



ENTERPRISE PROFESSIONAL SOLUTIONS

THIS IS A CLAIMS MADE AND REPORTED POLICY AND, SUBJECT TO ITS PROVISIONS, APPLIES ONLY TO ANY CLAIM BOTH FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD. CLAIM EXPENSES ARE WITHIN THE LIMIT OF LIABILITY.

PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium and in reliance upon all statements made in the **Application** furnished to the Insurer designated in the Declarations, a stock insurance corporation (the "Insurer"), the Insurer and the **Insureds** agree as follows:

I. COVERAGES

A. INSURING AGREEMENTS

If the Insuring Agreement has been purchased, as indicated in the Declarations, the Insurer will pay on behalf of the **Insured** all sums in excess of the retention and up to the applicable limit of liability that the **Insured** shall become legally obligated to pay:

1. Technology Liability

as **Damages** and **Claim Expenses** resulting from any **Technology Claim** both first made against the **Insured** and reported to the Insurer in writing during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured**, or by someone for whose **Wrongful Act** the **Insured** is legally responsible;

2. Professional Services Liability

as **Damages** and **Claim Expenses** resulting from any **Professional Services Claim** both first made against the **Insured** and reported to the Insurer in writing during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured**, or by someone for whose **Wrongful Act** the **Insured** is legally responsible;

3. Media Liability

as **Damages** and **Claim Expenses** resulting from liability imposed by law or **Assumed under Contract** resulting from any **Media Claim** both first made against the **Insured** and reported to the Insurer in writing during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured**, or by someone for whose **Wrongful Act** the **Insured** is legally responsible;

4. Network Security and Privacy Injury Liability

- a. as **Damages** and **Claim Expenses** resulting from any **Network Damage Claim** both first made against the **Insured** and reported to the Insurer in writing during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured** or by someone for whose **Wrongful Act** the **Insured** is legally responsible; or
- b. as **Damages** (including any **Privacy Regulation Fines**) and **Claim Expenses** resulting from any **Privacy Regulation Proceeding** both first made against the **Insured** and reported to the Insurer in writing during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured** or by someone for whose **Wrongful Act** the **Insured** is legally responsible;

provided that, with respect to paragraphs 1. through 4. above:



ENTERPRISE PROFESSIONAL SOLUTIONS

1. prior to the inception date of this policy or the first such policy issued and continuously renewed by the Insurer, whichever is earlier;
 - a. no **Executive Officer** had knowledge of or could have reasonably foreseen any circumstances which might have resulted in a **Claim**; and
 - b. the **Wrongful Act** or any **Related Wrongful Act** has not been the subject of any notice given under any prior policy; and,
2. the **Wrongful Act** occurred on or after the applicable **Retroactive Date** for each Insuring Agreement as set forth in the Declarations, in Item 3. Coverage Schedule, and prior to the end of the **Policy Period**.

B. PRIVACY EVENT EXPENSE REIMBURSEMENT

If **Privacy Event Expense** Reimbursement coverage has been purchased, as indicated in the Declarations, the Insurer will reimburse the **Insured Entity** for **Privacy Event Expenses** (up to the **Privacy Event Expenses** limit of liability and in excess of the **Privacy Event Expenses** retention) which amounts are incurred within twelve months of the date that the **Insured** reports the **Privacy Event**, and which amounts are consented to by the Insurer (such consent not to be unreasonably withheld):

1. to effect compliance with:
 - a. a **Security Breach Notice Law**; or
 - b. any statute or regulation referenced under the definition of **Privacy Injury** where the **Insured Entity** has been notified that a **Privacy Regulation Proceeding** with respect to such law has been commenced; or
2. to minimize harm to the **Insured Entity's** reputation from such **Privacy Event**.

II. DEFINITIONS

The following defined words shall have the same meaning throughout this **Policy**, whether expressed in the singular or the plural.

Application means all signed applications, any attachments to such applications, other materials submitted therewith or incorporated therein, and any other documents submitted in connection with the underwriting of this Policy by the Insurer, or any other policy underwritten by the Insurer or its affiliates of which this Policy is a direct or indirect renewal or replacement.

Assumed under Contract means liability of others, for **Material** furnished by the **Insured**, that the **Insured** agrees to assume under a hold harmless or indemnity agreement but only to the extent such liability arises out of any **Media Activity**.

Breach of Contract means the unintentional breach of written contracts with a client to provide **Technology Services, Telecommunications Services** or **Professional Services** due to:

- A. such **Technology Services, Telecommunications Services** or **Professional Services** not conforming in all material respects with any written specifications that forms part of the relevant contract and where it is an express term of the contract that the **Technology Services, Telecommunications Services** or **Professional Services** must comply with that specification;
- B. the **Technology Services, Telecommunications Services** or **Professional Services** containing a material defect; or
- C. the **Technology Services, Telecommunications Services** or **Professional Services** failing to meet any implied statutory term concerning necessary quality, safety or fitness.

Claim means:

- A. a written demand for monetary damages or non-monetary relief (including demands for injunctive or declaratory relief); or
 - B. a civil adjudicatory proceeding in a court of law or equity or arbitration, including any appeal therefrom.
- However, a **Claim** does not include any criminal proceeding or investigation or any regulatory proceeding or investigation except if the regulatory proceeding is a **Privacy Regulation Proceeding**.



ENTERPRISE PROFESSIONAL SOLUTIONS

Claim Expenses mean:

- A. fees charged by attorneys designated by the Insurer or by the **Insured** with the written consent of the Insurer; or
- B. all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim** if incurred by the Insurer including, but not limited to, premiums for any appeal bond, attachment bond or similar bond but without any obligation of the Insurer to apply for or furnish any such bond.

However, **Claim Expenses** do not include fees and expenses of independent adjusters or salaries of the Insurer's officials or employees, other than fees and expenses charged by its employed attorneys who may be designated to represent the **Insured** with the **Insured's** prior consent.

Computer Virus means unauthorized computer code that is designed and intended to transmit, infect and propagate itself over one or more **Networks**, and cause:

- A. computer code or programs to perform in an unintended manner;
- B. the deletion or corruption of electronic data or software; or
- C. the disruption or suspension of a **Network**.

Damages mean settlements, judgments or awards (including any award of pre-judgment and post-judgment interest on a judgment) for which the **Insured** is legally obligated to pay on account of a covered **Claim**.

However, **Damages** shall not include:

- A. criminal or civil fines, sanctions, penalties or taxes imposed by law except that this shall not include **Privacy Regulation Proceeding Fines**;
- B. matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed;
- C. any amount for which an **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- D. the return or restitution of fees, costs or expenses paid to the **Insured**, disgorgement of profits or lost investment income;
- E. the **Insured's** production costs, or the **Insured's** cost of reprinting, recalling, recovering, shipping, correcting, reprocessing, restoring, repairing, replacing, or reproducing erroneous, damaged or lost tangible property or **Material**;
- F. funds, monies, or securities that an **Insured** transferred or failed to transfer; or
- G. liquidated damages pursuant to a written contract or agreement in excess of the **Insured's** liability caused by a **Wrongful Act**.

Notwithstanding the foregoing paragraph, **Damages** shall include (subject to this Policy's other terms, conditions and limitations, including but not limited to exclusions relating to profit or advantage, deliberate fraud or deliberate criminal acts), punitive, exemplary and multiplied damages. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages. As used herein, "applicable law" means the law of any of the following jurisdictions:

- 1. where the **Claim** seeking such **Damages** is brought or where such **Damages** are awarded or imposed;
- 2. where the **Wrongful Act** giving rise to the **Claim** occurred;
- 3. where the **Insureds** subject to such **Damages** are incorporated, have their principal place of business or reside; or
- 4. where the Insurer is incorporated or has its principal place of business.

Denial of Service Attack means an attack executed over one or more **Networks** or the internet, which attack is specifically designed and intended to disrupt the operation of a **Network** and render the **Network** inaccessible to authorized users.

Domestic Partner means any spouse and any person qualifying as a **Domestic Partner** under any federal, state or local laws or under the **Insured Entity's** employee benefit plans.

ERISA or any Similar Act means the Employee Retirement Income Security Act of 1974, as amended, or any similar common or statutory law of the United States, Canada or their states, territories or provinces or any other jurisdiction anywhere in the world.

Executive Officer means:



ENTERPRISE PROFESSIONAL SOLUTIONS

- A. any duly elected or appointed director, officer, managing partner, general partner or other executive of the **Insured Entity**;
- B. an official in an **Insured Entity** organized and operated in a **Foreign Jurisdiction** who is holding a position that is equivalent to an executive position listed in A.

Foreign Jurisdiction means any jurisdiction, other than the United States or any of its territories or possessions.

Insured means the **Insured Entity** and:

- A. any person who was, is or becomes an employee (including leased and temporary employees), director, officer, trustee, manager, member or partner of the **Insured Entity** but solely with respect to a **Wrongful Act** committed within the scope of such individual's duties on behalf of the **Insured Entity**;
- B. an independent contractor of the **Insured Entity** but solely with respect to a **Wrongful Act** committed within the scope of such individual's duties on behalf of the **Insured Entity**; or
- C. an individual of an **Insured Entity** organized and operated in a **Foreign Jurisdiction** who is holding a position that is equivalent to an executive position listed in A above.

Insured Entity means the **Named Insured** and any **Subsidiary** including any such entity as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.

Internet Services means:

- A. services as an internet access provider, application service provider, domain name registrar, domain name register, search engine, web browser;
- B. web hosting, e-commerce transaction services, electronic exchange and auction services, internet media services, managed and network security services, public key infrastructure services and web portal services; or
- C. development, design and maintenance of chat rooms, websites, e-mail services, bulletin boards.

Management Control means:

- A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of; or
- B. having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **Insured Entity**, to elect, appoint or designate a majority of:

the Board of Directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company, the general partners of a limited partnership or the partnership managers of a general partnership or the **Foreign Jurisdiction** equivalent of any such entity.

Material means the content of any media including software, software code and source code.

Media Activity means any actual or alleged act, error or omission occurring in the course of:

- A. gathering, acquiring, obtaining, researching, developing, editing, preparing, filming, videotaping and recording **Material**; or
- B. the dissemination or utterance of **Material**, by any means, including:
 - 1. publishing, producing, printing, advertising, marketing, promoting and exhibiting;
 - 2. broadcasting, telecasting, webcasting, cablecasting; or
 - 3. syndicating, selling, leasing, licensing, distributing, serializing or releasing;through any medium, including but not limited to wireless or electronic medium.

Media Claim means a **Claim** arising out of **Media Activity** and alleging:

- A. any form of defamation or other tort related to disparagement or harm to the character, reputation or feelings of any person or organization, including libel, slander, product disparagement, trade libel, negligent or intentional infliction of emotional distress, outrage or outrageous conduct;
- B. any form of invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion and commercial appropriation of name or likeness;
- C. false arrest, detention or imprisonment or malicious prosecution;
- D. wrongful entry or eviction, trespass, eavesdropping or other invasion of the right of private occupancy;
- E. infringement of copyright, title, slogan, logo, trademark, trade name, trade dress, service mark or service name;



ENTERPRISE PROFESSIONAL SOLUTIONS

- F. plagiarism, piracy, misappropriation of ideas under implied contract or other misappropriation of property rights, ideas or information; or
- G. unfair competition or unfair trade practices alleged in conjunction with A. through F. above, including but not limited to dilution, confusion, deceptive trade practices or unfair trade practices, civil actions for consumer fraud, false, disruptive or misleading advertising or misrepresentation in advertising.

However, **Media Claim** does not include any **Claim** alleging **Privacy Injury**.

Merchandizing Activities means manufacture, production or distribution of goods (other than media) which contain intellectual property.

Named Insured means any entity named in Item 1. in the Declarations.

Network means a party's local or wide area network owned or operated by or on behalf of or for the benefit of that party, provided, however, **Network** shall not include the internet, telephone company networks, or other public infrastructure network.

Network Damage means:

- A. the unscheduled and unplanned inability of an authorized user to gain access to a **Network**;
- B. the **Unauthorized Access** to, destruction, addition to, deletion, alteration, removal, disclosure or copying of any third-party's information residing on the **Insured Entity's Network**, including trade secrets or other intellectual property of such third party;
- C. the suspension or interruption of any **Network**;
- D. the transmission of a **Computer Virus** to any **Network**; or
- E. a **Denial of Service Attack**.

Network Damage Claim is any **Claim**, other than a **Privacy Regulation Proceeding**, alleging **Network Damage**, **Privacy Injury** or violation of any **Security Breach Notice Law**.

Nonpublic Personal Information means information not available to the general public from which an individual may be identified, including without limitation, an individual's name, address, telephone number, social security number, account relationships, account numbers, account balances, and account histories.

Occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Personal/Proprietary Injury means injury arising out of one or more of the following offenses:

- A. false arrest, detention or imprisonment, or malicious prosecution;
- B. wrongful entry or eviction, or other invasion of the right of private occupancy;
- C. libel, slander, or other forms of defamation;
- D. plagiarism, piracy, or misappropriation of ideas under implied contract, or misappropriation of intellectual property or breach of confidentiality;
- E. invasion, infringement or interference with the rights of privacy or publicity; or
- F. infringement of copyright, title, slogan, trademark, trade name, trade dress, service mark or service name, provided however, **Personal/Proprietary Injury** does not include any such injury arising out of **Media Activity**.

Policy Period means the period from the effective date of this Policy to the Policy expiration date stated in Item 2. in the Declarations, or its earlier cancellation date.

Pollutants means any substance exhibiting hazardous characteristics as is or may be defined or identified on any list of hazardous substances issued by the United States Environmental Protection Agency or any state, local or foreign counterpart. **Pollutants** also means, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed), as well as any air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos, or asbestos products or any noise.

Privacy Event means any **Wrongful Act** which in the reasonable opinion of an **Executive Officer** did cause or is reasonably likely to result in the disclosure of **Nonpublic Personal Information**.



ENTERPRISE PROFESSIONAL SOLUTIONS

Privacy Event Expenses means all reasonable and necessary fees, costs and expenses incurred by the **Insured Entity** in connection with a **Privacy Event**.

Privacy Injury means any unauthorized disclosure of, ability or inability to access, or inaccuracy with respect to, **Nonpublic Personal Information** in violation of:

- A. the **Insured Entity's Privacy Policy**; or
- B. any federal, state, foreign or other law, statute or regulation governing the confidentiality, integrity or accessibility of **Nonpublic Personal Information**, including but not limited to, the Health Insurance Portability and Accountability Act of 1996, Gramm-Leach-Bliley Act, Children's Online Privacy Protection Act, or the EU Data Protection Act.

Privacy Policy means the **Insured Entity's** policies in written or electronic form that:

- A. govern the collection, dissemination, confidentiality, integrity, accuracy or availability of **Nonpublic Personal Information**; and
- B. the **Insured Entity** provides to its customers, employees or others who provide it with **Nonpublic Personal Information**.

Privacy Regulation Fines means civil fines, sanctions or penalties imposed under any **Privacy Regulation Proceeding** for a violation of any **Security Breach Notice Law** or any law, statute or regulation referenced under the definition of **Privacy Injury**.

Privacy Regulation Proceeding means a civil, administrative or regulatory proceeding against an **Insured** by a federal, state or foreign governmental authority alleging violation of any law referenced under the definition of **Privacy Injury** or a violation of a **Security Breach Notice Law**.

Professional Services means those services specified in the attached "Professional Services Endorsement".

Professional Services Claim means any **Claim** arising out of a **Wrongful Act** in the performance of **Professional Services**.

Property Damage means:

- A. physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - B. loss of use of tangible property that is not physically damaged which is caused by an **Occurrence**.
- Tangible property does not include electronic data. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Related Claims mean all **Claims** based upon or arising out of a single **Wrongful Act** or any **Related Wrongful Acts**.

Related Wrongful Act mean all **Wrongful Acts** that are temporally, logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.

Retroactive Date means the date set forth in Item 3. in the Declarations.

Security Breach means the failure of any **Network** hardware, software, or firmware, the function or purpose of which is to:

- A. identify and authenticate parties prior to accessing the **Insured Entity's Network**;
- B. control access to the **Insured Entity's Network** or monitor and audit such access;
- C. protect against **Computer Virus**;
- D. defend against **Denial of Service Attacks** or co-optation of the **Insured Entity's Network** to perpetrate a **Denial of Service Attack** against others; or
- E. ensure confidentiality, integrity and authenticity of information on the **Insured Entity's Network**.



ENTERPRISE PROFESSIONAL SOLUTIONS

Security Breach Notice Law means any statute or regulation that requires an entity storing **Nonpublic Personal Information** on its **Network** to provide notice to specified individuals of any actual or potential **Security Breach** with respect to such **Nonpublic Personal Information**, including Sections 1789.29 and 1798.82 – 1798.84 of the California Civil Code (formerly S.B. 1386).

Subsidiary means any entity in which the **Named Insured** has **Management Control** directly or indirectly through one or more other **Subsidiaries**:

- A. on or before the effective date of this Policy; or
- B. after the effective date of this Policy by reason of being created or acquired by the **Insured Entity** after such date, if and to the extent coverage with respect to the entity is afforded pursuant to Section XVII.

Takeover means:

- A. the acquisition by another entity or person, or group of entities or persons acting in concert, of:
 - 1. the ownership or control of voting stock of the **Named Insured** resulting in such entity, person or group owning or controlling more than 50% of the voting stock of the **Named Insured**; or
 - 2. assets of the **Named Insured** resulting in such entity, person or group owning more than 50% of the total consolidated assets of the **Named Insured** as of the date of the **Named Insured's** most recent audited consolidated financial statement prior to such acquisition;
- B. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity; or
- C. the consolidation of the **Named Insured** with another entity.

Technology Claim means a **Claim** arising out of a **Wrongful Act** in the performance of **Technology Services** or **Telecommunication Services** or resulting in the failure of the **Insured's Technology Products** to perform the function or serve the purpose intended.

Technology Products means:

- A. computer hardware including products, components and peripherals;
- B. computer software, computer firmware and data; or
- C. electronic, telecommunications and wireless equipment, created, designed, manufactured, sold, licensed, leased, handled or distributed by the **Insured Entity** or on the **Insured Entity's** behalf.

Technology Services means:

- A. analysis, design, integration and conversion of computer systems, computer networks and electronic systems;
- B. designing, developing, programming, installing, servicing, supporting, maintaining and repairing computer software, computer code and computer firmware;
- C. designing, installing, integrating, servicing, supporting, maintaining and repairing computer hardware;
- D. education and training in the use of computer hardware and/or computer software;
- E. information services;
- F. data processing, management or warehousing;
- G. hosting, managing or administering the computer systems or facilities of another;
- H. **Internet Services**;
- I. project management related to A. through H. above or on **Technology Products**; or
- J. consulting on any of A. through I. above or on **Technology Products**.

Telecommunication Services means:

- A. local, regional and long distance wireline and wireless dial tone access and switched services, including value added services such as directory assistance, toll free services, voice mail, call forwarding, call waiting and caller ID;
- B. ground based satellite communications services;
- C. DSL, ISDN and VOIP services;
- D. video conferencing services;
- E. paging services;
- F. basic wire maintenance;
- G. 911 emergency services;



ENTERPRISE PROFESSIONAL SOLUTIONS

- H. directory services and operator assistance;
- I. analysis, design, integration and conversion of telecommunication systems;
- J. directory publishing;
- K. project management related to A. through J. above; or
- L. consulting on any of A. through K. above.

Unauthorized Access means any accessing of the **Insured Entity's Network** or information residing on the **Insured Entity's Network** by unauthorized persons or by authorized persons accessing such information in an unauthorized manner.

Wrongful Act:

- A. With respect to Insuring Agreements 1. and 2. only, a **Wrongful Act** means any actual or alleged act, error, omission, neglect or breach of duty, including any disclosure of a third party's trade secrets or other intellectual property, **Privacy Injury, Personal/Proprietary Injury or Breach of Contract:**
 - 1. committed solely in the conduct of **Professional Services, Technology Services or Telecommunication Services** for others for a fee; or
 - 2. resulting in the failure of the **Insured's Technology Products** to perform the function or serve the purpose intended.
- B. With respect to Insuring Agreement 3. only, **Wrongful Act** means **Media Activity**.
- C. With respect to Insuring Agreement 4. only, **Wrongful Act** means any actual or alleged act, error, omission, neglect or breach of duty that results in any **Security Breach**.

III. EXCLUSIONS APPLICABLE TO ALL CLAIMS

This Policy does not apply to any **Claim**:

A. Bodily Injury/Property Damage

for any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, libel, slander or defamation of any person, or **Property Damage**, except that this exclusion shall not apply to:

- 1. allegations of emotional distress, mental anguish, libel, slander or defamation by a claimant in a **Media Claim**;
- 2. the wrongful infliction of emotional distress or mental anguish arising out of **Privacy Injury**; or
- 3. allegations of libel, slander or defamation by a claimant in a **Technology Claim** or a **Professional Services Claim**;

B. ERISA or any Similar Act

for any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by **ERISA or any Similar Act**;

C. Discrimination/Harassment

for any actual or alleged wrongful employment practice, discrimination, humiliation, harassment or misconduct that includes, but shall not be limited to, **Claims** based upon an individual's race, creed, color, age, sex, national origin, religion, handicap, marital status or sexual preference;

D. Pollution

based upon or arising out of: any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**; any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or any actual or alleged **Property Damage**, or bodily injury, sickness, disease or death of any person, or financial loss to the **Insured Entity**, their security holders, or their creditors resulting from any of the aforementioned matters;

E. Deliberate Acts/Commingling or Misappropriation of Funds

based upon or arising out of the committing of any deliberate fraudulent or deliberate criminal act by the **Insured** or out of the commingling, misappropriation or misuse of funds if a judgment, ruling or other finding of fact in any proceeding establishes that such act, or such commingling, misappropriation or misuse was committed. If such act, or such commingling, misappropriation or misuse is so determined to have been committed, the **Insured** will reimburse the Insurer for all **Claim Expenses** paid. The Insurer will not defend any criminal act which was the subject of a criminal prosecution in which the **Insured** was found guilty or pleaded guilty, *nolo contendere* or no contest. Criminal proceedings are not covered under this Policy regardless of the allegations made against any **Insured**.

For purposes of determining the applicability of this Exclusion:

1. the facts pertaining to and knowledge possessed by any natural person **Insured** shall not be imputed to any other natural person **Insured**; and
2. only facts pertaining to and knowledge possessed by any **Executive Officer** shall be imputed to the **Insured Entities**.

F. Claims by Insureds

by or on behalf of any **Insured** in any capacity provided, however that this Exclusion shall not apply to:

1. any **Claim** that is in the form of a crossclaim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy;
2. any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver or rehabilitator for an **Insured Entity** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator; or
3. any **Network Damage Claim** that is by an employee and alleges **Privacy Injury** resulting from the unauthorized disclosure of such employee's **Nonpublic Personal Information**;

G. Owned Entity

made against an **Insured** by any entity, if at the time of the **Wrongful Act** giving rise to such **Claim**:

1. any **Insured** controlled, owned, operated or managed such entity; or
2. any **Insured** was an owner, partner, director, officer or employee of such entity;

For the purpose of this exclusion, a 5% or more owner of the voting stock of a publicly held corporation or a 40% or more owner of the voting stock of a privately held corporation shall be deemed to own such entity;

H. Securities Claims

based upon or arising out of:

1. the filing of any registration statement under the Securities Acts of 1933, or the Securities Exchange Act of 1934, any State Blue Sky Law, or any other state or local securities law; or
2. the Securities Act of 1933, the Securities and Exchange Act of 1934, rules or regulations of the Securities Exchange Commission under either or both acts, similar securities laws or regulations of state, or any laws of any state relating to any transaction arising out of, involving, or relating to the public offering of securities;

I. Unfair Competition/Antitrust Claims/RICO Claims

based upon or arising out of:

1. unfair competition, dilution, deceptive trade practices, civil actions for consumer fraud, charges of price fixing, monopolization or restraint of trade;
2. any actual or alleged violation of:



ENTERPRISE PROFESSIONAL SOLUTIONS

- a. the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;
 - b. the Racketeer Influenced and Corrupt Organizations Act;
 - c. any rules or regulations promulgated under or in connection with the above statutes, or any similar provision of any state, federal or local statutory law or common law;
3. false or deceptive advertising or misrepresentation in advertising, except that paragraphs 1. and 3. do not apply to any **Media Claim**;

J. **Patent Infringement**

based upon or arising out of actual or alleged infringement of patent;

K. **War**

based upon or arising out of:

1. war, including undeclared or civil war;
2. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
3. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these;

L. **Trade Secrets**

based upon or arising out of actual or alleged misappropriation of trade secrets except for **Network Damage Claims**;

M. **Lotteries/Sweepstakes/Over-redemption**

based upon or arising out of price discounts, prizes, awards, coupons or any other valuable consideration given in excess of the total contracted or expected amount;

N. **Contractual Liability**

based upon or arising out of:

1. liability of others assumed by an **Insured** under any oral or written contract or agreement; or
2. an **Insured's** actual or alleged liability under any oral or written contract or agreement, except that this exclusion does not apply to liability that would have existed in the absence of such contract or agreement, **Breach of Contract** or to any **Media Claim**;

O. **Injunctive Relief**

for the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement. However, the Insurer shall provide a defense for any **Claim** seeking injunctive relief. Such defense will not waive any of the Insurer's rights under this Policy;

P. **Licensing Organization**

involving, by, or on behalf of or for the benefit of any licensing organization, including but not limited to ASCAP, SESAC or BMI;

Q. **Satellite Failure**

based upon or arising out of the failure of any satellite.



ENTERPRISE PROFESSIONAL SOLUTIONS

IV. EXCLUSIONS APPLICABLE TO TECHNOLOGY CLAIMS AND PROFESSIONAL SERVICES CLAIMS

This Policy does not apply to any **Technology Claim** or **Professional Services Claim**:

A. Support or Maintenance

based upon or arising out of the intentional discontinuance or cessation of the provision, support or maintenance of any **Technology Products**;

B. Mechanical or Electrical Failure

based upon or arising out of any mechanical or electrical failure caused by a third party, acting independently of the **Insured**, or by an event outside of the **Insured Entity's** control, including any electrical power interruption or surge, brownout, blackout, short circuit, over voltage, induction or power fluctuations;

C. Withdrawal/Recall

based upon or arising out of the withdrawal or recall of electronic products or systems or of work compiled by or on behalf of any **Insured**, or any property of which such products or work form a part. However, this exclusion will not apply to **Claims** by third parties caused solely by "loss of use" due to a **Wrongful Act** committed by the **Insured**. As used herein, "loss of use" means the inability to use or access such electronic products, systems, work or property resulting from withdrawal or recall of such products, systems, work or property;

D. Spam

based upon or arising out of:

1. any actual or alleged violation of any federal or state anti-spam statute or regulation; or
2. the dissemination of unsolicited electronic communications to multiple third parties;

E. Media Claims/Network Damage Claims/Privacy Regulation Proceeding

based upon or arising out of any **Media Claim**, **Network Damage Claim** or any **Privacy Regulation Proceeding**.

V. EXCLUSIONS APPLICABLE TO MEDIA CLAIMS

This Policy does not apply to any **Media Claim** made against the **Insured**:

A. Ownership of Material

based upon or arising out of contractual rights to, or the ownership of, **Material** except to the extent such **Claim** is based upon or arises out of plagiarism;

B. Merchandizing Activities

based upon or arising out of **Merchandizing Activities**;

C. Technology Claims/Professional Services Claims/Network Damage Claims/Privacy Regulation Proceeding

based upon or arising out of any **Technology Claim**, **Professional Services Claim**, **Network Damage Claim** or any **Privacy Regulation Proceeding**.

VI. EXCLUSIONS APPLICABLE TO NETWORK DAMAGE CLAIMS/PRIVACY REGULATION PROCEEDINGS

This Policy does not apply to any **Network Damage Claim** or any **Privacy Regulation Proceeding**:

A. Governmental Actions

based upon or arising out of any action or order by any domestic or foreign law enforcement, administrative, regulatory or judicial body or other governmental authority, to ban, limit or restrict access to, or provide access to, or intercept, confiscate, monitor or analyze, an **Insured Entity's Network** or any data, software or other information stored or processed on, or transmitted to or from, an **Insured Entity's Network**, whether authorized by the **Insured Entity** or not, including without limitation, interception, monitoring, or analysis by the NSA, CIA or FBI, or under the Foreign Intelligence Surveillance Act, the USA Patriot Act or any other domestic or foreign law, regulation or order;

B. Guarantees, Representations and Failure to Perform

based upon or arising out of:

1. inaccurate, inadequate or incomplete description of the price of goods, products or services;
2. failure of goods, products or services to conform to an advertised quality or performance; or
3. the **Insured Entity's** cost guarantees, cost representations, contract price, estimates of probable costs or cost estimates being exceeded;

C. Software

based upon or arising out of the inability to use or lack of performance of software programs:

1. due to expiration, cancellation, withdrawal or failure to maintain or support;
2. that have not yet been released from their development stage, passed all test runs or proven successful in applicable daily operations; or
3. that result from the **Insured Entity's** modification of software programs in violation of any software license agreement, including but not limited to, violation of license provisions regarding modification that invalidate a warranty;

D. Video Game Property

based upon or arising out of any theft of computer or video game points, earnings, awards or other intangible property related to computer or video games;

E. Service Interruptions

based upon or arising out of any:

1. service interruption by or on behalf of any entity, other than the **Insured Entity**, that provides third parties with access to the internet or any telecommunications service provider or any application service provider; or
2. partial or total electrical failure including electrical power interruption, surge, brownout or blackout; or interruptions or outages to any other utilities or elements of infrastructure, including gas, water, telephone (on-line, wireless or other), cable or satellite services,

including, but not limited to, planned outages or reductions in service involving items identified in subsections 1. and 2. above;

F. Technology Claims/Professional Services Claims/Media Claims

based upon or arising out of any **Technology Claim**, **Professional Services Claim** or any **Media Claim**.

VII. LIMITS OF LIABILITY/RETENTION**A. Policy Aggregate**

The amount set forth as the Policy Aggregate Limit of Liability in Item 3.a. in the Declarations shall be the maximum aggregate limit of liability of the Insurer for all **Damages** and **Claims Expenses** and all **Privacy Event Expenses** under this Policy, regardless of the number of **Insureds, Claims** made, or persons or entities bringing such **Claims**. The Scheduled Limits of Liability set forth in the Coverage Schedule in the Declarations are sub-limits which further limit and do not increase the Insurer's limit of liability under this Policy Aggregate Limit. The limits of liability set forth in paragraphs B, C, D, E and F below are subject always to this Policy Aggregate.

B. Insuring Agreement 1 – Technology Liability**1. Each Technology Claim**

Subject to the **Technology Claims** Aggregate, the amounts set forth in the Declarations, in Item 3.b. of the Coverage Schedule, is the limit of liability for all **Damages** and **Claim Expenses** for each **Technology Claim**.

2. All Technology Claims in the Aggregate

The amounts set forth in the Declarations, in Item 3.b. of the Coverage Schedule, is the limit of liability for all **Damages** and **Claim Expenses** for all **Technology Claims** combined.

C. Insuring Agreement 2 – Professional Services Liability**1. Each Professional Services Claim**

Subject to the **Professional Services Claims** Aggregate, the amounts set forth in the Declarations, in Item 3.c. of the Coverage Schedule, is the limit of liability for all **Damages** and **Claim Expenses** for each **Professional Services Claim**.

2. All Professional Services Claims in the Aggregate

The amounts set forth in the Declarations, in Item 3.c. of the Coverage Schedule, is the limit of liability for all **Damages** and **Claim Expenses** for all **Professional Services Claims** combined.

D. Insuring Agreement 3 – Media Liability**1. Each Media Claim:**

Subject to the **Media Claims** Aggregate, the amounts set forth in the Declarations, in Item 3.d. of the Coverage Schedule, is the limit of liability for all **Damages** and **Claim Expenses** for each **Media Claim**.

2. All Media Claims in the Aggregate

The amounts set forth in the Declarations, in Item 3.d. of the Coverage Schedule, is the limit of liability for all **Damages** and **Claim Expenses** for all **Media Claims**.

E. Insuring Agreement 4 – Network Security and Privacy Injury Liability**1. Each Network Damage Claim**



ENTERPRISE PROFESSIONAL SOLUTIONS

Subject to the **Network Damage Claims** Aggregate, the amounts set forth in the Declarations, in Item 3.e. of the Coverage Schedule, is the limit of liability for all **Damages** and **Claim Expenses** for each **Network Damage Claim**.

2. **All Network Damage Claims** in the Aggregate

The amount set forth in the Declarations, in Item 3.e. of the Coverage Schedule, is the limit of liability for all **Damages** and **Claim Expenses** for all **Network Damage Claims**.

3. **Each Privacy Regulation Proceeding**

The amount set forth in the Declarations, in Item 3.e. of the Coverage Schedule, is the limit of liability for all **Damages** and **Claim Expenses** for each **Privacy Regulation Proceeding**.

4. **All Privacy Regulation Proceedings** in the Aggregate

The amount set forth in the Declarations, in Item 3.e. of the Coverage Schedule, is the limit of liability for all **Damages** and **Claim Expenses** for all **Privacy Regulation Proceedings**.

5. **Privacy Regulation Fines Sublimit of Liability**

The amount set forth in the Declarations, in Item 3.e. of the Coverage Schedule, is the limit of liability for all **Privacy Regulation Fines** in connection with each **Privacy Regulation Proceeding**, which limit is a sublimit of, and not in addition to, the Each **Privacy Regulation Proceeding** limit of liability.

F. All Privacy Event Expenses in the Aggregate

The amount set forth in the Declarations in Item 3.f. of the Coverage Schedule is the limit of liability for all **Privacy Event Expenses** for all **Privacy Events**.

G. Retentions

1. **Insuring Agreement Retentions**

A separate retention applies to each Insuring Agreement as indicated in Item 3. of the Coverage Schedule in the Declarations. The Insurer shall only be liable for the amount of **Damages** and **Claim Expenses** arising from each **Claim** which is in excess of the applicable retention amounts. The retention amounts specified in the Declarations shall apply to **Damages** and **Claim Expenses** arising from each **Claim**. The retentions shall be uninsured. The Insurer will have no obligation to pay all or any portion of any applicable retention. In the event more than one retention applies to any **Claim**, the maximum total retention amount applicable to such **Claim** shall be the highest of such applicable retentions.

Notwithstanding the forgoing, a separate retention, as set forth in the Coverage Schedule in the Declarations, applies to all **Privacy Regulation Fines** assessed in connection with each **Privacy Regulation Proceeding**. The **Privacy Regulation Proceeding** retention shall continue to apply with respect to all **Damages** other than **Privacy Regulation Fines**.

2. **Privacy Event Expenses Reimbursement Retention**

The Insurer shall only be liable for reimbursement of reasonable and necessary fees, costs and expenses arising from all **Privacy Events** up to the **Privacy Event Expenses** retention amount stated in Item 3. of the Coverage Schedule in the Declarations.

H. Related Claims and Related Privacy Events



ENTERPRISE PROFESSIONAL SOLUTIONS

1. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** shall be considered as one **Claim** which shall be deemed to have been first made on the earlier of:
 - a. the date on which the earliest such **Claim** was first made; or
 - b. the first date valid notice was given by the **Insureds** to the Insurer under this Policy of any **Wrongful Act** or under any prior policy of any **Wrongful Act** or any fact, circumstance, situation, event or transaction which underlies any such **Claim**.
2. More than one **Privacy Event** involving the same **Wrongful Act** or **Related Wrongful Acts** shall be considered as one **Privacy Event** which shall be subject to the **Privacy Event** Limit applicable to the earliest such **Privacy Event** reported to the Insurer under this Policy or under any prior policy.

I. Multiple Insureds, Claims and Claimants

The limits of liability shown in the Declarations and subject to the provisions of this Policy is the amount the Insurer will pay for **Damages** and **Claim Expenses** regardless of the number of **Insureds, Claims** made or persons or entities making **Claims**.

VIII. SETTLEMENT/DEFENSE OF CLAIMS

A. Defense

The Insurer shall have the right and duty to defend in the **Insured's** name and on the **Insured's** behalf a **Claim**, other than a **Privacy Regulation Proceeding**, even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Insurer has the right to make such investigation and conduct negotiations and enter into such settlement of any **Claim** as the Insurer deems necessary. The **Insureds** and not the Insurer have the duty to defend any **Privacy Regulation Proceedings**. The Insurer shall be entitled to effectively associate in the defense and the negotiation of any settlement of any **Privacy Regulation Proceeding** that involves or appears reasonably likely to involve the Insurer.

B. Consent to Settlement

The Insurer shall not settle any **Claim** without the prior written consent of the **Named Insured**. If however, the **Named Insured** refuses to consent to such settlement or compromise recommended by the Insurer and agreed to by the claimant, the Insurer's duty to defend shall then cease and the **Named Insured** shall thereafter at the **Named Insured's** own expense negotiate or defend such **Claim** independently of the Insurer, and the Insurer's liability shall be limited to the amount of **Damages** for which the **Claim** could have been settled, if such recommendation was consented to, and for all **Claim Expenses** incurred up to the time of such refusal.

C. Exhaustion of Limits

The Insurer shall not be obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle a **Claim** after the applicable limit of liability has been exhausted by payment of **Damages** or **Claim Expenses**, or any combination thereof. In such case, the Insurer shall have the right to withdraw from the further investigation, defense, payment or settlement of such **Claim** by tendering control of said investigation, defense or settlement of the **Claim** to the **Insured**.

IX. NOTICE OF CLAIMS/NOTICE OF CIRCUMSTANCES/DATE OF CLAIM

A. Notice of Claim

The **Insured**, as a condition precedent to the obligations of the Insurer shall give written notice to the Insurer as soon as reasonably possible during the **Policy Period** of any **Claims**. The Insurer agrees with the **Insured** that the **Insured** may have up to, but not to exceed, sixty (60) days after the Policy expiration



ENTERPRISE PROFESSIONAL SOLUTIONS

to report to the Insurer a **Claim** made against the **Insured** during the **Policy Period** if the reporting of such **Claim** is as soon as reasonably possible.

B. Notice of Circumstance

If during the **Policy Period** the **Insureds** first become aware of any facts or circumstances which may reasonably be expected to give rise to a **Claim** and during such **Policy Period** give written notice to the Insurer of:

1. the allegations anticipated as the basis of the potential **Claim** and the names of any potential claimants;
2. the identity of the specific **Insureds** allegedly responsible for such specific facts and circumstances;
3. the consequences which have resulted or may result from such specific facts and circumstances;
4. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific facts and circumstances; and
5. the circumstances by which **Insureds** first became aware of such specific facts and circumstances,

then any such covered **Claim** which is subsequently made and which arises out of such facts and circumstances shall be deemed to have been first made against the **Insured** and reported to the Insurer by the **Insureds** at the time such written notice was received by the Insurer.

C. Pre-Claims Assistance

Until the date a **Claim** is made, the Insurer may pay for all costs or expenses it incurs, at its sole discretion, as a result of investigating a circumstance that the **Insured** reports in accordance with Paragraph B, Notice of Circumstance, above. Such costs and expenses are outside the limits or liability and not subject to the retention.

D. When a Claim is Deemed Made

Except as provided in B. above, a **Claim** shall be deemed made:

1. in the case of a written demand for monetary damages or non-monetary relief, on the earlier of the **Insured's** or Insurer's receipt of notice of such demand;
2. in the case of a civil proceeding in a court of law or equity or arbitration, on the date of service upon or other receipt by any **Insured** of a complaint against the **Insured** in such proceeding or arbitration; or
3. in the case of a **Privacy Regulation Proceeding**, on the date of receipt by such **Insured** of a written notice from the investigating authority identifying such **Insured** as an individual or entity against whom a formal proceeding may be commenced.

E. To Whom Notices are Sent

The **Insureds** shall give written notice to the Insurer under this Policy as specified in Item 5. in the Declarations. If mailed, the date the Insurer receives such notice shall constitute the date such notice was given. Proof of mailing shall be sufficient proof of notice.

X. CANCELLATION

A. Insurer's Right to Cancel

The Insurer shall not cancel this Policy except for non-payment of any premium when due. The Insurer shall provide to the **Named Insured** written notice of such cancellation stating when, not less than fifteen (15) days thereafter, such cancellation shall be effective, except that non-payment of premium due at inception of this Policy will result in the policy being cancelled effective as of the inception date.

B. Named Insured's Right to Cancel



ENTERPRISE PROFESSIONAL SOLUTIONS

The **Insureds** grant the exclusive authority to cancel this Policy to the **Named Insured**. The **Named Insured** may cancel this Policy by providing the Insurer written notice stating when thereafter such cancellation shall be effective. The mailing or delivery of such notice shall be sufficient. The unearned premium shall be computed in accordance with customary short rate provisions and premium adjustment may be made at the time cancellation is effected or as soon as practicable.

XI. TERRITORY

Coverage shall apply to **Claims** made and **Wrongful Acts** committed worldwide.

XII. APPLICATION

The **Insureds** represent and acknowledge that the statements contained in the **Application** and any materials submitted or required to be submitted therewith (which shall be maintained on file by the Insurer and be deemed attached to and incorporated into this Policy as if physically attached), are true and:

- A. are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy; and
- B. shall be deemed material to the acceptance of this risk or the hazard assumed by the Insurer under this Policy.

This Policy is issued in reliance upon the truth of such representations.

In the event the statements, representations or information in the **Application**, including materials submitted or required to be submitted therewith, contains any misrepresentation or omission which materially affects either the acceptance of the risk or the hazard assumed by the Insurer under this Policy this Policy shall be null and void.

XIII. OTHER INSURANCE

If any **Claim** is insured under any other insurance, this Policy shall apply only as excess over any other valid and collectible insurance unless such other insurance is written only as specific excess insurance over the limit of liability provided by this Policy. This Policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this Policy may be obligated to pay **Damages** or **Claim Expenses**.

XIV. ESTATES, LEGAL REPRESENTATIVES AND DOMESTIC PARTNERS

The estates, heirs, legal representatives, assigns and any **Domestic Partner** of a natural person **Insured** shall be considered **Insureds** under this Policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a **Domestic Partner**, where such **Claim** seeks **Damages** from marital community property, jointly held property or property transferred from such **Insured** to the **Domestic Partner**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, assign, **Domestic Partner**. All terms and conditions of this Policy, including without limitation the retention, applicable to **Damages** or **Claim Expenses** incurred by the **Insured** shall also apply to **Damages** and **Claim Expenses** incurred by such estates, heirs, legal representatives, assigns and **Domestic Partners**.

XV. NO ACTION AGAINST INSURER

No action shall be taken against the Insurer unless, as a condition precedent, there shall have been full compliance with all the provisions of this Policy nor until the amount of the **Insureds** obligation to pay shall have been finally determined either by final and nonappealable judgment against the **Insureds** after trial or by written agreement of the **Insureds**, the claimant and the Insurer.

No person or organization shall have any right under this Policy to join the Insurer as a party to any **Claim** against the **Insureds** to determine the **Insureds** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives in any such **Claim**.



ENTERPRISE PROFESSIONAL SOLUTIONS

XVI. ASSIGNMENT OF INTEREST

Assignment of interest under this Policy shall not bind the Insurer unless the Insurer's consent to such assignment is endorsed to this Policy.

XVII. COVERAGE FOR NEW SUBSIDIARIES

- A. Other than an entity described in paragraph B. below, if, after the effective date of this Policy the **Insured Entity** first has **Management Control** of any entity then such entity and its subsidiaries, directors, officers, trustees, managers, members, partners or employees who otherwise would thereby become an **Insured**, shall be covered under this Policy, subject to its terms and conditions.
- B. If, after the effective date of this Policy, the **Insured Entity** first has **Management Control** of an entity where the total revenues (as reflected in the most recent audited consolidated financial statements of such entity and the **Insured Entity**) exceeds ten percent (10%) of the combined total revenues of all **Insured Entities**, as of the inception date of this Policy, then the Insurer, at its sole option upon submission of such information as the Insurer may require, and payment of any additional premium or amendment of the provisions of the Policy, may agree to provide coverage for such subsidiaries, directors, officers, managers, members, partners or employees.
- C. There shall be no coverage under this Policy for any **Wrongful Act** by such entity, or by any persons or entities considered to be **Insureds** pursuant to Section XVII. A. and B. above, where such **Wrongful Act** occurred in whole or in part before the date the **Insured Entity** first has such **Management Control** or for any **Wrongful Act** occurring on or after such date which, together with any **Wrongful Acts** occurring before such date, would be considered **Related Wrongful Acts**.

XVIII. CHANGE OF STATUS OF INSUREDS

A. Takeover of the Named Insured

In the event of a **Takeover** of the **Named Insured**, coverage under this Policy shall continue until this Policy is otherwise terminated, but only with respect to **Claims** for **Wrongful Acts** occurring before the effective date of the **Takeover**, unless:

1. the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date, and
2. the **Named Insured** accepts any special terms, conditions and exclusions and pays any additional premium charge required by the Insurer.

This Policy may not be canceled after the effective date of the **Takeover** and the entire premium for this Policy shall be deemed earned as of such effective date.

B. Cessation of Subsidiary

If any organization ceases to be a **Subsidiary**, coverage under this Policy or any renewal of this Policy, shall continue until this Policy is otherwise terminated, but only with respect to **Claims** for **Wrongful Acts** occurring before the effective date of such cessation, unless:

1. the Insurer is notified in writing of such cessation prior to the effective date thereof and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date, and
2. the **Insured Entity** accepts any special terms, conditions and exclusions and pays any additional premium charge required by the Insurer.

XIX. ASSISTANCE AND COOPERATION

Each **Insured** shall give the Insurer full cooperation and shall furnish the Insurer with copies of reports, investigations, pleadings, and all related papers, and such other information, assistance and cooperation as the Insurer may reasonably request. The **Insureds** shall do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery.



ENTERPRISE PROFESSIONAL SOLUTIONS

XX. SUBROGATION AND RECOVERY

To the extent it pays any **Damages** or **Claim Expenses**, the Insurer shall be subrogated to all the **Insureds** rights of recovery therefor, including without limitation an **Insureds** right to indemnification or advancement from the **Insured Entity**. The **Insureds** shall execute all papers necessary to secure such rights, including executing any documents necessary to enable the Insurer effectively to bring suit in their name, and shall take no action which impairs the Insurer's rights of subrogation or recovery.

XXI. NOTICES TO THE NAMED INSURED

Any notices to the **Named Insured** under this Policy shall be provided to the **Named Insured** at the last known address and to its insurance agent or broker. If properly mailed to the **Named Insured** at such address, the date of mailing shall constitute the date such notice was given.

XXII. CHANGES

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

XXIII. INSURER AUTHORIZATION

The **Insureds** agree that the **Named Insured** will act on behalf of the **Insureds** with respect to giving of all notice to the Insurer (except notices provided in Section IX. A. or B.), the receipt of notices from the Insurer, the payment of the premiums, the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

XXIV. ENTIRE AGREEMENT

The **Insureds** agree that this Policy, including the **Application** and any materials submitted or required to be submitted therewith, and any written endorsement attached, constitute the entire contract existing between them and the Insurer or any of its agents relating to this insurance.

XXV. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** shall not relieve the Insurer of any of its obligations hereunder.

If a liquidation or reorganization proceeding is commenced by the **Named Insured** and/or any other **Insured Entity** (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively "Bankruptcy Law") then, in regard to a covered **Claim** under this Policy, the **Insureds** hereby:

- A. waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this Policy under such Bankruptcy Law; and
- B. agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any stay or injunction applicable to the proceeds of this Policy as a result of the commencement of such liquidation or reorganization proceeding.

XXVI. ALTERNATIVE DISPUTE RESOLUTION PROCESS

All disputes or differences between the **Insured** and Insurer which may arise under or in connection with this Policy, whether arising before or after termination of this Policy, including any determination of the amount of **Damages** or **Claim Expenses**, shall be submitted to the alternative dispute resolution ("ADR") process set forth in this Section.



ENTERPRISE PROFESSIONAL SOLUTIONS

Either the Insurer or an **Insured** may elect the type of ADR process discussed below; provided, however, that such **Insured** shall have the right to reject the Insurer's choice of the type of ADR process at any time prior to its commencement, in which case such **Insured's** choice of ADR process shall control.

The Insurer and each and every **Insured** agrees that there shall be two choices of ADR process:

- A. non-binding mediation administered by the American Arbitration Association, in which the Insurer and any such **Insured** shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules; or
- B. arbitration submitted to the American Arbitration Association in accordance with its then-prevailing Commercial Arbitration Rules, in which the arbitration panel shall consist of three disinterested individuals.

In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator or arbitrators shall also give due consideration to the general principles of the law of the state where the **Named Insured** is incorporated in the construction or interpretation of the provisions of this Policy. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include attorney's fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least sixty (60) days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the ADR process.

Either choice of ADR process may be commenced in New York or Illinois or in the state indicated in the Declarations as the mailing address for the **Named Insured**.

XXVII. EXTENDED REPORTING PERIOD

A. Automatic Extended Reporting Period

The **Named Insured** shall have the right to a period of sixty (60) days following the effective date of such cancellation or non-renewal (referred to as the Automatic Extended Reporting Period), in which to give written notice to the Insurer of **Claims** first made against the **Insured** during said sixty (60) days period for any **Wrongful Act** committed prior to the end of the **Policy Period** and otherwise covered by this Policy.

B. Optional Extended Reporting Period

If the Insurer non-renews this Policy, the **Named Insured** shall have the right to purchase, upon payment of an additional premium, an extension of this Policy for twelve (12) months, for any **Claim** first made or deemed to be first made during such period for **Wrongful Acts** committed before the earlier of the end of the **Policy Period** or the effective date of any **Takeover**. The additional premium shall not exceed 200% of the total premium charged for this Policy.

This period shall be referred to as the "Optional Extended Reporting Period".

C. Payment of Extended Reported Period Premium

As a condition precedent to the right to purchase the Optional Extended Reporting Period, the total premium for this Policy must have been paid. The right to purchase such Extended Reporting Period shall end unless the Insurer receives written notice of the **Named Insured's** election to purchase such Extended Reporting Period and full payment of the premium for such period within sixty (60) days after the end of the **Policy Period**.

D. Non-Cancelable/Premium Fully Earned



ENTERPRISE PROFESSIONAL SOLUTIONS

If the Optional Extended Reporting Period is purchased, it is non-cancelable and the entire premium shall be deemed fully earned at its commencement without any obligation by the Insurer to return any portion thereof.

E. No Separate Limit

There is no separate or additional limit of liability for any Extended Reporting Period.

XXVIII. CONFIDENTIAL SOURCE

Solely with respect to a **Media Claim**, the **Insured's** rights under this Policy shall not be prejudiced by the **Insured's**:

- A. refusal to reveal a confidential source or to produce reporters notes or any other documents or information obtained by the **Insured**; or
- B. accidental or unintentional identification of the identity of a confidential source, in the course of the **Insured's Media Activities** with respect to which the **Insured** has asserted a claim of reporter's privilege or applicable First Amendment, statutory or common-law privilege relating to the protection of newsgathering.

XXIX. TRADE AND ECONOMIC SANCTIONS

This policy does not provide coverage for **Insureds**, transactions or that part of **Damages** or **Claim Expenses** that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

XXX. HEADINGS

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

XXXI. VALUATION

All premiums, limits, retentions, **Damages, Claim Expenses** and other amounts under this policy are expressed and payable in United States of America currency. If any judgment, settlement or any part of **Damages** or **Claim Expenses** are expressed or calculated in any other currency, payment of such **Damages** or **Claim Expenses** due under this Policy will be made in the currency of the United States of America, at the rate of exchange published in The Wall Street Journal on the date the Insurer's obligation to pay such **Damages** or **Claim Expenses** is established, or, if not published on that date, on the date of next publication.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be executed by its Chairman and Secretary, but this Policy shall not be binding upon us unless completed by the attachment of the Declarations.

Chairman

Secretary