



## BEAZLEY BREACH RESPONSE

**NOTICE: INSURING AGREEMENTS I.A., I.C., I.D. AND I.F. OF THIS POLICY PROVIDE COVERAGE ON A CLAIMS MADE AND REPORTED BASIS AND APPLY ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE OPTIONAL EXTENSION PERIOD (IF APPLICABLE) AND REPORTED TO THE UNDERWRITERS DURING THE POLICY PERIOD OR AS OTHERWISE PROVIDED IN CLAUSE X. OF THIS POLICY. AMOUNTS INCURRED AS CLAIMS EXPENSES UNDER THIS POLICY SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY AND ARE SUBJECT TO RETENTIONS.**

**INSURING AGREEMENT I.B. OF THIS POLICY PROVIDES FIRST PARTY COVERAGE ON AN INCIDENT DISCOVERED AND REPORTED BASIS AND APPLIES ONLY TO INCIDENTS FIRST DISCOVERED BY THE INSURED AND REPORTED TO THE UNDERWRITERS DURING THE POLICY PERIOD.**

Please review the coverage afforded under this Insurance Policy carefully and discuss the coverage hereunder with your insurance agent or broker.

The Underwriters agree with the **Named Insured**, set forth in Item 1. of the Declarations made a part hereof, in consideration of the payment of the premium and reliance upon the statements in the **Application** to this Insurance Policy (hereinafter referred to as the "Policy" or "Insurance") and subject to all the provisions, terms and conditions of this Policy:

### I. INSURING AGREEMENTS

#### A. Information Security & Privacy Liability

To pay on behalf of the **Insured**:

**Damages and Claims Expenses**, in excess of the **Retention**, which the **Insured** shall become legally obligated to pay because of any **Claim**, including a **Claim** for violation of a **Privacy Law**, first made against any **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause X. of this Policy for:

1. theft, loss, or **Unauthorized Disclosure** of **Personally Identifiable Non-Public Information** or **Third Party Corporate Information** that is in the care, custody or control of the **Insured Organization**, or a third party for whose theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Non-Public Information** or **Third Party Corporate Information** the **Insured Organization** is legally liable (a third party shall include a Business Associate as defined by the Health Insurance Portability and Accountability Act ("HIPAA")), provided such theft, loss or **Unauthorized Disclosure** first takes place on or after the **Retroactive Date** set forth in Item 6. of the Declarations and before the end of the **Policy Period**;
2. one or more of the following acts or incidents that directly result from a failure of **Computer Security** to prevent a **Security Breach**, provided that such act or incident first takes place on or after the **Retroactive Date** and before the end of the **Policy Period**;

- (a) the alteration, corruption, destruction, deletion, or damage to a **Data Asset** stored on **Computer Systems**;
  - (b) the failure to prevent transmission of **Malicious Code** from **Computer Systems** to **Third Party Computer Systems**; or
  - (c) the participation by the **Insured Organization's Computer System** in a **Denial of Service Attack** directed against a **Third Party Computer System**;
3. the **Insured Organization's** failure to timely disclose an incident described in Insuring Agreement I.A.1. or I.A.2. in violation of any **Breach Notice Law**; provided such incident giving rise to the **Insured Organization's** obligation under a **Breach Notice Law** must first take place on or after the **Retroactive Date** set forth in Item 6. of the Declarations and before the end of the **Policy Period**;
4. failure by the **Insured** to comply with that part of a **Privacy Policy** that specifically:
- (a) prohibits or restricts the **Insured Organization's** disclosure, sharing or selling of a person's **Personally Identifiable Non-Public Information**;
  - (b) requires the **Insured Organization** to provide access to **Personally Identifiable Non-Public Information** or to correct incomplete or inaccurate **Personally Identifiable Non-Public Information** after a request is made by a person; or
  - (c) mandates procedures and requirements to prevent the loss of **Personally Identifiable Non-Public Information**;

provided the acts, errors or omissions that constitute such failure to comply with a **Privacy Policy** must first take place on or after the **Retroactive Date** set forth in Item 6. of the Declarations and before the end of the **Policy Period**, and the **Insured Organization** must, at the time of such acts, errors or omissions have in force a **Privacy Policy** that addresses those subsections above that are relevant to such **Claim**; or

5. failure by the **Insured** to administer (a) an identity theft prevention program required by regulations and guidelines promulgated pursuant to 15 U.S.C. §1681m(e), as amended, or (b) an information disposal program required by regulations and guidelines promulgated pursuant to 15 U.S.C. §1681W, as amended; provided the acts, errors or omissions that constitute such failure must first take place on or after the **Retroactive Date** set forth in Item 6. of the Declarations and before the end of the **Policy Period**.

#### B. **Privacy Breach Response Services**

To provide **Privacy Breach Response Services** to the **Insured Organization** in excess of the **Retention** because of an incident (or reasonably suspected incident) described in Insuring Agreement I.A.1. or I.A.2. that first takes place on or after the **Retroactive Date** set forth in Item 6. of the Declarations and before the end of the

**Policy Period** and is discovered by the **Insured** and is reported to the Underwriters during the **Policy Period**.

**Privacy Breach Response Services** means the following:

1. Costs incurred:
  - (a) for a computer security expert to determine the existence and cause of any electronic data breach resulting in an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** which may require the **Insured Organization** to comply with a **Breach Notice Law** and to determine the extent to which such information was accessed by an unauthorized person or persons;
  - (b) for a PCI Forensic Investigator that is approved by the PCI Security Standards Council and is retained by the **Insured Organization** in order to comply with the terms of a **Merchant Services Agreement** to investigate the existence and extent of an actual or suspected compromise of credit card data; and in the Underwriters' discretion, where a computer security expert has not been retained under Insuring Agreement I.B.1.(a), for a computer security expert to provide advice and oversight in connection with the investigation conducted by the PCI Forensic Investigator;
  - (c) for fees charged by an attorney to determine the applicability of and actions necessary by the **Insured Organization** to comply with **Breach Notice Law** due to an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** and to advise the **Insured Organization** in responding to credit card system operating regulation requirements for any actual or suspected compromise of credit card data that is required to be reported to the **Insured Organization's** merchant bank under the terms of a **Merchant Services Agreement**, but this clause does not cover fees incurred in any legal proceeding, arbitration or mediation, or any advice in responding to credit card system operating regulations after any assessment of **PCI Fines and Costs**; and
  - (d) up to USD 50,000 for a computer security expert to demonstrate the **Insured's** ability to prevent a future electronic data breach as required by a **Merchant Services Agreement**;

provided amounts covered by (a), (b), (c) and (d) in this paragraph combined shall not exceed the amount set forth in Item 3.B.2. of the Declarations in the aggregate for the **Policy Period**.

2. To provide notification to:
  - (a) individuals who are required to be notified by the **Insured Organization** under the applicable **Breach Notice Law**; and
  - (b) in the Underwriters' discretion, to individuals affected by an incident in which their **Personally Identifiable Non-Public Information** has

been subject to theft, loss, or **Unauthorized Disclosure** in a manner which compromises the security or privacy of such individual by posing a significant risk of financial, reputational or other harm to the individual.

3. The offering of **Call Center Services** to **Notified Individuals**.
4. In connection with a credit file or identity monitoring program, the offering, at the **Named Insured's** option, of one of the credit monitoring or identity monitoring programs set forth in the Information Packet attached to the Policy ("the Credit and Identity Monitoring Program") to **Notified Individuals** residing in the United States whose **Personally Identifiable Non-Public Information** was compromised or reasonably believed to be compromised as a result of theft, loss or **Unauthorized Disclosure**. Such offer will be provided in the notification communication provided pursuant to paragraph I.B.2. above.
5. The **Named Insured** will be provided with access to educational and loss control information provided by or on behalf of the Underwriters at no charge.

**Privacy Breach Response Services** are described more fully in Attachment A and the Information Packet to this Policy, which is incorporated into and is part of this Policy.

**Privacy Breach Response Services** will only be provided in excess of the applicable **Retention**, shall not exceed the **Privacy Breach Response Aggregate Limit of Coverage** set forth in Item 3.B. of the Declarations and in Clause VII. of this Policy, and shall not include any internal salary or overhead expenses of the **Insured Organization**.

C. **Regulatory Defense and Penalties**

To pay on behalf of the **Insured**:

**Claims Expenses** and **Penalties** in excess of the **Retention**, which the **Insured** shall become legally obligated to pay because of any **Claim** in the form of a **Regulatory Proceeding**, first made against any **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause X. of this Policy, resulting from a violation of a **Privacy Law** and caused by an incident described in Insuring Agreement I.A.1., I.A.2. or I.A.3. that first takes place on or after the **Retroactive Date** set forth in Item 6. of the Declarations and before the end of the **Policy Period**.

D. **Website Media Content Liability**

To pay on behalf of the **Insured**:

**Damages** and **Claims Expenses**, in excess of the **Retention**, which the **Insured** shall become legally obligated to pay resulting from any **Claim** first made against any **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause X. of this Policy for one or more of the following acts first committed

on or after the **Retroactive Date** set forth in Item 6. of the Declarations and before the end of the **Policy Period** in the course of **Covered Media Activities**:

1. defamation, libel, slander, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
2. a violation of the rights of privacy of an individual, including false light and public disclosure of private facts;
3. invasion or interference with an individual's right of publicity, including commercial appropriation of name, persona, voice or likeness;
4. plagiarism, piracy, misappropriation of ideas under implied contract;
5. infringement of copyright;
6. infringement of domain name, trademark, trade name, trade dress, logo, title, metatag, or slogan, service mark, or service name; or
7. improper deep-linking or framing within electronic content.

**E. Crisis Management and Public Relations**

To pay **Public Relations and Crisis Management Expenses** incurred by the **Insured Organization** resulting from a **Public Relations Event**. Such expenses are subject to the applicable **Retention** and the **Public Relations Event** Limit of Liability. **Public Relations Event** means:

1. the publication or imminent publication in a newspaper (or other general circulation print publication) or on radio or television of a covered **Claim** under this Policy; or
2. an incident described in Insuring Agreement I.A.1. or I.A.2. which results in the provision of **Privacy Breach Response Services**, or which reasonably may result in a covered **Claim** under the Policy and which the **Named Insured** has notified the Underwriters as a circumstance under Clause X.C. of this Policy.

**Public Relations and Crisis Management Expenses** shall mean the following costs agreed in advance by the Underwriters in their reasonable discretion, and which are directly related to mitigating harm to the **Named Insured's** reputation or potential **Loss** covered by the Policy resulting from the covered **Claim** or incident:

1. costs incurred by a public relations or crisis management consultant;
2. costs for media purchasing or for printing or mailing materials intended to inform the general public about the event;
3. costs to provide notifications to customers or patients where such notifications are not required by law ("voluntary notifications"), including notices to non-affected customers or patients of the **Insured Organization**;
4. costs to provide government mandated public notices related to breach events (including such notifications required under HIPAA/Health Information Technology for Economic and Clinical Health Act ("HITECH"));

5. costs to provide services to restore healthcare records of **Notified Individuals** residing in the United States whose **Personally Identifiable Non-Public Information** was compromised as a result of theft, loss or **Unauthorized Disclosure**; and
6. other costs approved in advance by the Underwriters.

**Public Relations and Crisis Management Expenses** must be incurred no later than twelve (12) months following the reporting of such **Claim** or breach event to the Underwriters and, with respect to clauses 1. and 2., within ninety (90) days following the first publication of such **Claim** or breach event.

F. **PCI Fines and Costs**

To indemnify the **Insured** for **PCI Fines and Costs**, in excess of the **Retention**, which the **Insured** shall become legally obligated to pay because of a **Claim** first made against any **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause X. of this Policy. Coverage under this Insuring Agreement is sublimited to the amount set forth Item 3.A.4. of the Declarations, and the Underwriters shall have no duty to defend any **Claim** or pay **Claims Expenses** with respect to any **Claim** under this Insuring Agreement.

## II. DEFENSE AND SETTLEMENT OF CLAIMS

- A. The Underwriters shall have the right and duty to defend, subject to all the provisions, terms and conditions of this Policy:
1. any **Claim** against the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent; or
  2. under Insuring Agreement I.C., any **Claim** in the form of a **Regulatory Proceeding**.

Defense Counsel shall be mutually agreed upon between the **Named Insured** and the Underwriters, but in the absence of such agreement, the Underwriters' decision shall be final.

- B. With respect to any **Claim** against the **Insured** seeking **Damages** or **Penalties** which are payable under the terms of this Policy, the Underwriters will pay **Claims Expenses** incurred with their prior written consent. The Limit of Liability available to pay **Damages** and **Penalties** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages**, **Penalties**, and **Claims Expenses** shall be applied against the Each **Claim Retention** payable by the **Insured**.
- C. If the **Insured** shall refuse to consent to any settlement or compromise recommended by the Underwriters and acceptable to the claimant and elects to contest the **Claim**, the Underwriters' liability for any **Damages**, **Penalties** and **Claims Expenses** shall not exceed
1. the amount for which the **Claim** could have been settled, less the remaining **Retention**, plus the **Claims Expenses** incurred up to the time of such refusal; plus

2. fifty percent (50%) of any **Claims Expenses** incurred after the date such settlement or compromise was recommended to the **Insured** plus fifty percent (50%) of any **Damages** above the amount for which the **Claim** could have been settled. The remaining fifty percent (50%) of such **Claims Expenses** and **Damages** must be borne by the **Insured** at their own risk and uninsured;

or the applicable Limit of Liability, whichever is less, and the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**. The portion of any proposed settlement or compromise that requires the **Insured** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** (or **Penalties** for **Claims** covered under Insuring Agreement I.C.) shall not be considered in determining the amount for which a **Claim** could have been settled.

- D. The Underwriters agree that the **Insured** may settle any **Claim** where the **Damages** and **Claims Expenses** do not exceed the **Retention**, provided that the entire **Claim** is resolved and the **Insured** obtains a full release on behalf of all the **Insureds** from all claimants.

### III. THE INSURED AND THE INSURED ORGANIZATION

As used throughout this Policy, whether expressed in singular or plural, "**Insured**" shall mean:

- A. The **Named Insured** and any **Subsidiaries** of the **Named Insured** (together the "**Insured Organization**");
- B. A director, officer or **Manager** of the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- C. An employee (including a part time or temporary employee) of the **Insured Organization**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Insured Organization's** business;
- D. A principal if the **Named Insured** is a sole proprietorship, or a partner if the **Named Insured** is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- E. Any person who previously qualified as an **Insured** under III.B., III.C. or III.D. above prior to the termination of the required relationship with the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- F. The estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Insurance; and
- G. The lawful spouse, including any natural person qualifying as a domestic partner under the provisions of any applicable federal, state, or local law in the United States, of any **Insured**, but solely by reason of any act, error or omission of an **Insured** other than such spouse or domestic partner.

#### IV. TERRITORY

This Insurance applies to **Claims** made, acts committed, or **Loss** occurring anywhere in the world.

#### V. EXCLUSIONS

The coverage under this Insurance does not apply to any **Claim** or **Loss**;

- A. For, arising out of or resulting from **Bodily Injury** or **Property Damage**;
- B. For, arising out of or resulting from any employer-employee relations, policies, practices, acts or omissions, or any actual or alleged refusal to employ any person, or misconduct with respect to employees, whether such **Claim** is brought by an employee, former employee, applicant for employment, or relative or domestic partner of such person; provided, however, that this exclusion shall not apply to an otherwise covered **Claim** under Insuring Agreement I.A.1., I.A.2., or I.A.3. by a current or former employee of the **Insured Organization**; or to the providing of **Privacy Breach Response Services** involving current or former employees of the **Insured Organization**;
- C. For, arising out of or resulting from any actual or alleged act, error or omission or breach of duty by any director, officer or **Manager** in the discharge of their duty if the **Claim** is brought by the **Named Insured**, a **Subsidiary**, or any principals, directors, officers, **Managers**, stockholders, members or employees of the **Named Insured** or a **Subsidiary** in his or her capacity as such;
- D. For, arising out of or resulting from any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written, provided, however, that this exclusion will not apply:
  - 1. only with respect to the coverage provided by Insuring Agreement I.A.1., to any obligation of the **Insured Organization** to maintain the confidentiality or security of **Personally Identifiable Non-Public Information** or of **Third Party Corporate Information**;
  - 2. only with respect to Insuring Agreement I.D.4., for misappropriation of ideas under implied contract; or
  - 3. to the extent the **Insured** would have been liable in the absence of such contract or agreement;
- E. For, arising out of or resulting from any liability or obligation under a **Merchant Services Agreement** except this exclusion does not apply to **PCI Fines and Costs** covered under Insuring Agreement I.F., or to **Breach Response Services** covered under Insuring Agreement I.B.1.;
- F. For, arising out of or resulting from any actual or alleged antitrust violation, restraint of trade, unfair competition, or false or deceptive or misleading advertising or violation of the Sherman Antitrust Act, the Clayton Act, or the Robinson-Patman Act, as amended;
- G. For, arising out of or resulting from any actual or alleged false, deceptive or unfair trade practices; however this exclusion does not apply to:



1. any **Claim** covered under Insuring Agreements I.A.1., I.A.2., I.A.3. or I.C.; or
2. the providing of **Privacy Breach Response Services** covered under Insuring Agreement I.B.,

that results from a theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** provided that no member of the **Control Group** participated or is alleged to have participated or colluded in such theft, loss or **Unauthorized Disclosure**;

H. For, arising out of or resulting from:

1. the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Non-Public Information** (except as otherwise covered under Insuring Agreement I.A.5.) or other personal information by, on behalf of, or with the consent or cooperation of the **Insured Organization**; or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (e.g. opt-in or opt-out) from the collection, disclosure or use of **Personally Identifiable Non-Public Information**; provided, that this exclusion shall not apply to the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Non-Public Information** by a third party committed without the knowledge of the **Insured Organization**; or
2. the distribution of unsolicited email, direct mail, or facsimiles, wire tapping, audio or video recording, or telemarketing, if such distribution, wire tapping or recording is done by or on behalf of the **Insured Organization**;

I. For, arising out of or resulting from any act, error, omission, incident, failure of **Computer Security**, or **Security Breach** committed or occurring prior to the inception date of this Policy:

1. if any member of the **Control Group** on or before the **Continuity Date** knew or could have reasonably foreseen that such act, error or omission, incident, failure of **Computer Security**, or **Security Breach** might be expected to be the basis of a **Claim** or **Loss**; or
2. in respect of which any **Insured** has given notice of a circumstance, which might lead to a **Claim** or **Loss**, to the insurer of any other policy in force prior to the inception date of this Policy;

J. For, arising out of or resulting from any related or continuing acts, errors, omissions, incidents or events, where the first such act, error, omission, incident or event was committed or occurred prior to the **Retroactive Date**;

K. For, arising out of resulting from any of the following:

1. any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal law or legislation, or law or legislation of any state, province or other jurisdiction similar to the foregoing, whether such law is statutory, regulatory or common law;

2. any actual or alleged violation of any securities law, regulation or legislation, including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, any state or provincial blue sky or securities law, any other federal securities law or legislation, or any other similar law or legislation of any state, province or other jurisdiction, or any amendment to the above laws, or any violation of any order, ruling or regulation issued pursuant to the above laws;
3. any actual or alleged violation of the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Worker Adjustment and Retraining Act of 1988, the Certified Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970, any similar law or legislation of any state, province or other jurisdiction, or any amendment to the above law or legislation, or any violation of any order, ruling or regulation issued pursuant to the above laws or legislation; or
4. any actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;

however this exclusion does not apply to any otherwise covered **Claim** under Insuring Agreement I.A.1., I.A.2., or I.A.3., or to providing **Privacy Breach Response Services** covered under Insuring Agreement I.B., that results from a theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**, provided that no member of the **Control Group** participated, or is alleged to have participated or colluded, in such theft, loss or **Unauthorized Disclosure**;

- L. For, arising out of or resulting from any actual or alleged acts, errors, or omissions related to any of the **Insured Organization's** pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts, including any violation of any provision of the Employee Retirement Income Security Act of 1974 (ERISA) or any similar federal law or legislation, or similar law or legislation of any state, province or other jurisdiction, or any amendment to ERISA or any violation of any regulation, ruling or order issued pursuant to ERISA or such similar laws or legislation; however this exclusion does not apply to any otherwise covered **Claim** under Insuring Agreement I.A.1., I.A.2., or I.A.3., or to the providing of **Privacy Breach Response Services** under Insuring Agreement I.B., that results from a theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**, provided that no member of the **Control Group** participated, or is alleged to have participated or colluded, in such theft, loss or **Unauthorized Disclosure**;
- M. Arising out of or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, any intentional **Security Breach**, intentional violation of a **Privacy Policy**, or intentional or knowing violation of the law, if committed by such **Insured**, or by others if the **Insured** colluded or participated in any such conduct or activity; provided this Policy shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Insured**, or written admission by the **Insured**, establishing such conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time the **Named Insured** shall

reimburse the Underwriters for all **Claims Expenses** incurred defending the **Claim** and the Underwriters shall have no further liability for **Claims Expenses**;

provided further, that whenever coverage under this Insurance would be excluded, suspended or lost because of this exclusion relating to acts or violations by any **Insured**, and with respect to which any other **Insured** did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge thereof, then the Underwriters agree that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Insureds** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in above; however this exception to this exclusion is inapplicable to any **Claim** or circumstance that could reasonably be the basis of a **Claim** against the **Insured Organization** arising from acts, errors or omissions known to any present or former member of the **Control Group**;

- N. For, arising out of or resulting from any actual or alleged:
1. infringement of patent or patent rights or misuse or abuse of patent;
  2. infringement of copyright arising from or related to software code or software products other than infringement resulting from a theft or **Unauthorized Access or Use** of software code by a person who is not a **Related Party**;
  3. use or misappropriation of any ideas, trade secrets or **Third Party Corporate Information** (i) by, or on behalf of, the **Insured Organization**, or (ii) by any other person or entity if such use or misappropriation is done with the knowledge, consent or acquiescence of a member of the **Control Group**;
  4. disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person or entity prior to the date the person or entity became an employee, officer, director, **Manager**, principal, partner or **Subsidiary** of the **Insured Organization**; or
  5. under Insuring Agreement I.A.2., theft of or **Unauthorized Disclosure** of a **Data Asset**;
- O. For, in connection with or resulting from a **Claim** brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any other state, federal, local or foreign governmental entity, in such entity's regulatory or official capacity; provided, this exclusion shall not apply to an otherwise covered **Claim** under Insuring Agreement I.C. or to the providing of **Privacy Breach Response Services** under Insuring Agreement I.B. to the extent such services are legally required to comply with a **Breach Notice Law**;
- P. For, arising out of or resulting from a **Claim** by or on behalf of one or more **Insureds** under this Insurance against any other **Insured** or **Insureds** under this Insurance; provided this exclusion shall not apply to an otherwise covered **Claim** under Insuring Agreement I.A.1., I.A.2., or I.A.3. made by a current or former employee of the **Insured Organization**;
- Q. For, arising out of or resulting from:

1. any **Claim** made by any business enterprise in which any **Insured** has greater than a fifteen percent (15%) ownership interest or made by any parent company or other entity which owns more than fifteen percent (15%) of the **Named Insured**; or
  2. the **Insured's** activities as a trustee, partner, member, **Manager**, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **Insured Organization**;
- R. For, arising out of or resulting from any of the following: (1) trading losses, trading liabilities or change in value of accounts; any loss, transfer or theft of monies, securities or tangible property of others in the care, custody or control of the **Insured Organization**; (2) the monetary value of any transactions or electronic fund transfers by or on behalf of the **Insured** which is lost, diminished, or damaged during transfer from, into or between accounts; or (3) the value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;
- S. With respect to Insuring Agreements I.A., I.B., I.C., I.E. and I.F., any **Claim** or **Loss** for, arising out of or resulting from the distribution, exhibition, performance, publication, display or broadcasting of content or material in:
1. broadcasts, by or on behalf of, or with the permission or direction of any **Insured**, including but not limited to, television, motion picture, cable, satellite television and radio broadcasts;
  2. publications, by or on behalf of, or with the permission or direction of any **Insured**, including, but not limited to, newspaper, newsletter, magazine, book and other literary form, monograph, brochure, directory, screen play, film script, playwright and video publications, and including content displayed on an Internet site; or
  3. advertising by or on behalf of any **Insured**;
- provided however this exclusion does not apply to the publication, distribution or display of the **Insured Organization's Privacy Policy**;
- T. With respect to Insuring Agreement I.D., any **Claim** or **Loss**:
1. for, arising out of or resulting from the actual or alleged obligation to make licensing fee or royalty payments, including but limited to the amount or timeliness of such payments;
  2. for, arising out of or resulting from any costs or expenses incurred or to be incurred by the **Insured** or others for the reprinting, reposting, recall, removal or disposal of any **Media Material** or any other information, content or media, including any media or products containing such **Media Material**, information, content or media;
  3. brought by or on behalf of any intellectual property licensing bodies or organizations, including but not limited to, the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers or Broadcast Music, Inc;

4. for, arising out of or resulting from the actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services, cost guarantees, cost representations, or contract price estimates, the authenticity of any goods, products or services, or the failure of any goods or services to conform with any represented quality or performance;
  5. for, arising out of or resulting from any actual or alleged gambling, contest, lottery, promotional game or other game of chance; or
  6. in connection with a **Claim** made by or on behalf of any independent contractor, joint venturer or venture partner arising out of or resulting from disputes over ownership of rights in **Media Material** or services provided by such independent contractor, joint venturer or venture partner;
- U. Arising out of or resulting from, directly or indirectly occasioned by, happening through or in consequence of: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- V. Either in whole or in part, directly or indirectly arising out of or resulting from or in consequence of, or in any way involving:
1. asbestos, or any materials containing asbestos in whatever form or quantity;
  2. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; and any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins;
 

The Underwriters will have no duty or obligation to defend any **Insured** with respect to any **Claim** or governmental or regulatory order, requirement, directive, mandate or decree which either in whole or in part, directly or indirectly, arises out of or results from or in consequence of, or in any way involves the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind;
  3. the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property; or

4. the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants; or any governmental, judicial or regulatory directive or request that the **Insured** or anyone acting under the direction or control of the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including gas, acids, alkalis, chemicals, heat, smoke, vapor, soot, fumes or waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

## VI. DEFINITIONS

- A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insured** to the Underwriters in connection with the underwriting of this Policy, or prior policies of which this Policy is a renewal thereof.
- B. **Bodily Injury** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- C. **Breach Notice Law** means any United States federal, state, or territory statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or reasonably may have been accessed by an unauthorized person.

**Breach Notice Law** also means a foreign statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or reasonably may have been accessed by an unauthorized person; provided notification amounts covered under Insuring Agreement I.B.2. as to all such applicable foreign laws or regulations shall not exceed the amount set forth in Item 3.B.3. of the Declarations in the aggregate for the **Policy Period**; provided, (1) such notifications required by foreign laws or regulations shall not count toward the Notification limit set forth in Item 3.B.1. of the Declarations, and (2) the Credit and Identity Monitoring Program provided by Insuring Agreement I.B.4. shall not apply to persons notified pursuant to any such foreign statute or regulation.

- D. **Call Center Services** means the provision of a call center to answer calls during standard business hours for a period of ninety (90) days following notification (or longer if required by applicable law or regulation) of an incident pursuant to Insuring Agreement I.B.2. Such notification shall include a toll free telephone number that connects to the call center during standard business hours. Call center employees will answer questions about the incident from **Notified Individuals** and will provide information required by HITECH media notice or by other applicable law or regulation. **Call Center Services** will only be available for incidents (or reasonably suspected incidents) involving more than the number of **Notified Individuals** set forth in Item 4.B.2. of the Declarations.
- E. **Claim** means:
  1. a written demand received by any **Insured** for money or services, including the service of a suit or institution of regulatory or arbitration proceedings;
  2. with respect to coverage provided under Insuring Agreement I.C. only, institution of a **Regulatory Proceeding** against any **Insured**; and

3. a written request or agreement to toll or waive a statute of limitations relating to a potential **Claim** described in paragraph 1. above.

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, or omissions, or from any continuing acts, errors, omissions, or from multiple **Security Breaches** arising from a failure of **Computer Security**, shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of claimants or **Insureds** involved in the **Claim**. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

F. **Claims Expenses** means:

1. reasonable and necessary fees charged by an attorney designated pursuant to Clause II., Defense and Settlement of Claims, paragraph A.;
2. all other legal costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit, or proceeding arising in connection therewith, or circumstance which might lead to a **Claim**, if incurred by the Underwriters, or by the **Insured** with the prior written consent of the Underwriters; and
3. the premium cost for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any **Claim** against an **Insured**; provided the Underwriters shall have no obligation to appeal or to obtain bonds.

**Claims Expenses** do not include any salary, overhead, or other charges by the **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance that might lead to a **Claim** notified under this Policy, or costs to comply with any regulatory orders, settlements or judgments.

G. **Computer Security** means software, computer or network hardware devices, as well as the Insured **Organization's** written information security policies and procedures, the function or purpose of which is to prevent **Unauthorized Access or Use**, a **Denial of Service Attack** against **Computer Systems**, infection of **Computer Systems** by **Malicious Code** or transmission of **Malicious Code** from **Computer Systems**. **Computer Security** includes anti-virus and intrusion detection software, firewalls and electronic systems that provide access control to **Computer Systems** through the use of passwords, biometric or similar identification of authorized users.

H. **Computer Systems** means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:

1. operated by and either owned by or leased to the **Insured Organization**; or
2. systems operated by a third party service provider and used for the purpose of providing hosted computer application services to the **Insured Organization** or for processing, maintaining, hosting or storing the **Insured Organization's** electronic data, pursuant to written contract with the **Insured Organization** for such services.

I. **Continuity Date** means (i) the date stated in Item 8. of the Declarations with respect to the **Named Insured** and any **Subsidiaries** acquired before the date

stated in Item 8. of the Declarations; (ii) with respect to any **Subsidiaries** acquired after the date stated in Item 8. of the Declarations, the date the **Named Insured** acquired such **Subsidiary**.

- J. **Control Group** means the individuals holding the following positions in the **Insured Organization**: President; members of the Board of Directors; executive officers, including the Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer; General Counsel, staff attorneys employed by the **Insured Organization**; Chief Information Officer; Chief Security Officer; Chief Privacy Officer; **Manager**; and any individual in a substantially similar position as those referenced above, or with substantially similar responsibilities as those referenced above, irrespective of the exact title of such individual and any individual who previously held any of the above referenced positions.
- K. **Covered Media Activities** means the display of **Media Material** on the **Insured Organization's** web site.
- L. **Data Asset** means any software or electronic data that exists in **Computer Systems** and that is subject to regular back up procedures, including computer programs, applications, account information, customer information, private or personal information, marketing information, financial information and any other information maintained by the **Insured Organization** in its ordinary course of business.
- M. **Damages** means a monetary judgment, award or settlement; provided that the term **Damages** shall not include or mean:
1. future profits, restitution, disgorgement of unjust enrichment or profits by an **Insured**, or the costs of complying with orders granting injunctive or equitable relief;
  2. return or offset of fees, charges, or commissions charged by or owed to an **Insured** for goods or services already provided or contracted to be provided;
  3. any damages which are a multiple of compensatory damages, fines, taxes or loss of tax benefits, sanctions or penalties;
  4. punitive or exemplary damages, unless insurable by law in any applicable venue that most favors coverage for such punitive or exemplary damages;
  5. discounts, coupons, prizes, awards or other incentives offered to the **Insured's** customers or clients;
  6. liquidated damages to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement;
  7. fines, costs or other amounts an **Insured** is responsible to pay under a **Merchant Services Agreement**; or
  8. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**.
- N. **Denial of Service Attack** means an attack intended by the perpetrator to overwhelm the capacity of a **Computer System** by sending an excessive volume of



electronic data to such **Computer System** in order to prevent authorized access to such **Computer System**.

- O. **Loss** means **Damages, Claims Expenses, Penalties, Public Relations and Crisis Management Expenses, PCI Fines and Costs** and **Privacy Breach Response Services**.
- P. **Malicious Code** means any virus, Trojan horse, worm or any other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.
- Q. **Management Control** means:
  - 1. owning, directly or indirectly, more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of an entity's directors (in the case of a corporation), members of the board of managers (in the case of a limited liability company), management committee members (in the case of a joint venture or partnership) or persons serving in a functionally equivalent role for such an entity operating or organized outside of the United States; or
  - 2. having the right, pursuant to a written contract or the bylaws, charter, operating agreement or similar documents of an entity to elect, appoint or designate a majority of: the board of directors of a corporation; the management committee of a joint venture or partnership; the management board of a limited liability company; or persons serving in a functionally equivalent role for such an entity operating or organized outside of the United States.
- R. **Manager** means a manager of a limited liability company.
- S. **Media Material** means any information in electronic form, including words, sounds, numbers, images, or graphics and shall include advertising, video, streaming content, web-casting, online forum, bulletin board and chat room content, but does not mean computer software or the actual goods, products or services described, illustrated or displayed in such **Media Material**.
- T. **Merchant Services Agreement** means any agreement between an **Insured** and a financial institution, credit/debit card company, credit/debit card processor or independent service operator enabling an **Insured** to accept credit card, debit card, prepaid card, or other payment cards for payments or donations.
- U. **Named Insured** means the individual, partnership, entity, or corporation designated as such in Item 1. of the Declarations.
- V. **Notified Individual** means an individual person to whom notice is given or attempted to be given under Insuring Agreement I.B.2.; provided any persons notified under a foreign **Breach Notice Law** shall not be considered **Notified Individuals**.
- W. **Optional Extension Period** means the period of time after the end of the **Policy Period** for reporting **Claims** as provided in Clause IX., Optional Extension Period, of this Policy.
- X. **PCI Fines and Costs** means the direct monetary fines and penalties owed by the **Insured Organization** under the terms of a **Merchant Services Agreement**, but

only where such fines or penalties result both from the **Insured Organization's** actual or alleged noncompliance with published PCI Data Security Standards and from a data breach caused by an incident (or reasonably suspected incident) described in Insuring Agreement I.A.1. or I.A.2.; provided, **PCI Fines and Costs** shall not include, any charge backs, interchange fees, discount fees, or other service related fees, rates or charges.

Y. **Penalties** means:

1. any civil fine or money penalty payable to a governmental entity that was imposed in a **Regulatory Proceeding** by the Federal Trade Commission, Federal Communications Commission, or any other federal, state, local or foreign governmental entity, in such entity's regulatory or official capacity; the insurability of **Penalties** shall be in accordance with the law in the applicable venue that most favors coverage for such **Penalties**; and
2. amounts which the **Insured** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment or settlement of a **Regulatory Proceeding** (including such amounts required to be paid into a "Consumer Redress Fund"); but and shall not include payments to charitable organizations or disposition of such funds other than for payment of consumer claims for losses caused by an event covered by Insuring Agreements A.1., A.2. or A.3.;

but shall not mean (a) costs to remediate or improve **Computer Systems**, (b) costs to establish, implement, maintain, improve or remediate security or privacy practices, procedures, programs or policies, (c) audit, assessment, compliance or reporting costs, or (d) costs to protect the confidentiality, integrity and/or security of **Personally Identifiable Non-Public Information** from theft, loss or disclosure, even if it is in response to a regulatory proceeding or investigation.

Z. **Personally Identifiable Non-Public Information** means:

1. information concerning the individual that constitutes "nonpublic personal information" as defined in the Gramm-Leach Bliley Act of 1999, as amended, and regulations issued pursuant to the Act;
2. medical or health care information concerning the individual, including "protected health information" as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act;
3. information concerning the individual that is defined as private personal information under statutes enacted to protect such information in foreign countries, for **Claims** subject to the law of such jurisdiction;
4. information concerning the individual that is defined as private personal information under a **Breach Notice Law**; or
5. the individual's drivers license or state identification number; social security number; unpublished telephone number; and credit, debit or other financial account numbers in combination with associated security codes, access codes, passwords or pins;

if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual's financial account or medical record information but does not include publicly available information that is lawfully made available to the general public from government records.

- AA. **Policy Aggregate Limit of Liability** means the aggregate Limit of Liability set forth in Item 3.A.1. of the Declarations. The **Privacy Breach Response Aggregate Limit of Coverage** is separate from and in addition to the **Policy Aggregate Limit of Liability**.
- BB. **Policy Period** means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this Insurance and specifically excludes any **Optional Extension Period** or any prior policy period or renewal period.
- CC. **Privacy Breach Response Services Aggregate Limit of Coverage** means the Limit of Coverage set forth in Item 3.B. of the Declarations for the provision of **Privacy Breach Response Services**.
- DD. **Privacy Law** means a federal, state or foreign statute or regulation requiring the **Insured Organization** to protect the confidentiality and/or security of **Personally Identifiable Non-Public Information**.
- EE. **Privacy Policy** means the **Insured Organization's** public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to **Personally Identifiable Non-Public Information**.
- FF. **Property Damage** means physical injury to or destruction of any tangible property, including the loss of use thereof.
- GG. **Regulatory Proceeding** means a request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar proceeding brought by or on behalf of the Federal Trade Commission, Federal Communications Commission, or any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity in connection with such proceeding.
- HH. **Retention** means the applicable retention for each Insuring Agreement as specified in Item 4. of the Declarations.
- II. **Related Party** means the **Insured Organization** and any past, present or future employees, directors, officers, **Managers**, partners or natural person independent contractors of the **Insured Organization**.
- JJ. **Retroactive Date** means the date specified in Item 6. of the Declarations.
- KK. **Security Breach** means:
  - 1. **Unauthorized Access or Use of Computer Systems**, including **Unauthorized Access or Use** resulting from the theft of a password from a **Computer System** or from any **Insured**;
  - 2. a **Denial of Service Attack** against **Computer Systems** or **Third Party Computer Systems**; or

3. infection of **Computer Systems** by **Malicious Code** or transmission of **Malicious Code** from **Computer Systems**,

whether any of the foregoing is a specifically targeted attack or a generally distributed attack.

A series of continuing **Security Breaches**, related or repeated **Security Breaches**, or multiple **Security Breaches** resulting from a continuing failure of **Computer Security** shall be considered a single **Security Breach** and be deemed to have occurred at the time of the first such **Security Breach**.

LL. **Subsidiary** means any corporation, limited liability company, joint venture or partnership while the **Named Insured** has **Management Control** over such entity, if the **Named Insured**:

1. had **Management Control** over such entity on the inception date of this Policy or such entity was an insured under a policy issued by the Underwriters of which this Policy is a renewal;
2. acquires **Management Control** after the inception date of this Policy provided the revenues of the entity do not exceed ten percent (10%) of the **Named Insured's** annual revenues for the four quarterly periods directly preceding inception of the **Policy Period**; or
3. acquires **Management Control** after the inception date of this Policy provided that if the revenues of the entity exceed ten percent (10%) of the **Named Insured's** annual revenues for the four quarterly periods directly preceding inception of the **Policy Period**, the provisions of Clause XVI., Mergers and Acquisitions, must be fulfilled;

provided that this Policy only provides coverage for acts, errors, omissions, incidents or events that take place while the **Named Insured** has **Management Control** over such entity.

MM. **Third Party Computer Systems** means any computer systems that: (1) are not owned, operated or controlled by an **Insured**; and (2) does not include computer systems of a third party on which an **Insured** performs services. Computer systems include associated input and output devices, data storage devices, networking equipment, and back up facilities.

NN. **Third Party Corporate Information** means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not insured under this Policy which is not available to the general public and is provided to the **Insured** subject to a mutually executed written confidentiality agreement or which the **Insured Organization** is legally required to maintain in confidence; however, **Third Party Corporate Information** shall not include **Personally Identifiable Non-Public Information**.

OO. **Unauthorized Access or Use** means the gaining of access to or use of **Computer Systems** by an unauthorized person or persons or the use of **Computer Systems** in an unauthorized manner.

- PP. **Unauthorized Disclosure** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by the **Insured Organization** and is without knowledge of, consent, or acquiescence of any member of the **Control Group**.

## VII. LIMIT OF LIABILITY AND COVERAGE

- A. The **Policy Aggregate Limit of Liability** stated in Item 3.A.1. of the Declarations is the Underwriters' combined total limit of liability for all **Damages, Penalties, Public Relations and Crisis Management Expenses, PCI Fines and Costs, and Claims Expenses** payable under this Policy.

The sublimit of liability stated in Item 3.A.2. of the Declarations is the aggregate sublimit of liability payable under Insuring Agreement I.C. of this Policy and is part of and not in addition to the **Policy Aggregate Limit of Liability** stated in Item 3.A.1. of the Declarations.

The sublimit of liability stated in Item 3.A.3. of the Declarations is the aggregate sublimit of liability payable under Insuring Agreement I.E. of this Policy and is part of and not in addition to the **Policy Aggregate Limit of Liability** stated in Item 3.A.1. of the Declarations.

The sublimit of liability stated in Item 3.A.4. of the Declarations is the aggregate sublimit of liability payable under Insuring Agreement I.F. of this Policy and is part of and not in addition to the **Policy Aggregate Limit of Liability** stated in Item 3.A.1. of the Declarations.

Neither the inclusion of more than one **Insured** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.

- B. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the **Policy Aggregate Limit of Liability**.
- C. The Underwriters shall not be obligated to pay any **Damages, Penalties, Public Relations and Crisis Management Expenses, PCI Fines and Costs** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding, after the **Policy Aggregate Limit of Liability** set forth in the Declarations has been exhausted by payment of **Damages, Penalties, Public Relations and Crisis Management Expenses, PCI Fines and Costs** or **Claims Expenses**, or after deposit of the **Policy Aggregate Limit of Liability** in a court of competent jurisdiction. Upon such payment, the Underwriters shall have the right to withdraw from the further defense of any **Claim** under this Policy by tendering control of said defense to the **Insured**.
- D. The **Privacy Breach Response Aggregate Limit of Coverage** stated Item 3.B.1. of the Declarations is the maximum total number of **Notified Individuals** to whom notification will be provided or attempted for all incidents or series of related incidents giving rise to an obligation to provide **Privacy Breach Response Services** covered under Insuring Agreement I.B., and subject to the dollar limitation in section VII.F, below, if applicable.

The sublimit of coverage stated in Item 3.B.2. of the Declarations is the aggregate sublimit of coverage for all **Privacy Breach Response Services** incurred and services provided under Insuring Agreement I.B.1. of this Policy.

- E. The Underwriters shall not be obligated to provide **Privacy Breach Response Services**, including any computer security expert costs, attorney's fees, notifications, credit monitoring, or identity monitoring or any other services after the number of **Notified Individuals** under Insuring Agreement I.B.2. reaches an aggregate of the number of **Notified Individuals** stated in Item 3.B.1. of the Declarations. If the total number of individuals to be notified under the Policy exceeds the number of **Notified Individuals** stated in Item 3.B.1. of the Declarations, the **Insured** shall be responsible for providing notification, credit monitoring services or identity monitoring services to such additional individuals in accordance with the procedure set forth on Attachment A.
  
- F. **Privacy Breach Response Services** under Insuring Agreement I.B.4. will be provided by the service providers listed in the Information Packet, which list may be updated from time to time by the Underwriters. In the event a service provider is unable to or does not provide the services set forth, the Underwriters will procure similar services from other sources; provided in such event the maximum the Underwriters will pay for the costs of procuring and providing all **Privacy Breach Response Services** under Insuring Agreement I.B., including attorneys fees, expert costs, notification costs including foreign notifications, **Call Center Services** and substitute products and services for the Credit and Identity Monitoring Program shall be no more than USD 10,000,000 in the aggregate for the Policy Period, which amount shall be in addition to the **Policy Aggregate Limit of Liability**. In the event there is a change of law, regulation or enforcement that prevents the Underwriters or its service providers from providing all or part of the **Privacy Breach Response Services**, the Underwriters will make reasonable efforts to substitute other services, but if this is not possible, the Underwriters shall not be obligated to provide such services.

#### VIII. RETENTION

- A. The **Retention** amount set forth in Item 4.A. of the Declarations applies separately to each incident, event or related incidents or events, giving rise to a **Claim**. The **Retention** shall be satisfied by monetary payments by the **Named Insured of Damages, Claims Expenses, or Penalties**.
  
- B. The **Retention** amount set forth in Item 4.B. of the Declarations applies separately to each incident, event or related incidents or events, giving rise to an obligation to provide **Privacy Breach Response Services**. Under Insuring Agreement I.B.1. and I.B.2., the Each Incident Retention set forth in Item 4.B.1 of the Declarations shall be satisfied by monetary payments by the **Named Insured of Privacy Breach Response Services**. Services under Insuring Agreements I.B.3. and I.B.4. will only be provided for incidents requiring notification to more individuals than the number set forth in Item 4.B.2. of the Declarations. For incidents involving fewer individuals, the Underwriters shall not be obligated to offer or provide any services under Insuring Agreement I.B.3. or I.B.4. If an incident requires notice to a number of individuals equal to or greater than the number set forth in Item 4.B.2. of the Declarations, the Underwriters will provide the services set forth in Insuring Agreement I.B.3. and I.B.4. to all **Notified Individuals** subject to the Limit of Liability and other provisions of this Policy.
  
- C. The **Retention** amount set forth in Item 4.C. of the Declarations applies separately with respect to each **Claim** for one or more of the acts listed in Insuring Agreement

- I.D. in the course of the **Insured Organization's** performance of any **Covered Media Activities**, including **Claims Expenses**.
- D. The **Retention** amount set forth in Item 4.D. of the Declarations applies separately with respect to each **Public Relations Event**. The **Retention** shall be **satisfied** by monetary payments by the **Named Insured** of **Public Relations and Crisis Management Expenses**.
- E. The **Retention** amount set forth in Item 4.E. of the Declarations applies separately with respect to each **Claim** that gives rise to coverage for **PCI Fines and Costs**. The **Retention** shall be satisfied by monetary payments by the **Named Insured** of **PCI Fines and Costs**.
- F. Satisfaction of the applicable **Retention** is a condition precedent to the payment by the Underwriters of any amounts or providing of any services hereunder, and the Underwriters shall be liable only for the amounts in excess of such **Retention** subject to the Underwriters' total liability not exceeding the **Policy Aggregate Limit**, the **Privacy Breach Response Aggregate Limit of Coverage**. The **Named Insured** shall make direct payments within the **Retention** to appropriate other parties designated by the Underwriters.

#### IX. OPTIONAL EXTENSION PERIOD

- A. In the event of the termination of this Insurance for any reason except the non-payment of premium, the **Named Insured** designated in Item 1. of the Declarations shall have the right, upon payment in full and not proportionally or otherwise in part of the percentage shown in Item 7.(a) of the Declarations of the full Premium set forth below, to have issued an endorsement providing an **Optional Extension Period** for the period of time set forth in Item 7.(b) of the Declarations for **Claims** first made against any **Insured** and reported to the Underwriters during the **Optional Extension Period**, and arising out of any act, error or omission committed on or after the **Retroactive Date** and before the end of the **Policy Period**, subject to the conditions set forth herein. In order for the **Named Insured** to invoke the **Optional Extension Period** option, the payment of the additional premium for the **Optional Extension Period** must be paid to the Underwriters within thirty (30) days of the termination of this Insurance. If notice of election of the **Optional Extension Period** and full premium payment is not given to the Underwriters within such thirty (30) day period, there shall be no right to purchase the **Optional Extension Period**.
- B. The Limit of Liability for the **Optional Extension Period** shall be part of, and not in addition to, the applicable Limit of Liability of the Underwriters for the **Policy Period** and the exercise of the **Optional Extension Period** shall not in any way increase the **Policy Aggregate Limit of Liability** or any sublimit of liability. The **Optional Extension Period** does not apply to Insuring Agreement I.B.
- C. The right to the **Optional Extension Period** shall not be available to the **Named Insured** where the Policy premium has not been paid in full, or where cancellation or non-renewal by the Underwriters is due to non-payment of premium or failure of an **Insured** to pay such amounts in excess of the applicable limit of liability or within the amount of the applicable **Retention**.

- D. All notices and premium payments with respect to the **Optional Extension Period** option shall be directed to the Underwriters through the entity named in Item 9.(c) of the Declarations.
- E. At the commencement of the **Optional Extension Period** the entire premium shall be deemed earned, and in the event the **Named Insured** terminates the **Optional Extension Period** for any reason prior to its natural expiration, the Underwriters will not be liable to return any premium paid for the **Optional Extension Period**.

**X. NOTICE OF CLAIM, LOSS OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM**

- A. If any **Claim** is made against the **Insured**, the **Insured** shall forward as soon as practicable to the Underwriters through persons named in Item 9.(a) of the Declarations written notice of such **Claim** in the form of a telecopy, email or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative. In no event shall such notice to the Underwriters be later than the end of the **Policy Period**, the end of the **Optional Extension Period** (if applicable), or thirty (30) days after the expiration date of the **Policy Period** in the case of **Claims** first made against the **Insured** during the last thirty (30) days of the **Policy Period**.
- B. With respect to Insuring Agreement I.B., for a legal obligation to comply with a **Breach Notice Law** because of an incident (or reasonably suspected incident) described in Insuring Agreement I.A.1. or I.A.2., such incident or reasonably suspected incident must be reported as soon as practicable during the **Policy Period** after discovery by the **Insured**; provided, however, that unless the **Insured** cancels the Policy, or the Underwriters cancel for non-payment of premium, incidents discovered by the **Insured** within sixty (60) days prior to expiration of the Policy shall be reported as soon as practicable, but in no event later than sixty (60) days after the end the **Policy Period**; provided further, that if this Policy is renewed by the Underwriters and **Privacy Breach Response Services** are provided because of such incident or suspected incident that was discovered by the **Insured** within sixty (60) days prior to the expiration of the Policy, and first reported during the sixty (60) day post **Policy Period** reporting period, then any subsequent **Claim** arising out of such incident or suspected incident is deemed to have been made during the **Policy Period**.

Notwithstanding the foregoing, if the **Named Insured** reasonably believes that the **Privacy Breach Response Services** provided as a result of such incident or suspected incident are not likely to meet or exceed the **Retention**, then reporting of such incident or suspected incident under this Clause X.B. is at the **Named Insured's** option, but unless such incident or suspected incident is reported in accordance with the first paragraph of this Clause X.B., there shall be no coverage for **Privacy Breach Response Services** in connection with such incident or suspected incident.

- C. If during the **Policy Period**, the **Insured** first becomes aware of any circumstance that could reasonably be the basis for a **Claim** it may give written notice to the Underwriters in the form of a telecopy, email or express or certified mail through persons named in Item 9.(a) of the Declarations as soon as practicable during the **Policy Period**. Such a notice must include:



1. the specific details of the act, error, omission, or **Security Breach** that could reasonably be the basis for a **Claim**;
2. the injury or damage which may result or has resulted from the circumstance; and
3. the facts by which the **Insured** first became aware of the act, error, omission or **Security Breach**.

Any subsequent **Claim** made against the **Insured** arising out of such circumstance which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to the Underwriters.

An incident or reasonably suspected incident reported to Underwriters during the **Policy Period** and in conformance with Clause X.B shall also constitute notice of a circumstance under this Clause X.C.

- D. A **Claim** or legal obligation under paragraph A. or B. above shall be considered to be reported to the Underwriters when written notice is first received by the Underwriters in the form of a telecopy, email or express or certified mail or email through persons named in Item 9.(a) of the Declarations of the **Claim** or legal obligation, or of an act, error, or omission, which could reasonably be expected to give rise to a **Claim** if provided in compliance with paragraph C. above.

## XI. ASSISTANCE AND COOPERATION

- A. The Underwriters shall have the right to make any investigation they deem necessary, and the **Insured** shall cooperate with the Underwriters in all investigations, including investigations regarding the **Application** for and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriters. The **Insured** agrees not to take any action which in any way increases the Underwriters' exposure under this Policy.
- B. Upon the Underwriters' request, the **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of acts, errors or omissions, incidents or events with respect to which insurance is afforded under this Policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- C. The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without the written consent of the Underwriters, except as specifically provided in Clause II., Defense and Settlement of Claims, paragraph D.

Compliance with a **Breach Notice Law** will not be considered as an admission of liability for purposes of this Clause XI.C.

- D. Expenses incurred by the **Insured** in assisting and cooperating with the Underwriters do not constitute **Claims Expenses** under the Policy.

## XII. SUBROGATION

If any payment is made under this Policy and there is available to the Underwriters any of the **Insured's** rights of recovery against any other party, then the Underwriters shall maintain all such rights of recovery. The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing after an incident or event giving rise to a **Claim** or **Loss** to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **Loss** paid by the Underwriters, and lastly to the **Retention**. Any additional amounts recovered shall be paid to the **Named Insured**.

### **XIII. OTHER INSURANCE**

The insurance under this Policy shall apply in excess of any other valid and collectible insurance available to any **Insured**, including any self insured retention or deductible portion thereof unless such other insurance is written only as specific excess insurance over the **Policy Aggregate Limit of Liability** or any other applicable Limit of Liability of this Policy.

### **XIV. ACTION AGAINST THE UNDERWRITERS**

No action shall lie against the Underwriters or the Underwriters' representatives unless and until, as a condition precedent thereto, the **Insured** shall have fully complied with all provisions, terms and conditions of this Insurance and the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment or award against the **Insured** after trial, regulatory proceeding, arbitration or by written agreement of the **Insured**, the claimant, and the Underwriters.

No person or organization shall have the right under this Policy to join the Underwriters as a party to an action or other proceeding against the **Insured** to determine the **Insured's** liability, nor shall the Underwriters be impleaded by the **Insured** or the **Insured's** legal representative.

The **Insured's** bankruptcy or insolvency or of the **Insured's** estate shall not relieve the Underwriters of their obligations hereunder.

### **XV. ENTIRE AGREEMENT**

By acceptance of the Policy, all **Insureds** agree that this Policy embodies all agreements between the Underwriters and the **Insured** relating to this Policy. Notice to any agent 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 stop the Underwriters from asserting any right under the terms of this Insurance; nor shall the terms of this Insurance be waived or changed, except by endorsement issued to form a part of this Policy signed by the Underwriters.

### **XVI. MERGERS AND ACQUISITIONS**

#### **A. Newly Acquired Subsidiaries**

During the **Policy Period**, if the **Named Insured** or any **Subsidiary** acquires another entity whose annual revenues are more than ten percent (10%) of the **Named Insured's** total annual revenues for the four quarterly periods directly preceding inception of the **Policy Period**, such acquired entity shall not be a **Subsidiary**, and no **Insured** shall have coverage under this Policy for any **Claim** or **Loss** that arises out of any act, error omission, incident or event whether committed before or after such acquisition:

1. by or on behalf of the acquired entity or any person employed by the acquired entity;
2. involving or relating to the assets, liabilities, **Covered Media Activities** or policies or procedures of the acquired entity or to data, information, computers, or networks, security systems, of or under the care, custody or control of the acquired entity, a Business Associate of the acquired entity, or a third party on behalf of the acquired entity; or
3. by any person or entity holding, processing, managing or transferring information or operating **Computer Systems** on behalf of the acquired entity;

unless the **Named Insured** gives the Underwriters written notice prior to the acquisition, obtains the Underwriters' written consent to extend coverage to such additional entities, assets, exposures, or **Computer Systems**, and agrees to pay any additional premium required by the Underwriters.

If during the **Policy Period** the **Named Insured** or any **Subsidiary** acquires a privately held entity whose annual revenues are more than ten percent (10%) of the Named Insured's total annual revenues for the four quarterly periods directly preceding inception of the **Policy Period**, then, subject to the **Policy Period** and all other terms and conditions of this Policy, coverage under this Policy shall be afforded for a period of sixty (60) days, but only for any **Claim** that arises out of any act, error or omission first committed or incident or event first occurring after the entity becomes so owned. Coverage beyond such sixty (60) day period shall only be available if the **Named Insured** gives the Underwriters written notice of the acquisition, obtains the written consent of Underwriters to extend coverage beyond such sixty (60) day period to the entity and agrees to pay any additional premium required by Underwriters.

#### B. **Mergers or Consolidations**

If during the **Policy Period** the **Named Insured** consolidates or merges with or is acquired by another entity, or sells substantially all of its assets to any other entity, then this Policy shall remain in full force and effect, but only with respect to a **Security Breach**, or other act or incidents that occur prior to the date of the consolidation, merger or acquisition. There shall be no coverage provided by this Policy for any other **Claim** or **Loss** unless the **Named Insured** provides written notice to the Underwriters prior to such consolidation, merger or acquisition, the **Named Insured** has agreed to any additional premium and terms of coverage required by the Underwriters and the Underwriters have issued an endorsement extending coverage under this Policy.

- C. All notices and premium payments made under this Clause XVI. shall be directed to the Underwriters through the entity named in Item 9.(c) of the Declarations.

### **XVII. ASSIGNMENT**

The interest hereunder of any **Insured** is not assignable. If the **Insured** shall die or be adjudged incompetent, such insurance shall cover the **Insured's** legal representative as the **Insured** as would be permitted under this Policy.

### **XVIII. CANCELLATION**

- A. This Policy may be cancelled by the **Named Insured**, by surrender thereof to the Underwriters or by mailing or delivering to the Underwriters through the entity named in Item 9.(c) of the Declarations, written notice stating when the cancellation shall be effective.
- B. This Policy may be cancelled by the Underwriters by mailing or delivering to the **Named Insured** at the address shown in the Declarations written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if the Underwriters cancel this Insurance because the **Insured** has failed to pay a premium when due, this Policy may be cancelled by the Underwriters by mailing a written notice of cancellation to the **Named Insured** at the address shown in the Declarations stating when, not less than ten (10) days thereafter, such cancellation shall be effective. Mailing of notice shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery (where permitted by law) of such written notice either by the **Named Insured** or by the Underwriters shall be equivalent of mailing.
- C. If the **Named Insured** cancels this Policy, the earned premium shall be computed in accordance with the attached short rate table and procedure.
- D. If the Underwriters cancel this Policy prior to any **Claim** being reported or **Loss** incurred under this Policy, earned premium shall be computed pro rata.
- E. The premium shall be deemed fully earned if any **Claim** under this Policy is reported to the Underwriters or **Loss** incurred under this Policy on or before the date of cancellation.
- F. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

#### **XIX. SINGULAR FORM OF A WORD**

Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

#### **XX. HEADINGS**

The titles of paragraphs, section, provisions, or endorsements of or to this Policy are intended solely for convenience and reference, and are not deemed in any way to limit or expand the provisions to which they relate and are not part of the Policy.

#### **XXI. WARRANTY BY THE INSURED**

By acceptance of this Policy, all **Insureds** agree that the statements contained in the **Application** are their agreements and representations, that they shall be deemed material to the risk assumed by the Underwriters, and that this Policy is issued in reliance upon the truth thereof.

#### **XXII. NAMED INSURED AS AGENT**

The **Named Insured** shall be considered the agent of all **Insureds**, and shall act on behalf of all **Insureds** with respect to the giving of or receipt of all notices pertaining to this Policy,

the acceptance of any endorsements to this Policy, and the **Named Insured** shall be responsible for the payment of all premiums and **Retentions**.

### **XXIII. SERVICE OF SUIT CLAUSE (U.S.A)**

- A. It is agreed that in the event of our failure to pay any amount claimed to be due under this Insurance, the Underwriters herein, at the **Insured's** request, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this clause constitutes or should be understood to constitute a waiver of the Underwriters' rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or seek a transfer of a case to another court as permitted by the laws of the United States or any state in the United States. It is further agreed that service of processing such suit may be made upon the Underwriters' representative, designated in Item 10. of the Declarations, and that in any suit instituted against any one of them upon this contract, the Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.
- B. The Underwriters' representative designated in Item 10. of the Declarations is authorized and directed to accept service of process on the Underwriters' behalf in any such suit and/or upon the **Insured's** request to give a written undertaking to the **Insured** that they will enter a general appearance upon the Underwriters' behalf in the event such a suit shall be instituted.
- C. Pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the Underwriters hereby designate the Superintendent, Commissioner, or Director of Insurance or other officer specified for that purpose in the statute, or his successor in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on the **Insured's** behalf or any beneficiary hereunder arising out of this Policy, and hereby designate the Underwriters' representative listed in Item 9. of the Declarations as the person to whom said officer is authorized to mail such process or a true copy thereof.

### **XXIV. CHOICE OF LAW**

Any disputes involving this Policy shall be resolved applying the law designated in Item 11. of the Declarations.

### **XXV. VALUATION AND CURRENCY**

All premiums, limits, deductibles, **Damages** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Damages** under this Policy is stated in a currency other than United States dollars or if **Claims Expenses** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Damages** is due or the date such **Claims Expenses** are paid.

### **XXVI. AUTHORIZATION**

By acceptance of this Policy, the **Insureds** agree that the **Named Insured** will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the

payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

**XXVII. SHORT RATE CANCELLATION TABLE**

Notwithstanding anything to the contrary contained herein and in consideration of the premium for which this Insurance is written it is agreed that in the event of cancellation thereof by the **Insured** the Earned Premium shall be computed as follows:

A. For insurances written for one (1) year:

Days Insurance in Force	Per cent. of One Year Premium	Days Insurance in Force	Per cent. of One Year Premium
1 - 73	30	206 - 209	66
74 - 76	31	210 - 214 (7 months)	67
77 - 80	32	215 - 218	68
81 - 83	33	219 - 223	69
84 - 87	34	224 - 228	70
88 - 91 (3 months)	35	229 - 232	71
92 - 94	36	233 - 237	72
95 - 98	37	238 - 241	73
99 - 102	38	242 - 246 (8 months)	74
103 - 105	39	247 - 250	75
106 - 109	40	251 - 255	76
110 - 113	41	256 - 260	77
114 - 116	42	261 - 264	78
117 - 120	43	265 - 269	79
121 - 124 (4 months)	44	270 - 273 (9 months)	80
125 - 127	45	274 - 278	81
128 - 131	46	279 - 282	82
132 - 135	47	283 - 287	83
136 - 138	48	288 - 291	84
139 - 142	49	292 - 296	85
143 - 146	50	297 - 301	86
147 - 149	51	302 - 305 (10 months)	87
150 - 153 (5 months)	52	306 - 310	88
154 - 156	53	311 - 314	89
157 - 160	54	315 - 319	90
161 - 164	55	320 - 323	91
165 - 167	56	324 - 328	92
168 - 171	57	329 - 332	93
172 - 175	58	333 - 337 (11 months)	94
176 - 178	59	338 - 342	95
179 - 182 (6 months)	60	343 - 346	96
183 - 187	61	347 - 351	97
188 - 191	62	352 - 355	98
192 - 196	63	356 - 360	99
197 - 200	64	361 - 365 (12 months)	100
201 - 205	65		

B. For Insurances written for more or less than one (1) year:

1. If insurance has been in force for twelve (12) months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
2. If insurance has been in force for more than twelve (12) months:
  - (a) Determine full annual premium as for an insurance written for a term of one (1) year.
  - (b) Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata Earned Premium on the basis of the ratio of the length of time beyond one (1) year the insurance has been in force to the length of time beyond one (1) year for which the insurance was originally written.
  - (c) Add premium produced in accordance with items (a) and (b) to obtain Earned Premium during full period insurance has been in force.

Furthermore and notwithstanding the foregoing, the Underwriters shall retain the total premium for this Policy, such total premium to be deemed earned upon inception of the Policy if any **Claim, Loss** or any circumstance that could reasonably be the basis for a **Claim** or **Loss** is reported to the Underwriters under this Policy on or before such date of cancellation.