



AFB MEDIA TECH®

**PROFESSIONAL AND TECHNOLOGY BASED SERVICES, TECHNOLOGY PRODUCTS, INFORMATION SECURITY & PRIVACY, AND MULTIMEDIA AND ADVERTISING LIABILITY INSURANCE POLICY**

**NOTICE: COVERAGE UNDER INSURING AGREEMENTS A., B., C., E., F., AND G. OF THIS POLICY IS PROVIDED ON A CLAIMS MADE AND REPORTED BASIS AND APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE OPTIONAL EXTENSION PERIOD IF (IF APPLICABLE) AND REPORTED TO THE UNDERWRITERS DURING THE POLICY PERIOD OR AS OTHERWISE PROVIDED IN CLAUSE IX. 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 D. OF THIS POLICY PROVIDES FIRST PARTY COVERAGE ON AN INCIDENT DISCOVERED AND REPORTED BASIS AND APPLIES ONLY TO INCIDENTS FIRST DISCOVERED BY THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE UNDERWRITERS DURING THE POLICY PERIOD OR AS OTHERWISE PROVIDED IN CLAUSE IX. OF THIS POLICY.**

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. Professional and Technology Based Services Liability**

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

**Damages and Claims Expenses**, in excess of the **Retention**, which the **Insured** shall become legally obligated to pay because of 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 IX. of this Policy, arising out of any:

1. negligent act, error, omission, misstatement, misleading statement or misrepresentation in rendering or failing to render **Professional Services** or **Technology Based Services**;
2. unintentional breach of a contractual obligation to perform **Professional Services** or **Technology Based Services**;

that takes place on or after the Retroactive Date and before the end of the **Policy Period** by the **Insured** or by any person or entity for whose negligent act, error, omission,

misstatement, misleading statement, misrepresentation or unintentional breach of contract the **Insured Organization** is legally responsible.

**B. Technology Products Liability**

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

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

1. (a) negligent act, error, omission, misstatement, misleading statement or misrepresentation; or  
  
(b) unintentional breach of a contractual obligation;

by the **Insured** on or after the Retroactive Date and before the end of the **Policy Period** that results in the failure of **Technology Products** to perform the function or serve the purpose intended; or

2. infringement of copyright committed by the **Insured** on or after the Retroactive Date and before the end of the **Policy Period** with respect to software **Technology Products**.

**C. 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 IX. of this Policy, for:

1. theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Information** or **Third Party 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 Information** or **Third Party Information** the **Insured Organization** is legally responsible (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 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 data stored on **Computer Systems**;
  - (b) the failure to prevent transmission of malicious code from **Computer Systems** to computer or network systems that are not owned, operated

or controlled by an **Insured**; or

- (c) the participation by the **Insured Organization's Computer System** in a denial of service attack directed against computer or network systems that are not owned, operated or controlled by an **Insured**;
3. the **Insured Organization's** failure to timely disclose an incident described in C.1 or C.2. above 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 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 Information**;
  - (b) requires the **Insured Organization** to provide access to **Personally Identifiable Information** or to correct incomplete or inaccurate **Personally Identifiable Information** after a request is made by a person;
  - (c) mandates procedures and requirements to prevent the loss of **Personally Identifiable Information**;
  - (d) prevents or prohibits improper, intrusive or wrongful collection of **Personally Identifiable Information** from a person;
  - (e) requires notice to a person of the **Insured Organization's** collection or use of, or the nature of the collection or use of his or her **Personally Identifiable Information**; or
  - (f) provides a person with the ability to assent to or withhold assent for (e.g. opt-in or opt-out) the **Insured Organization's** collection or use his or her **Personally Identifiable 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 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 directly 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 and before the end of the **Policy Period**.

#### D. **Privacy Notification Costs**

To pay the **Named Insured** for:

**Privacy Notification Costs**, in excess of the **Retention** and incurred by the **Insured Organization**, resulting from the **Insured Organization's** legal obligation to comply with a **Breach Notice Law** because of an incident (or reasonably suspected incident) described in Insuring Agreement C.1. or C.2. that first takes place on or after the Retroactive Date and before the end of the **Policy Period**, is discovered by the **Insured** during the **Policy Period**, and is reported to the Underwriters during the **Policy Period** or as otherwise provided in Clause IX. of this Policy.

**Privacy Notification Costs** means the following reasonable and necessary costs incurred with the Underwriters' prior consent within one (1) year of the **Insured Organization** reporting the incident or suspected incident to the Underwriters:

1. for **Computer Expert Services**;
2. for **Legal Services**;
3. to provide notification to:
  - (a) individuals who are required to be notified by the **Insured Organization** under the applicable **Breach Notice Law**; or
  - (b) in the Underwriters' discretion, individuals affected by an incident in which their **Personally Identifiable 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;
4. for **Call Center Services**;
5. up to one hundred thousand United States dollars (USD 100,000) for the costs of a public relations consultancy for the purpose of averting or mitigating material damage to the **Insured Organization's** reputation; and
6. for a **Credit Monitoring Product** or **Identity Monitoring Product**, provided all such costs payable under this subsection 6. must be for the purpose of mitigating potential **Damages** or **Penalties** resulting from the theft, loss or **Unauthorized Disclosure of Personally Identifiable Information**.

**Privacy Notification Costs** will only be paid in excess of the applicable **Retention** and shall not include any internal salary or overhead expenses of the **Insured Organization**.

**E. 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 IX. of this Policy, for violation of a **Privacy Law** and caused by an incident described in Insuring Agreement C.1., C.2. or C.3 that first takes place on or after the Retroactive Date and before the end of the **Policy Period**.

**F. Multimedia and Advertising 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 liability imposed by law or **Assumed Under Contract** resulting from any **Claim** first made against any **Insured** during the **Policy Period** or Optional Extension Period (if applicable) and reported to the Underwriters during the **Policy Period** or as otherwise provided in Clause IX. of this Policy, for one or more of the following acts first committed on or after the Retroactive Date and before the end of the **Policy Period** in the course of the **Insured Organization's** performance of **Professional Services, Media Activities or Technology Based Services**:

1. defamation, libel, slander, product disparagement, trade libel, prima facie tort, 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. invasion of or interference with the right to privacy or of publicity;
3. misappropriation of any name or likeness for commercial advantage;
4. false arrest, detention or imprisonment;
5. invasion of or interference with any right to private occupancy, including trespass, wrongful entry or wrongful eviction;
6. plagiarism, piracy or misappropriation of ideas under implied contract;
7. infringement of copyright;
8. infringement of trade dress, domain name, title or slogan, or the dilution or infringement of trademark or service mark;
9. negligence regarding the content of any **Media Communication**, including harm caused through any reliance or failure to rely upon such content;
10. misappropriation of trade secret; or
11. unfair competition, but only if alleged in conjunction with and arising out of any of the acts listed in paragraphs 7. or 8. above.

**G. PCI Fines, Expenses and Costs**

To indemnify the **Insured** for **PCI Fines, Expenses 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 IX. of this Policy. Coverage under this Insuring Agreement is sublimited to the amount set forth Item 3.D. 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;
2. any **Claim** in the form of a civil suit against the **Insured** that seeks injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction) for one or more of the acts listed in Insuring Agreement F. if:
  - (a) the **Claim** is first made and reported to the Underwriters during the **Policy Period** or Optional Extension Period (if applicable); and
  - (b) the act or acts were committed on or after the Retroactive Date and before the end of the **Policy Period** in the course of the **Insured's** performance of **Professional Services, Media Activities** or **Technology Based Services**.
3. under Insuring Agreement E., 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 **Loss** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Loss** shall be applied against the **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** or **Penalties** above the amount for which the **Claim** could have been settled. The remaining fifty percent (50%) of such **Claims Expenses, Damages** or **Penalties** 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 E.) 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 fifty percent (50%) of 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 listed in Item 1. of the Declarations (the "**Named Insured**") and any **Subsidiaries** of the **Named Insured** (together the "**Insured Organization**");
- B. A director, manager of a limited liability company ("**Manager**") or officer 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, temporary, leased or seasonal employee) or **Independent Contractor** 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. An **Additional Insured**, but only as respects the vicarious liability of such person or entity for the **Insured Organization**;
- G. 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
- H. 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 and acts, errors or omissions committed, or **Loss** occurring anywhere in the world.

### V. EXCLUSIONS

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

- A. Arising out of or resulting from any criminal, dishonest, fraudulent or malicious act, error or omission, intentional **Security Breach**, intentional violation of a **Privacy Policy** or intentional or knowing violation of the law, if committed by any **Insured**, or by others if such **Insured** colluded or participated in any such conduct or activity;

this exclusion shall not apply to:

1. **Claims Expenses** incurred in defending any **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**; or
  2. a **Claim** or **Loss** against a natural person **Insured** if such **Insured** did not personally commit, participate in or know about any act, error, omission, incident or event giving rise to such **Claim** or **Loss**;
- B. 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 principal, partner, corporate officer, director, **Manager**, general counsel (or most senior legal counsel) or risk manager of the **Insured Organization** (or any person in a substantially similar position) on or before the **Continuity Date** knew or could have reasonably foreseen that such act, error, 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 (i) the inception date of this Policy, or (ii) if this Policy is a renewal, the inception date of the first consecutive policy issued by the Underwriters of which this Policy is a renewal;
- C. 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;
- D. For or arising out of or resulting from:
1. physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress that results from such physical injury, sickness, disease or death; or
  2. physical injury to or destruction of any tangible property, including the loss of use thereof; provided that electronic data shall not be considered tangible property for purposes of this exclusion.
- E. For, arising out of or resulting from obligation under or breach of any contract or agreement, except:
1. to an otherwise covered **Claim** under Insuring Agreements A. and B.;
  2. with respect to Insuring agreement C.1., to an obligation to maintain the confidentiality or security of **Personally Identifiable Information** or of **Third Party Information** (provided this exception E.2 does not apply to any obligation under a **Merchant Services Agreement**);



3. to **Computer Expert Services** or **Legal Services** covered under Insuring Agreement D.;
  4. with respect to Insuring Agreement F. to:
    - a. liability **Assumed under Contract**; or
    - b. misappropriation of ideas under an implied contract; or
  5. to **PCI Fines, Expenses and Costs** covered under Insuring Agreement G.; or
  6. to the extent the **Insured** would have been liable in the absence of such contract or agreement;
- F. Under Insuring Agreements A. or B., for, arising out of or resulting from liability assumed in any hold harmless or indemnity agreement other than a hold harmless or indemnity agreement with respect to intellectual property rights or breaches of the confidentiality of information of any third party;
- G. For or arising out of or resulting from:
1. breach of any express warranty or representation except for an agreement to perform within a reasonable standard of care or skill consistent with applicable industry standards, or breach of any other contractual obligation which goes beyond an express or implied duty to exercise a degree of care or skill as is consistent with applicable industry standards;
  2. breach of guarantee or any promises of cost savings, profits or return on investment; or
  3. delay in delivery or performance, or failure to deliver or perform at or within an agreed upon period of time, but this exclusion shall not apply if such delay or failure to deliver or perform is a consequence of a negligent act, error or omission committed during the course of providing **Professional Services** or **Technology Based Services** if the **Insured** has made diligent efforts to deliver or perform such **Professional Services** or **Technology Based Services**;
- H. For, arising out of or resulting from:
1. inaccurate, inadequate or incomplete description of the price of goods, products or services;
  2. cost guarantees, cost representations or contract price estimates of probable costs or cost estimates actually or allegedly being exceeded;
  3. the failure of goods, products or services to conform with any represented quality or performance contained in **Advertising**; or
  4. any actual or alleged gambling, contest, lottery, promotional game or other game of chance;
- I. For, arising out of or resulting from any costs or expenses incurred or to be incurred by the **Insured** or others for:

1. the reprinting, recall, removal or disposal of any **Media Material**, including any media or products containing such **Media Material**; or
2. the withdrawal, recall, inspection, repair, replacement, reproduction, removal or disposal of:
  - (a) **Technology Products**, including any products or other property of others that incorporate **Technology Products**;
  - (b) work product resulting from or incorporating the results of **Professional Services** or **Technology Based Services**; or
  - (c) any products or other property on which **Professional Services** or **Technology Based Services** are performed;

however, this exclusion shall not apply to third party **Claims** for the resulting loss of use of such **Media Material** or **Technology Products**, or loss of use of the work product resulting from such **Professional Services** or **Technology Based Services**;

- J. For, arising out of or resulting from any failure or malfunction of electrical or telecommunications infrastructure or services, unless under the **Insured Organization's** operational control;
- K. For, arising out of or resulting from any actual or alleged antitrust violation, restraint of trade, unfair competition (except as provided in Insuring Agreement F.11), false or deceptive or misleading advertising or violation of the Sherman Antitrust Act, the Clayton Act or the Robinson-Patman Act, as amended;
- L. For, arising out of or resulting from any actual or alleged false, deceptive or unfair trade practices, or violation of consumer protection laws; however this exclusion does not apply to:
  1. any **Claim** covered under Insuring Agreements C.1., C.2., C.3. or E. that results from a theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Information**; or
  2. coverage for **Privacy Notification Costs** covered under Insuring Agreement D.;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. For, in connection with or resulting from a **Claim** brought by or on behalf of any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity; provided, this exclusion shall not apply to an otherwise covered **Claim**: (i) made against the **Insured Organization** by a government entity solely in its capacity as a customer of the **Insured Organization**; or (ii) under Insuring Agreement E.;
- N. For, arising out of or resulting from any actual or alleged:
  1. infringement of patent or patent rights or misuse of patent;
  2. misappropriation of trade secret arising out of or related to **Technology Products** or any other goods or products;

3. under Insuring Agreement C., use or misappropriation of any ideas, trade secrets or **Third Party 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 he or she became an employee, officer, director, **Manager**, principal, partner or **Subsidiary of the Insured Organization**; or
  5. under Insuring Agreement C.2., theft of or **Unauthorized Disclosure** of data;
- O. For, arising out of or 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;
  2. any actual or alleged violation of any securities law, including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, the Sarbanes-Oxley Act of 2002 or any "Blue Sky" laws; or
  3. 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);
  4. any regulation promulgated under any the foregoing laws; or
  5. any federal, state, local or foreign laws or legislation similar to the foregoing laws;
- however, this exclusion does not apply to any otherwise covered **Claim** under Insuring Agreements C.1., C.2. or C.3., or to paying **Privacy Notification Costs** under Insuring Agreement D., that results from a theft, loss or **Unauthorized Disclosure of Personally Identifiable Information**, provided that no member of the **Control Group** participated or colluded in, or is alleged to have participated or colluded in such theft, loss or **Unauthorized Disclosure**;
- 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** (i) brought by or on behalf of an **Additional Insured**; or (ii) under Insuring Agreements C.1., C.2. or C.3. made by a current or former employee of the **Insured Organization**;
- Q. For, arising out of or resulting from any **Claim** made by, or the provision of services or products to, 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 any **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:

1. any employment or labor 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, that this exclusion shall not apply to an otherwise covered **Claim** under Insuring Agreements C.1., C.2. or C.3. by a current or former employee of the **Insured Organization**, or to **Privacy Notification Costs** involving current or former employees of the **Insured Organization**; or
2. 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;
- S. For, arising out of or resulting from any actual or alleged (a) unlawful distribution of email, direct mail, text messages or facsimiles, (b) unlawful telemarketing, or (c) eavesdropping, wiretapping or audio or video recording, if any of the above is done by or on behalf of the **Insured Organization**;
- T. 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 or on behalf of 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;
- U. For, arising out of or resulting from:
  1. the actual or alleged obligation to make licensing fee or royalty payments, including but limited to the amount or timeliness of such payments;
  2. any right asserted or claim 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.;
  3. any claim brought 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;
- V. For, arising out of or resulting from any of the following:
  1. trading losses, trading liabilities or change in value of accounts;
  2. any loss, transfer or theft of monies, securities or tangible property of others in the care, custody or control of the **Insured Organization**;
  3. 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
  4. the value of coupons, price discounts, prizes, awards or any other valuable consideration given in excess of the total contracted or expected amount;
- W. Either in whole or in part, directly or indirectly, arising out of or resulting from, 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

Wherever used in this Policy in bold face type, the following definitions shall apply.

### A. **Additional Insured** means:

1. any natural person or entity that the **Insured Organization** has expressly agreed in writing to add as an **Additional Insured** under this Policy prior to the commission or occurrence of any act, error or omission for which such person or entity would be provided coverage for under this Policy; and
2. any other person or entity added as an **Additional Insured** by endorsement to this Policy;

but only to the extent the **Insured Organization** would have been liable and coverage would have been afforded under this Policy had such **Claim** been made against the **Insured Organization**.

- B. **Advertising** means material which promotes the product, service or business of the **Insured Organization** or others.
- C. **Application** means all applications, including any attachments thereto, and all other information and materials submitted or specifically referenced 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.
- D. **Assumed Under Contract** means liability assumed by the **Insured Organization** under a written hold harmless or indemnity agreement regarding the content of **Media Material** used in a **Media Communication**, but only as respects acts for which insurance is afforded under Insuring Agreement F.
- E. **Breach Notice Law** means any federal, state, local or foreign statute or regulation that requires notice to persons whose **Personally Identifiable Information** was accessed or reasonably may have been accessed by an unauthorized person.
- F. **Call Center Services** means the provision of a call center to answer calls, from individuals to whom notice of an incident is provided pursuant to Insuring Agreement D.3., during standard business hours for a period of up to ninety (90) days following notification (or longer if required by applicable law or regulation) of such incident.
- G. **Claim** means:
1. a written demand received by any **Insured** for money or services, including the service of a suit or institution of arbitration proceedings;
  2. a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).
  3. with respect to coverage provided under Insuring Agreement E. only, institution of a **Regulatory Proceeding** against any **Insured**; and
  4. a written request or agreement to toll or waive a statute of limitations relating to a potential **Claim** described above.

Multiple **Claims** arising from the same or a series of related or repeated acts, errors or omissions, or from any continuing acts, errors or 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**.

- H. **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 amounts charged or incurred by the **Insured** in assisting the Underwriters or 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.

- I. **Computer Expert Services** means costs for:
  1. a computer security expert to determine the existence and cause of an actual or suspected electronic data breach 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; and
  2. 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 described in 1. above has not been retained, for a computer security expert to provide advice and oversight in connection with the investigation conducted by the PCI Forensic Investigator; and
  3. a computer security expert, up to USD 50,000 (which amount is part of and not in addition to the sublimit of coverage stated in Item 3.B. of the Declarations), to demonstrate the **Insured's** ability to prevent a future electronic data breach as required by a **Merchant Services Agreement**.
- J. **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.
- K. **Computer Systems** means computers, any software residing on such 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.
- L. **Continuity Date** means (i) the date stated in Item 6.B. of the Declarations with respect to the **Named Insured** and any **Subsidiaries** acquired before the date stated in Item 6.B. of

the Declarations; or (ii) with respect to any **Subsidiaries** acquired after the date stated in Item 6.B. of the Declarations, the date the **Named Insured** acquired such **Subsidiary**.

- M. **Control Group** means any principal, partner, corporate officer, director, **Manager**, general counsel (or most senior legal counsel) or risk manager of the **Insured Organization** and any individual in a substantially similar position.
- N. **Credit Monitoring Product** means a product that provides one (1) year of credit file monitoring, plus mailing and other reasonable third party administrative costs associated with offering such product to individuals whose **Personally Identifiable Information** was compromised or reasonably believed to be compromised as a result of a theft, loss or **Unauthorized Disclosure** in an incident that gives rise to notification of such individual pursuant to Insuring Agreement D.3..
- O. **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 for goods or services already provided or contracted to be provided; but this limitation does not apply to any return or offset of fees, charges or commissions that serves as a contractual measure, cap or limitation of liability if such amounts are otherwise covered **Damages** under Insuring Agreements A. or B.;
  3. costs incurred by the **Insured** to correct, re-perform or complete any **Professional Services, Technology Based Services** or **Media Activities**;
  4. taxes or loss of tax benefits;
  5. fines, sanctions or penalties;
  6. punitive or exemplary damages or any damages which are a multiple of compensatory damages, unless insurable by law in any applicable venue that most favors coverage for such punitive, exemplary or multiple damages;
  7. discounts, coupons, prizes, awards or other incentives offered to the **Insured's** customers or clients;
  8. liquidated damages, but only 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; or
  9. any amounts for which the **Insured** is not liable or for which there is no legal recourse against the **Insured**.
- P. **Identity Monitoring Product** means the offering of a product or service that provides up to one (1) year of monitoring of the internet for the possible presence of an individual's **Personally Identifiable Information** that was compromised or reasonably believed to be compromised as a result of theft, loss or **Unauthorized Disclosure** in the incident giving rise to notification of such individual pursuant to Insuring Agreement D.3.



- Q. **Independent Contractor** means any natural person independent contractor who performs labor or service for the **Insured Organization** pursuant to a written contract or agreement, where such labor or service is under the exclusive direction of the **Insured Organization**. The status of an individual as an **Independent Contractor** shall be determined as of the date of an alleged act, error or omission by any such **Independent Contractor**.
- R. **Legal Services** means fees charged by an attorney:
1. to determine the applicability of and actions necessary for the **Insured Organization** to comply with **Breach Notice Laws** due to an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Information**; and
  2. 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 **Legal Services** does not include 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, Expenses and Costs**.
- S. **Loss** means **Damages, Claims Expenses, Privacy Notification Costs, Penalties and PCI Fines, Expenses and Costs**.
- T. **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.
- U. **Media Activities** means **Media Communications** and/or the gathering, collection or recording of **Media Material** for inclusion in any **Media Communication** in the ordinary course of the **Insured Organization's** business.
- V. **Media Communication** means the display, broadcast, dissemination, distribution or release of **Media Material** to the public by the **Insured Organization**.
- W. **Media Material** means words, sounds, numbers, images, graphics or other information in any form, but does not mean computer software or the actual goods, products or services described, illustrated or displayed in a **Media Communication**.
- X. **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.

Y. **PCI Fines, Expenses and Costs** means the direct monetary fines, penalties, reimbursements, fraud recoveries or assessments owed by the **Insured Organization** under the terms of a **Merchant Services Agreement**, but only where such fines, penalties, reimbursements, fraud recoveries or assessments 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 C.1. or C.2.; provided, that the term **PCI Fines, Expenses and Costs** shall not include or mean any charge backs, interchange fees, discount fees or prospective service fees.

Z. **Penalties** means:

1. any civil fine or money penalty payable to a governmental entity that was imposed in a **Regulatory Proceeding** by any 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 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 pursuant to Insuring Agreements C.1., C.2. or C.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 Information** from theft, loss or disclosure, even if it is in response to a regulatory proceeding or investigation.

AA. **Personally Identifiable 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. education records as defined by the Family Educational Rights and Privacy Act (FERPA), which are directly related to an individual's attendance as a student;
6. 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.

**Personally Identifiable Information** does not include publicly available information that is lawfully made available to the general public from government records.

- 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 Law** means a federal, state or foreign statute or regulation requiring the **Insured Organization** to protect the confidentiality and/or security of **Personally Identifiable Information**.
- DD. **Privacy Policy** means the **Insured Organization's** publicly available written statement of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to **Personally Identifiable Information**.
- EE. **Professional Services** means professional services performed for others by or on behalf of the **Insured Organization** for a fee, but does not include **Technology Based Services**, **Media Activities**, any services involving the creation, development, sale, distribution, installation, licensing or manufacturing of **Technology Products**, or work or activities performed by or on behalf of the **Insured Organization** or for the **Insured Organization** as an accountant, architect, surveyor, health care provider, lawyer, insurance or real estate agent or broker, or civil or structural engineer.
- FF. **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 any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity in connection with such proceeding.
- GG. **Retention** means the applicable retention for each **Claim** or incident as specified in Item 4. of the Declarations.
- HH. **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 computer systems that are not owned, operated or controlled by an **Insured**; or
  3. infection of **Computer Systems** by malicious code or transmission of malicious code from **Computer Systems**,

regardless of whether any of the foregoing is a specifically targeted or 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**.

- II. **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 fifteen percent (15%) 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 fifteen percent (15%) of the **Named Insured's** annual revenues for the four quarterly periods directly preceding inception of the **Policy Period**, the provisions of Clause XV., 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.

- JJ. **Technology Based Services** means computer and electronic technology services, including data processing, Internet services, data and application hosting, computer systems analysis, technology consulting and training, custom software programming for a specific client of the **Insured Organization**, computer and software systems installation and integration, computer and software support, and network management services performed by the **Insured**, or by others acting under the **Insured Organization's** trade name, for others for a fee, but shall not mean **Technology Products**.
- KK. **Technology Products** means a computer or telecommunications hardware or software product, or related electronic product, that is created, manufactured or developed by the **Insured Organization** for others, or distributed, licensed, leased or sold by the **Insured Organization** to others, for compensation, including software updates, service packs and other maintenance releases provided for such products.
- LL. **Third Party 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 fully executed written confidentiality agreement or which the **Insured Organization** is legally required to maintain in confidence; however, **Third Party Information** shall not include **Personally Identifiable Information**.
- MM. **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.
- NN. **Unauthorized Disclosure** means the disclosure (including disclosure resulting from phishing) of or access to information in a manner that is not authorized by the **Insured Organization** and is without knowledge, consent or acquiescence of any member of the **Control Group**.

## VII. LIMIT OF LIABILITY

- A. The Policy Aggregate Limit of Liability stated in Item 3.A. of the Declarations (the “**Policy Aggregate Limit of Liability**”) is the Underwriters’ combined total limit of liability for all **Loss** payable under this Policy.

The sublimit of liability stated in Item 3.B. of the Declarations is the aggregate limit of liability payable under this Policy for all **Privacy Notification Costs** covered under Insuring Agreement D. and is part of, and not in addition to, the **Policy Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.C. of the Declarations is the aggregate limit of liability under this Policy for all **Claims Expenses** and **Penalties** covered under Insuring Agreement E. and is part of, and not in addition to, the **Policy Aggregate Limit of Liability**.

The sublimit of liability stated in Item 3.D. of the Declarations is the aggregate limit of liability under this Policy for all **PCI Fines, Expenses and Costs** covered under Insuring Agreement G. and is part of, and not in addition to, the **Policy Aggregate Limit of Liability**.

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 **Loss**, or to undertake or continue defense of any suit or proceeding, after the **Policy Aggregate Limit of Liability** or any other applicable limit of liability has been exhausted by payment of **Loss**, or after deposit of the **Policy Aggregate Limit of Liability** or any other applicable 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**.

## 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, Penalties** or **PCI Fines, Expenses and Costs**.

In the event that **Damages, Claims Expenses, Penalties** or **PCI Fines, Expenses and Costs** arising out of a **Claim** are subject to more than one **Retention**, the applicable **Retention** amounts shall apply to such **Damages, Claims Expenses, Penalties** or **PCI Fines, Expenses and Costs**, provided that the sum of such **Retention** amounts shall not exceed the largest applicable **Retention** amount.

- 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 pay **Privacy Notification Costs**. The **Retention** shall be satisfied by monetary payments by the **Named Insured** of **Privacy Notification Costs**.
- C. Satisfaction of the applicable **Retention** is a condition precedent to the payment by the Underwriters of any amounts 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 of Liability** or any applicable Limit of Liability. The **Named Insured** shall make direct payments within the **Retention** to appropriate other parties designated by the Underwriters.

#### IX. 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 8.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 the Underwriters be given notice of a **Claim** later than the end of the **Policy Period**, the end of the Optional Extension Period (if applicable), or sixty (60) days after the expiration date of the **Policy Period** in the case of **Claims** first made against the **Insured** during the last sixty (60) days of the **Policy Period**.
- B. With respect to Insuring Agreement D. for a legal obligation to comply with a **Breach Notice Law** because of an incident (or reasonably suspected incident) described in Insuring Agreement C.1., C.2. or C.3., such incident or reasonably suspected incident must be reported in writing to the Underwriters through the persons named in Item 8.A. of the Declarations in the form of a telecopy, email or express or certified mail, including specific details of the incident, as soon as practicable during the **Policy Period** after discovery by the **Insured**; provided, 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 covered **Privacy Notification Costs** are incurred 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**.
- C. If during the **Policy Period** the **Insured** 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 8.A. of the Declarations as soon as practicable during the **Policy Period**. Such notice must include:
1. the specific details of the act, error or omission in the provision of **Professional Services, Technology Based Services or Media Activities** or relating to **Technology Products** or a **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 or 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.

- 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 8.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.

#### X. **OPTIONAL EXTENSION PERIOD**

- A. Upon termination of this Insurance for any reason except the non-payment of premium, the **Named Insured** 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 in Item 5. of the Declarations, 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 **Policy Aggregate Limit of Liability** and the exercise of the Optional Extension Period shall not in any way increase such **Policy Aggregate Limit of Liability** or any sublimit of liability. The Optional Extension Period does not apply to Insuring Agreement D.
- 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 8.B. 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.

#### XI. **WARRANTY**

By acceptance of this Policy, all **Insureds** agree that the statements contained in the **Application** are their agreements and representations and that the Underwriters issue this Policy, and assume the risks hereunder, in reliance upon the truth thereof.

#### XII. **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.

### XIII. 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 by this Policy.

### XIV. 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 8.B. 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 customary short rate portion of the full premium set forth in Item 5. of the Declarations.
- 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**, or any circumstance that could reasonably be the basis for a **Claim** or **Loss**, is reported to the Underwriters 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.

### XV. MERGERS AND ACQUISITIONS

#### A. Newly Acquired Subsidiaries

If during the **Policy Period** the **Named Insured** or any **Subsidiary** acquires any entity whose annual revenues are more than fifteen percent (15%) 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 the Underwriters to extend coverage to the entity beyond such sixty (60) day period and agrees to pay any additional premium required by the 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 acts or incidents that occur prior to the date of the consolidation, merger or acquisition. No coverage shall be 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 XV. shall be directed to the Underwriters through the entity named in Item 8.B. of the Declarations.

#### **XVI. 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.

However, notwithstanding the above, the **Insured's** rights under this Policy shall not be prejudiced by any refusal to disclose the identity of any confidential source of information, or to produce any documentation or information obtained in the course of **Media Activities** in respect of which the **Insured** has asserted a claim of reporter's privilege or any other privilege regarding the protection of news-gathering activities.

- 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, select the services and products described in Insuring Agreement D., 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 an admission of liability for purposes of this Clause XVI.C.

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

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

#### **XVIII. 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**.

#### **XIX. 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 estop 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.

#### **XX. 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.

#### **XXI. AUTHORIZATION**

By acceptance of this Policy and the coverage provided hereunder, the **Insureds** agree and acknowledge that (a) the **Named Insured** will act on their behalf with respect to the giving and receiving of any notice pertaining to 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; and (b) the Underwriters shall not bear any liability in connection with the same.

#### **XXII. HEADINGS**

The titles of paragraphs, sections, 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.

#### **XXIII. 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.