cooperation of the General Terms and Conditions.

Privacy event response costs must be incurred within twenty four (24) months of the date you reported the **privacy event** to us, provided that solely with respect to (vi) above, such costs may exceed the twenty four (24) month limit if so required by law.

Privacy event response costs include, but are not limited to, **HIPAA notification costs**.



Privacy regulation fines and redress amounts mean: (i) civil monetary fines or penalties assessed by the arbiter of a **privacy regulation proceeding**; or (ii) equitable amounts you are legally obligated to pay into a fund for the payment of consumer claims as a result of a **privacy regulation proceeding**. **Privacy regulation fines and redress amounts** include, but are not limited to, **HIPAA fines and penalties**. **Privacy regulation fines and redress amounts** do not include fines or penalties that are uninsurable under the law pursuant to which this policy is construed, or any amount constituting settlement to which we have not consented to in writing.

Privacy regulation proceeding means a civil investigative demand, administrative or regulatory investigation or proceeding, or a written request for information by a federal, state, local, or foreign governmental authority, or self-regulating organization, against the **named insured** and pertaining to a **privacy wrongful act**. **Privacy regulation proceeding** includes, but is not limited to, a **HIPAA proceeding**.

Privacy wrongful act means any actual or alleged:

- (i) act, error or omission by the **named insured** (or by a **rogue employee** or a third party provider for whose actions the **insured** is legally liable) that results in a **data breach**; or
- (ii) failure by the **named insured** to destroy **protected information**.

Proceeding means any civil proceeding in which **damages** for injury to which this insurance applies are alleged, including:

- (i) an **arbitration proceeding** seeking **damages**; or
- (ii) any other alternative dispute resolution proceeding in which such **damages** are claimed and to which the **insured** submits with our consent.

Representative entity means any union, insurance fund, private insurance company, or such similar or like entity.

Response vendors mean: (i) the panel of pre-approved vendors provided by us; or (ii) a qualified vendor that has been approved by us prior to retention.

Rogue employee means an **employee** who intentionally acts outside of his/her/their capacity as such.

Security breach means: (i) access to a **network** by an unauthorized person; (ii) use of any **network** in an unauthorized manner; (iii) transmission of malicious code or virus to a **network**; or (iv) denial of service attack on a **network**.

Security wrongful act means any actual or alleged:

- (i) act, error, or omission by the **named insured** (or by a **rogue employee** or a third party provider for whose actions the **insured** is legally liable) that results in a **security breach**;
- (ii) failure by the **named insured** to timely disclose a **security breach**; or
- (iii) act, error, or omission by the **named insured** that results in an unscheduled or unplanned inability of an authorized third party user to gain authorized access to a **network**.

V. Solely with respect to the coverage afforded by this endorsement, Section IV. of the General Terms and Conditions, Exclusions Applicable to All Coverage Parts, is amended as follows:



- A. The lead in for the Exclusions is deleted and replaced with the following:

This policy does not apply to any **claim, damages, defense costs, first party loss**, expenses, fees or loss in connection with any **claim** or **first party loss**:

- B. The Unsolicited Communication Exclusion is deleted and replaced with the following:

Unsolicited Communication

This policy does not apply to any **claim, damages, defense costs, first party loss** expenses, fees or loss in connection with any **claim** or **first party loss** based upon or arising from any actual or alleged violation by the **named insured** of any **United States law** that regulates or governs commercial solicitation, messaging, automatic contract renewals, or anti-spam (including commercial emails and spam, telemarketing, texts, and electronic commerce); provided this exclusion will not apply to any **security breach**;

- VI. Solely with respect to the coverage afforded by this endorsement, Section IV. of the Professional Liability Coverage Part, Exclusions Applicable to the Professional Liability Coverage Part, is amended as follows:

- A. The lead in for the Exclusions is deleted and replaced with the following:

This Coverage Part does not apply to any **claim, damages, defense costs, first party loss**, expenses, fees or loss in connection with any **claim** or **first party loss**:

- B. The Contractual Liability Exclusion is deleted and replaced with the following:

Assumed liability

This policy does not apply to any **claim, damages, defense costs, first party loss** expenses, fees or loss in connection with any **claim** or **first party loss** based upon or arising from any actual or alleged assumption of liability of others by the **named insured** pursuant to contract or agreement; provided this exclusion will not apply:

- (i) if liability would be established in the absence of such contract or agreement; or
- (ii) to a **privacy event** arising out of a violation of a non-disclosure agreement;

- C. The Wrongful Employment Practices Exclusion is deleted and replaced with the following:

Wrongful Employment Practices

based on, or arising out of, any actual or alleged matter relating to the responsibilities, obligations or duties of an employer to any **employee**, or prospective **employee**, including wage and hour, as imposed by United States law or common law, or any such equivalent or similar foreign law; provided this exclusion will not apply to an **insured** alleging a **privacy wrongful act**;

- VII. Solely with respect to coverage afforded by this endorsement, the following Exclusions are added:

- A. This Coverage Part does not apply to any **claim, damages, defense costs, first party loss**, expenses, fees or loss in connection with any **claim** or **first party loss**:

- (i) based upon or arising out of:
 - (a) Critical Infrastructure Failure



actual or alleged failure, interruption, disturbance, or outage of critical infrastructure including, but not limited to electrical, gas, water, telecommunications, internet, or any satellite, which is not under your operational control;

(b) Cryptocurrency

cryptocurrency; provided this exclusion (b) will not apply to an **extortion demand**;

(c) Force Majeure

fire, earthquake, flood, smoke, explosion, volcanic eruption, lightning, wind, water, tidal wave, solar flare, landslide, hail, or act of God, regardless of cause;

(d) Goodwill/Stock Value

any actual or alleged adverse impact on goodwill or change in value of shares, stock, or securities;

(e) Governmental Orders

any actual or alleged requisition, nationalization, confiscation, destruction, or damage to property, by order of any federal, state, local, national, or foreign governmental authority or foreign political authority;

(f) Knowing Wrongful Disclosure

Any knowing wrongful disclosure of **protected information**.

(g) Patent Infringement

any actual or alleged infringement of patent;

(h) Trade Secrets

any actual or alleged misappropriation, violation, infringement, or right of interest in any trade secret; provided this exclusion (g) will not apply to any **data breach** or **security breach**;

(ii) Bodily Injury

for **bodily injury**;

VIII. Solely with respect to the **first party loss** Insuring Agreements in this endorsement, the following Exclusions are added:

A. We will not cover any **first party loss**, expenses, fees or loss:

(i) Collusion

based upon or arising from any third party acting in collusion with an **insured**;

(ii) Consequential Loss

that represents consequential loss or damage;



- (iii) Credit
based upon or arising from the extension of any loan, credit, or similar promise to pay;
- (iv) Defect
based upon or arising from the failure, malfunction, inadequacy, or illegitimacy of any product or service;
- (v) Gambling
based upon or arising from any gambling, game of chance, lottery, or similar game;
- (vi) Intellectual Property
that represents loss or destruction of intellectual property;
- (vii) Investment
based upon or arising from the investment in any securities, or ownership in any entity or real property or similar investment, whether or not such investment is genuine; or
- (viii) Payment Card or Recovery
 - (a) based upon or arising from any party's use or acceptance of any credit card, debit card, or similar payment method, whether genuine or not; or
 - (b) that represents amounts wholly or partially recovered from a credit card company or financial institution.

IX. Solely with respect to the coverage afforded by this endorsement, the Cyber Event Exclusion is deleted.

X. Solely with respect to the coverage afforded by this endorsement, Section V. of the Professional Liability Coverage Part, Coverage Part Limits of Liability and Related Claims, is amended by adding the following:

A. Cyber Liability and First Party Loss Aggregate Limit

The Cyber Liability and First Party Loss Aggregate Limit set forth above is the maximum Limit of Liability for all **claims, damages, defense costs, first party loss**, expenses, fees or loss. Such limit of liability shall be separate and in addition to the applicable Professional Liability Limits of Liability provided by this policy.

B. All Claims Aggregate Limit of Liability (Cyber Liability)

Subject to Cyber Liability and First Party Loss Aggregate Limit, the limit of liability for **damages** including **defense costs** for all **claims** shall not exceed the amount set forth in the Coverage Schedule above. This amount is a sublimit of liability which further reduces, and in no way increases the Cyber Liability and First Party Loss Aggregate Limit.

C. Each Claim (Cyber Liability)

Subject to the Cyber Liability and First Party Loss Aggregate Limit, the limit of liability for **damages** including **defense costs** for each **claim** shall not exceed the amount set forth in the Coverage Schedule above.



D. First Party Loss Limit of Liability

The amounts set forth above for all **privacy event response costs** and **extortion payments** respectively are the total amount we will pay or reimburse the **named insured** for all covered **privacy event response costs**, and **extortion payments**, respectively. Such payment is a sublimit and is part of and not in addition to the Cyber Liability and First Party Loss Aggregate Limit.

E. Deductible

The Deductible amount set forth in the Coverage Schedule, if any, shall be the Deductible applicable to each **claim, privacy regulation proceeding, extortion demand, and privacy event**, respectively. We will pay only **damages, defense costs, first party loss** that are in excess of the Deductible. It will be the responsibility of the **named insured** to pay all **damages, defense costs, first party loss** up to the amount of the Deductible. It is agreed payment of the Deductible will be made by the **named insured** as such **damages, defense costs, first party loss** are incurred. The Deductible is in addition to, and not part of, the Limit of Liability.

XI. Solely with respect to the coverage afforded by this endorsement, the following sections are added to the policy:

A. First Party Liability Insuring Agreements Notice of Loss

As a condition precedent to our policy obligations, you must provide written notice of a **first party loss** as soon as practicable after **discovery**.

If the **named insured** and the Insurer disagree on the amount of **first party loss** sustained, either may make a written demand for a voluntary, non-binding appraisal of such **first party loss**. If both parties agree to proceed to an appraisal, , the following process will apply except where other rules are agreed to. Each party will select an appraiser. The appraisers will state separately the amount of **first party loss** sustained. If they fail to agree, the **named insured** and the Insurer will submit their differences to an impartial third appraiser jointly selected by both the **named insured** and the Insurer. The **named insured** and the Insurer will each bear their own costs with respect to the selection and retention of their appraisals and any disputes arising out of the payment of **first party loss**. The Insurer and the **named insured** shall jointly bear the costs of the third appraiser.

Any appraisal of **first party loss** shall still be subject to all other terms, conditions and exclusions of this policy.

B. Proof of First Party Loss:

- (i) In all instances of **first party loss**, except for an **extortion payment**, and **privacy event response costs**, the **named insured** must submit a written proof of **first party loss** complete with full and sufficient details to establish the loss or damage. The proof of loss must be submitted with reasonable promptness, but in no event later than six (6) months after the date the initial notice of the cyber incident was submitted to us.

The amount of **first party loss** will be payable by us, to the **named insured**, within sixty (60) days after our written agreement to the amounts claimed in the proof of loss.

It is agreed that no action may be taken against us earlier than ninety (90) days after a proof of loss has been provided to us.

- (ii) Upon our request the **insured** incurring the **first party loss** will:

- (a) maintain and preserve all records relevant to the **first party loss**;



- (b) produce records relevant to the **first party loss** as reasonably requested by us;
 - (c) submit to an examination under oath; and
 - (d) allow us access for examination and inspection of records.
- (iii) If the amount of **first party loss** cannot be agreed upon, then you or we may make a written demand for a voluntary, non-binding appraisal. If both parties agree to proceed to an appraisal, the following process will apply except where other rules are agreed to. Each party will select an appraiser. The appraisers will state separately the amount of **first party loss**. If the appraisers fail to agree, the **named insured** and we will submit any differences to an impartial third appraiser jointly selected by the **named insured** and us. Each party to the appraisal will bear their own costs with respect to the selection and retention of the appraisers and any disputes based upon or arising out of the payment of **first party loss**. The parties to the appraisal will jointly bear the costs of the third appraiser.

Any appraisal of **first party loss** will be subject to all other terms, conditions and exclusions of this policy.

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 said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.