HISCOX

Collegiate UNDERWRITING

Professional indemnity for technology companies

Policy wording

The general terms and conditions and the following terms and conditions all apply to this section.

Special definitions for this section

Advertising	Advertising, publicity, or promotion in or of **your** products or services performed within the **geographical limits**.
Applicable courts	The courts of competent jurisdiction in those countries stated as the "applicable courts" in the schedule.
Business activities	The activities shown in the schedule, which **you** perform in the course of **your business** within the **geographical limits**.
Claim	Any written assertion of liability or any written demand for financial compensation or injunctive relief first made against **you** within the **applicable courts**.
Client	Any person or entity with whom **you** have contracted to provide services or deliverables that expressly fall within **your business activities**.
Defence costs	All reasonable and necessary lawyer's and expert's fees and legal costs incurred with **our** prior written agreement in investigating, settling, defending, and/or appealing or defending an appeal against a covered **claim** 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 section.
Employee	An individual performing employment duties solely on **your** behalf in the ordinary course of **your business activities** and who is subject to **your** sole control and direction and to whom **you** supply the instruments and place of work necessary to perform such **business activities**. **You** and **your** independent contractors will not be treated as **employees** under this section.
Existing subsidiary	Each and every entity identified in **your** proposal for this **policy**, but only if a. the **insured** owns more than 50% of the book value of the assets or of the outstanding voting rights as of the first day of the **period of insurance**, and b. its annual revenue and **business activities** are included in **your** proposal for this **policy**.
Insured	The entity stated as the 'Insured' in the schedule.
Limit of indemnity	The Limit of indemnity shown in the schedule.
Loss	Any financial harm caused to **your business**.
Potential claim	Any matter reasonably likely to lead to a **claim** covered under this section.
Retroactive date	The date stated as the 'retroactive date' in the schedule.
You / your	1. The **insured** or any **existing subsidiary**; 2. directors, officers, board members and senior managers of the **insured** and **existing subsidiaries**.

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What is covered

Claims against you

If the performance of **business activities** or **advertising** on or after the **retroactive date** by **you** or anyone on **your** behalf, including **your** subcontractors or outsourcers or the dishonest acts of **employees**, results in a **claim** being first made against **you** during the **period of insurance** for any actual or alleged:

a. unintentional breach of a written contract where the **claim** is brought by a **client**;

b. unintentional breach of an implied contractual term concerning necessary quality, safety or fitness where the **claim** is brought by a **client**;

c. negligence or breach of any duty to use reasonable care and skill, including but not limited to negligent misrepresentation or negligent loss of or damage to any third party document, data or information for which **you** are responsible;

d. negligent transmission of a computer virus, worm, logic bomb or Trojan horse, or negligence in connection with a denial of service attack;

e. 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;

f. breach of any duty of confidentiality, invasion of privacy, or violation of any other legal protections for personal information;

g. defamation, including but not limited to libel, slander, trade libel, product disparagement, or malicious falsehood; or

h. any other civil liability unless excluded by **What is not covered** below;

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 the amount to satisfy a judgment or arbitration award against **you** including any judgment or award ordering the payment of claimant's lawyers fees and costs. Such amounts to be paid by **us** shall not include or be calculated based on any of **your** overhead expenses, **your** liability for taxes, 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, or costs of improving **your** security, or performing audits.

We will also pay covered **defence costs** on **your** behalf. **We** will not pay **defence costs** for any part of a claim not covered by this section.

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 section that is greater than the amount **you** are owed;

then **we** will pay the amount **you** are owed above the amount of the **excess** (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**.

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 defence and/or resolution of that **claim**.

Your own losses

Losses from dishonesty

If during the **period of insurance**, and in the performance of **your business activities** within the **geographical limits**, **you** suffer a loss from the dishonesty of **your employees** or self-employed freelancers directly contracted to **you** and under **your** supervision, where there was a clear intention to cause **you** loss or damage and to obtain a personal financial gain over and above any

salary, bonus or commission, **we** will indemnify **you** against **your** direct financial loss.

Loss of documents

If during the **period of insurance** any document, information or data of **yours** which is necessary for the performance of **your business activities** is lost, damaged or destroyed while in **your** possession, **we** will cover **you** against the cost of restoring or replacing it. This does not include any data held electronically.

What is not covered

We will not make any payment for any **claim** (including **defence costs**) or **loss** directly or indirectly:

Matters specific to your business

1. for, alleging or arising from any contractual liability. However, this exclusion will not apply to any **claim** for:
   a. unintentional breach of a written contract brought by a **client**;
   b. unintentional breach of an implied contractual term concerning necessary quality, safety or fitness brought by a **client**;
2. for, alleging or arising from:
   a. any contractual liability under 1.a. or 1.b. above where at the time the contract or variation to an existing contract was entered **you** were aware or reasonably ought to have been aware that there were not sufficient technical, creative, logistical, or financial resources to perform the contract as promised, including **your** under-budgeting of a project;
   b. any breach of any warranty or guarantee; however, this exclusion will not apply to:
      i. **your** warranty or guarantee that **you** will use reasonable care and skill (or an equivalent industry standard) in the performance of a contract;
      ii. **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 (but not any patent infringement or trade secret misappropriation);
      iii. 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;
      iv. **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
   c. any breach of any exclusivity, non-competition, non-solicitation, or other similar commercial terms in **your** contract with a **client**;
3. resulting in an award for consequential, special or indirect damages, or loss of claimant's profits; however, this exclusion will not apply to:
   a. 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 (but not any patent infringement or trade secret misappropriation);
   b. breach of an express contractual provision that is solely triggered by **your** disclosure of **your client's** confidential information;
   c. 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;
   d. 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
   e. 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;

4. 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:
   a. covered **defence costs** incurred by **you** to defend such portions of a **claim** 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 **you** shall reimburse **us** for all **defence costs** that **we** have paid toward that **claim**, or
   b. any amount **you** satisfy **us** that **you** are legally able to recover under a written contract;
5. for, alleging, or arising from any death or bodily injury or disease suffered or alleged to be suffered by anyone; however this exclusion does not apply to any portion of any **claim**:
   a. seeking damages for mental anguish or distress where such damages solely stem from a covered cause of action for defamation, breach of privacy, or negligent publication; or
   b. directly arising from designs, plans, specifications, formulae, directions or advice prepared or given by **you** for a fee, provided that such **claim** is first brought within the **applicable courts** but always excluding USA or Canada;
6. for alleging, or arising from the loss, damage or destruction or loss of use of any tangible property; however this exclusion does not apply to any:
   a. **claim** directly arising from designs, plans, specifications, formulae, directions or advice prepared or given by **you** for a fee, provided that such **claim** is first brought in a jurisdiction other than the USA or Canada;
   b. **claim** for alleging or arising from damage to electronic data;
   c. **loss** directly arising from any document of **yours** which is necessary for the performance of **your business activities** and which is lost, damaged or destroyed while in **your** possession;
7. 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;
8. 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;
9. for, alleging or arising from any design of hardware or manufacture of hardware by **you** or on **your** behalf;
10. for, alleging, or arising from any governmental enforcement of any regulation or governmental provision; however, this exclusion shall not apply to any otherwise covered **claim** from a federal, national, state, local or foreign government, agency or entity that is a **client** of **yours** and has asserted the **claim** in its capacity as a **client** and not in its official governmental capacity;
11. 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 venture partner, but only to the extent such a **claim** is based upon:
    a. 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
    b. **your** decision to cease doing business with such a partner or associate;
12. for, alleging, or arising from any infringement, use, or disclosure of a patent, or any use, disclosure or misappropriation of a trade secret;

13. for, alleging, or arising from any false or misleading advertisement about **your** products 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 unauthorised use of another's trademark;
14. 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;
15. for, alleging, or arising from any 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**;
16. 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;
17. for, alleging, or arising from any failure or interruption of service provided by an internet service provider, telecommunications provider or other utility provider except to the extent **you** provide those services as part of **your business activities**;
18. 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;
    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. violation of any taxation, competition, restraint of trade or anti-trust law or regulation(s);
    d. breach of any fiduciary duty owed by **you**;
19. 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;
    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** directors, officers, trustees, or board members, including but not limited to any allegation of insider trading or breach of any duty of corporate loyalty;
    d. personal liability incurred by any director, officer, trustee, or board member of **yours** when acting in that capacity or managing **your business**;
20. for, alleging, or arising from **your** insolvency or the insolvency of **your** suppliers;
21. for or arising from **your** provision of any sweepstakes, gambling activities, or lotteries;
22. for alleging or arising from counterfeit products including software, unless obtained from a source specifically approved by the originator of the products;

Matters insurable elsewhere

23. for, alleging or arising from the ownership, possession or use of any land or building, any animal, any aircraft, watercraft or any motor vehicle;
24. for, alleging, or arising from property owner's liability;
25. for alleging or arising from the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper;

Reckless or dishonest acts	26.	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 or any act **you** knew, at the time **you** performed it, would give rise to a **claim** or **loss**. However, this exclusion will not apply unless: a. 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 b. such conduct or wilful violation of the law has been established by **your** admission in a proceeding or otherwise; or c. **you** or **we** discover evidence of such conduct or willful violation of the law; 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;
Pre-existing problems	27.	arising out of any matter that prior to the first date of the **policy period you** knew or reasonably ought to have known would be likely to lead to a **claim, potential claim** or **loss**;
War, terrorism and nuclear	28.	for, alleging or arising from **war**, **terrorism** or **nuclear risks**;
Asbestos	29.	for, alleging or arising from **asbestos risks**;
Pollution	30.	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;
Claims brought by a related party	31.	brought by any person or entity falling within the definition of **you** or any party with a financial, executive or managerial interest in **you**, including any parent company or any party in which **you** have a financial, executive or managerial interest, including any subsidiary company. This does not apply to a **claim** based on a liability to an independent third party directly arising out of the performance of **your business activities**;
	32.	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**;
Non-compensatory payments	33.	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;
	34.	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 national, federal, state, or local governmental body or by the Mechanical Copyright Protection Society (MCPS)-Performing Rights Society (PRS) Alliance, American Society of Composers Authors and Publishers (ASCAP), Broadcast Music Inc. (BMI), Society of European Stage Authors and Composers (SESAC), or other similar licensing organisation;
Claims outside the applicable courts	35.	brought outside the countries set out in the schedule under **applicable courts**, including arbitration. This applies to proceedings in the **applicable courts** to enforce, or which are based on, a judgment or award from outside the **applicable courts**;
Other losses	36.	for, alleging or arising out of any trading loss or trading liability including those arising from the loss of any **client**, account or business.

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How much we will pay

We will pay up to the **limit of indemnity** shown in the Schedule unless limited below. **We** will also pay for **defence costs** incurred with **our** prior written agreement. However, if a payment greater than the **limit of indemnity** has to be made for a **claim our** liability for **defence costs** will be limited to the same proportion that the **limit of indemnity** bears to the amount paid.

You must pay the relevant **excess** shown in the Schedule and **our** duty to make any payment under this section will only arise after the applicable **excess** is fully paid. The **excess** will only be eroded by the covered part of the **claim**.

When **we** settle **your** own losses from dishonesty, **we** will deduct any sums **you** owe or the value of any property **you** hold belonging to the perpetrator.

For lost, damaged or destroyed documents, information or data, **we** will pay the reasonable expenses **you** incur with **our** prior written consent in restoring or replacing them.

Multiple claims from a single source

All **claims, losses** and **potential claims** which arise from:

a. the same original cause, a single source or a repeated or continuing problem in your work; or additionally

b. in relation to defamatory statements, a single or continuing investigation or a common set of facts or state of affairs;

will be treated as a single **claim, loss** or **potential claim. You** will pay a single **excess** and **we** will pay a maximum of a single **limit of indemnity** for these related **claims.** All of the notifications which are related will be considered as having been made on the date of the first notification to **us**.

Special limits

For **claims** and **your** own losses arising from dishonesty and from the physical loss or destruction of or damage to tangible property and from the death, disease or bodily or mental injury of anyone, the most **we** will pay is a single **limit of indemnity** for the total of all such **claims**, their **defence costs** and **your** own losses. **You** must pay the relevant **excess** shown in the Schedule.

Paying out the limit of indemnity

At any stage of a claim **we** can pay **you** the applicable **limit of indemnity** or what remains after any earlier payment from that limit. **We** will pay **defence costs** already incurred at the date of **our** payment. **We** will then have no further liability for that **claim** or its **defence costs**.

Your obligations

If a problem arises

You must notify **us** of any **claim** made against **you** or any **loss** as soon as practicable and within the **period of insurance** or at the latest within 14 days after it expires for any **claim** or **loss you** first became aware of in the seven days before expiry.

You must also notify **us** of **potential claims** under this section, such notification must be as soon as practicable and within the **period of insurance**, and must to the fullest extent possible identify the particulars of the **potential claim**, including identifying the potential claimant(s), the likely basis for liability, the likely demand for relief and any additional information about the **potential claim** that **we** reasonably request. If such a **potential claim** notification is made to **us** then **we** will treat any **claim** arising from the same particulars as that notification as if it had first been made against **you** on the date **you** properly notified **us** of it as a **potential claim**, even if that **claim** is first made against **you** after the **period of insurance** has expired.

We will not make any payment, including any **defence cost** payment, toward any portion of any **claim** if you:

1. fail to 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;

2. reveal the amount of cover available under this insurance, unless **you** had to give these details in negotiating a contract with **your client** or **you** are required by law or compelled by a court, or **you** otherwise have **our** prior written consent;

3. admit liability in connection with, make any settlement offer with respect to, or settle any **claim** under this policy without **our** prior consent.

Control of defence

Defence arrangements

This is a duty to defend section. This means that **we** have the right and duty to defend **you** against any **claim** which is covered in its entirety. If **we** think it necessary **we** will appoint an adjuster, solicitor or any other appropriate person to deal with the **claim**. **We** may appoint **your** own solicitor but on a similar fee basis as **our** solicitor and only for work done with **our** prior written approval.

If a **claim** which is only partially covered is made against **you**, **we** have the right and duty to defend **you**, but amounts relating to non-covered portions of **claims** will be deducted from **our** final settlement.

However, for **claims** or portions of **claims** which allege or arise from any infringement, use or disclosure of a patent, or any use, disclosure or misappropriation of a trade secret, **we** and **you** agree to allocate all amounts, including **defence costs**, upon **our** receipt of the **claim** or **potential claim**.

We and **you** agree to use best efforts to determine a fair allocation of covered and non covered portions of **claims**. If **you** and **we** cannot agree on a fair allocation **you** and **we** agree to follow the dispute resolution process in the General terms and conditions of this **policy**.

If a covered or partially covered **claim** is made against **you,** then **we** have the right to appoint suitably qualified legal representation to defend **you**.

We have no duty to defend **you** against **claims** where:

a. no portion of the **claim** is covered; or

b. **we** pay **you** the **limit of indemnity** as described in **How much we will pay** – Paying out the limit of indemnity.

Our duty to make a payment under this section arises only after the applicable **excess** is fully paid. The **excess** will only be eroded by the covered portion(s) of a **claim**.