

HOUSTON CASUALTY COMPANY

Houston, TX

Technology and Data Security Liability Policy

THIS IS A CLAIMS MADE AND REPORTED POLICY. COVERAGE IS LIMITED TO ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE OPTIONAL EXTENDED REPORTING PERIOD (IF APPLICABLE) AND REPORTED TO THE COMPANY IN WRITING PURSUANT TO THE POLICY'S TERMS AND CONDITIONS. THE PAYMENT OF LOSS, CLAIM EXPENSES AND/OR FIRST PARTY LOSS REDUCES AND MAY EXHAUST THE POLICY'S LIMIT OF LIABILITY. THE COMPANY'S PAYMENT OR REIMBURSEMENT OF CLAIM EXPENSES, LOSS AND FIRST PARTY LOSS WILL BE APPLIED AGAINST THE POLICY'S RETENTION. PLEASE REVIEW THE POLICY CAREFULLY WITH YOUR INSURANCE BROKER OR ADVISOR.

In consideration of the payment of the premium, and in reliance upon the statements, representations, attachments and information contained in and submitted with the **Application**, which is deemed attached hereto and made a part of the Policy, and subject to the Policy's Aggregate Limit of Liability as well as all of the Policy's terms, conditions, limitations, exclusions and other provisions, the **Company** agrees with the **Named Insured** as follows:

I. INSURING AGREEMENTS

Coverage under the Policy is afforded only for those Insuring Agreements purchased by the **Named Insured**, as indicated at Item 3 on the Declarations of the Policy.

(A) THIRD PARTY COVERAGES

(1) Technology Services Liability

The **Company** will pay **Loss** and **Claim Expenses** in excess of the **Retention** and subject to the Policy's Aggregate Limit of Liability that the **Named Insured** becomes legally obligated to pay as the result of a **Claim** made for a **Technology Services Wrongful Act** arising from **Technology Services**, including the use and performance of **Technology Products**.

(2) Network Security and Privacy Liability

The **Company** will pay **Loss** and **Claim Expenses** in excess of the **Retention** and subject to the Policy's Aggregate Limit of Liability

that the **Named Insured** becomes legally obligated to pay as a result of a **Claim** made for a **Network Security and Privacy Wrongful Act** resulting in a **Privacy Event** or a **Network Security Event**.

(3) Media and Advertising Liability

The **Company** will pay **Loss** and **Claim Expenses** in excess of the **Retention** and subject to the Policy's Aggregate Limit of Liability that the **Named Insured** becomes legally obligated to pay as the result of a **Claim** made for a **Media and Advertising Wrongful Act** arising from **Advertising**.

(4) Regulatory Action

The **Company** will pay **Regulatory Damages** in excess of the **Retention** and subject to the Policy's sublimit set forth at Item 6I.A.4. on the Declarations of the Policy incurred by the **Named Insured** with the prior written consent of the **Company** in responding to a **Regulatory Action** brought against the **Named Insured** by or before a state or federal regulating body, provided that:

- (a) the **Regulatory Action** arises out of the **Named Insured's Technology Services** or a **Privacy Event**; and
- (b) the **Regulatory Action** is first initiated during the **Policy Period** and reported to the **Company** in writing, during the **Policy Period, Discovery Period** or **Optional Extended Reporting Period** (if applicable).

The **Company** has the right, but not the duty, to defend the **Named Insured** in a **Regulatory Action**. **Regulatory Damages** are part of, and not in addition to, the Policy's Aggregate Limit of Liability. The **Company's** payment of **Regulatory Damages** ceases upon the exhaustion of the Policy's Aggregate Limit of Liability.

(5) PCI Fines and Penalties and Investigation Costs

The **Company** will reimburse the **Named Insured** for **PCI Fines and Penalties** and **Investigation Costs** in excess of the **Retention** and subject to the sublimit stated at Item 6.A.5 on the Declarations of the Policy incurred by a **Named Insured**, with the prior written consent of the **Company** in responding to a **PCI Claim** (alleging

violation of **Payment Card Association Rules** or **PCI Standards**).

(B) CRISIS MANAGEMENT RESPONSE

The **Company** will reimburse the **Named Insured** for **Crisis Management Response Costs** in excess of the **Retention** and subject to the Policy's Aggregate Limit of Liability that the **Named Insured** will become legally obligated to pay as a result of a **Breach**; provided that: (1) the **Crisis Management Response Costs** arise from a **Breach** first discovered during the **Policy Period** and reported to the **Company** in writing during the **Policy Period, Discovery Period** or Optional Extended Reporting Period (if applicable); (2) the **Named Insured's** partners, principals, officers, directors, members or insurance managers have no knowledge of any circumstance, dispute, situation or incident that gave rise to such **Breach** or could reasonably have been expected to give rise to such **Breach** prior to the Effective Date of the Policy; and (3) the **Crisis Management Response Costs** are incurred to pay an approved vendor.

(C) FIRST PARTY COVERAGE

(1) Non-Physical Business Interruption and Extra Expense

The **Company** will indemnify the **Named Insured** for **Loss of Income** and **Extra Expense** in excess of the **Time Retention** and subject to the Policy's Aggregate Limit of Liability that the **Named Insured** incurs as the result of **Non-Physical Property Damage** during the **Restoration Period** resulting from the interruption, degradation or cessation of the **Named Insured's Computer System** and which is caused by:

- (a) **An Act of Terrorism** on the **Named Insured's Computer System**;
- (b) **A Denial of Service Attack**;
- (c) **Unauthorized Access, Unauthorized Use** or **Computer Fraud** on the **Named Insured's Computer System**; or
- (d) negligence in connection with a **Qualified Service Provider's** provision of professional services, but only if such interruption, degradation or cessation is caused by non-physical damage to the **Named Insured's Computer System** and would have been covered under the Policy had the **Qualified Service Provider** qualified as an **Named**

Insured under the Policy;

provided that coverage is available only if: (i) the interruption, degradation or cessation first occurs and is discovered during the **Policy Period** and is reported to the **Company** in writing during the **Policy Period**, **Discovery Period** or Optional Extended Reporting Period (if applicable); and (ii) the **Named Insured's** partners, principals, officers, directors, members or insurance managers had no knowledge of any circumstance, dispute, situation or incident that gave rise to such **Loss of Income** and **Extra Expense** or could reasonably have been expected to give rise to such **Loss of Income** and **Extra Expense** prior to the Effective Date of the Policy.

(2) Digital Asset Protection

The **Company** will reimburse the **Named Insured** for those reasonable and necessary costs in excess of the **Retention** and subject to the Policy's Aggregate Limit of Liability incurred by the **Named Insured** and approved in writing by the **Company** to (i) determine whether the **Named Insured's Digital Assets** have been destroyed, damaged or corrupted as the result of **Unauthorized Access** or **Unauthorized Use** and (ii) replace or restore such **Digital Assets** to substantially the same form as existed prior to such destruction, damage or corruption; provided that: (i) such costs are incurred during the **Policy Period** and reported to the **Company** in writing during the **Policy Period**, **Discovery Period** or Optional Extended Reporting Period (if applicable); and (ii) the **Named Insured's** partners, principals, officers, directors, members or insurance managers had no knowledge of any circumstance, dispute, situation or incident that gave rise to such costs or could reasonably have been expected to give rise to such costs prior to the Effective Date of the Policy.

(3) Cyber Extortion

The **Company** will indemnify the **Named Insured** for **Cyber Extortion Costs** in excess of the **Retention** and subject to the Sublimit stated at Item 6.C3 on the Declarations of the Policy resulting from a **Cyber Extortion Event**, provided that: (i) the **Cyber Extortion Costs** are first incurred during the **Policy Period** and reported to the **Company** in writing during the **Policy Period**, **Discovery Period** or Optional Extended Reporting Period (if applicable); and (ii) the **Named Insured's** partners, principals,

officers, directors, members or insurance managers had no knowledge of any circumstance, dispute, situation or incident that gave rise to such **Cyber Extortion Event** or could reasonably have been expected to give rise to such **Cyber Extortion Event** prior to the Effective Date of the Policy. The applicable Sublimit of Liability is part of, and not in addition to, the Aggregate Limit of Liability stated on the Declarations of the Policy.

Cyber Extortion Costs will not be incurred by the **Named Insured** without the prior written consent of the **Company**.

(4) Computer Crime and Electronic Funds Transfer Fraud

In the absence of other insurance available to the **Insured**, the **Company** will pay **Computer Crime and Electronic Funds Loss** in excess of the **Retention** and subject to the sublimit stated at Item 6.C4 on the Declarations of the Policy resulting from **Computer Fraud** that was determined by an independent third party to be the proximate cause of such **Computer Crime and Electronic Funds Loss**, provided that:

- (a) The **Named Insured** was conducting business and using a reasonable standard of care consistent with and generally accepted as being within the parameters of current industry standards and applicable regulatory guidelines; and
- (b) The fraudulent act was not committed by or with the participation or prior knowledge of, in whole or in part, a person with more than five percent (5%) ownership in, or an employee, partner, principal, member, insurance manager, director or officer of the **Named Insured**; and
- (c) The **Computer Fraud** first occurs and is discovered by the **Named Insured** during the **Policy Period** and is reported to the **Company** in writing during the **Policy Period, Discovery Period** or Optional Extended Reporting Period (if applicable).

(5) Subpoena Response Assistance

The **Company** will reimburse the **Named Insured** upon written request reasonable and necessary legal fees and expenses of up to \$10,000 incurred by the **Named Insured** during the **Policy**

Period and with the prior written consent of the **Company**, in responding to a subpoena served upon the **Named Insured**, provided always that:

- (a) the subpoena arises out of the **Named Insured's Technology Services** or a **Privacy Event**; and
- (b) the subpoena is served upon the **Named Insured** during the **Policy Period** and is reported to the **Company** in writing during the **Policy Period, Discovery Period** or the **Optional Extended Reporting Period** (if applicable).

After the **Company** has paid \$10,000 under this provision, it will not be obligated to pay any further legal fees or expenses in connection with any subpoena. This coverage applies only to subpoenas issued in private commercial litigation and not in any matter initiated by or arising from a regulatory body.

II. DEFINITIONS

- (A) **"Act of Terrorism"** means an attack, intrusion, strike, initiative or offense made, supported or sponsored by a state, government or criminal person, entity or body, or activist or activist group, against the **Named Insured** by way of the **Named Insured's Computer System** with the intent to cause a **Network Security Event**.
- (B) **"Advertising"** means any promotional **Matter** published by the **Named Insured** for others for a fee. **Advertising** does not include solicitations, sweepstakes, coupons, prizes, games of chance awards or other incentive based programs, whether for the **Insured** or otherwise.
- (C) **"Application"** means all applications and/or proposals, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Named Insured** to the **Company** in connection with the underwriting of the Policy, or any other policy or policies of which the Policy is an indirect or direct renewal or replacement.
- (D) **"Bodily Injury"** means physical injury, sickness, disease, death of a person, mental anguish, emotional distress, mental injury, shock, humiliation, pain and suffering, or any similar injury to any person.
- (E) **"Breach"** means the unauthorized acquisition, access, use or publication of **Personal Information** caused by the **Unauthorized Access, Unauthorized Use**, or unintended introduction of **Malicious Code** into

the **Named Insured's Computer System** of which the **Insured** first becomes aware during the **Policy Period**. **Breach** does not mean **Computer Fraud** or **Funds Transfer Fraud**.

(F) **"Business Interruption Event"** means the interruption, material degradation or loss of access to the **Named Insured's Computer System**, website, intranet, network, programs, or data causing **Loss of Income** as the direct result of malicious acts or omissions of an unauthorized person or an authorized person in an unauthorized manner that prevents the **Named Insured** from gaining access to its website, intranet, network, **Computer System**, programs, or data held electronically by the **Named Insured**.

(G) **"Certified Acts of Terrorism"** means any act that is certified as terrorism by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States, in accordance with the Terrorism Risk Insurance Act of 2002.

(H) **"Claim"** means:

- (1) a written demand made against the **Insured** for monetary damages;
- (2) any civil, arbitration or administrative proceeding commenced by the service of a complaint or similar pleading and initiated against the **Insured** seeking monetary damages, including any appeal thereof, seeking monetary damages; or
- (3) a **Regulatory Action**;

provided, however, **Claim** does not include any criminal, investigative or regulatory proceedings initiated against the **Insured** or subpoenas served upon the **Insured** other than in connection with a **Regulatory Action**.

(I) **"Claim Expenses"** means (1) reasonable and necessary legal fees and expenses incurred by an attorney selected and appointed by the **Company** in defense of a **Claim**; and (2) reasonable and necessary fees, costs or expenses incurred in the investigation, defense and appeal of a **Claim** if incurred by or on behalf of the **Insured** with the prior written consent of the **Company**; provided, however, that the **Company** will have no obligation to apply for or furnish any bond for appeal, injunction, attachment or similar purpose.

Claim Expenses do not include: (1) salary, wages or lost earnings of the **Insured**; (2) amounts incurred by the **Insured** in connection with a disciplinary

proceeding other than a **Regulatory Proceeding**; (3) amounts incurred by the **Insured** in connection with responding to a subpoena other than in connection with a **Regulatory Proceeding**; (4) **Loss, First Party Loss, Cyber Extortion Costs, Computer Crime and Electronic Funds Loss** or **Crisis Management Response Costs**.

(J) **“Company”** means the insurance carrier set forth in the Declarations of the Policy.

(K) **“Computer Crime and Electronic Funds Loss”** means **Computer Fraud** that directly causes the **Named Insured** to suffer:

(1) loss resulting from the transfer, payment or delivery of the **Named Insured’s** securities or money other than crypto-currency by an unauthorized person or an authorized person without authority to do so;

(2) loss of debit or credit information of an account owned by the **Named Insured**; or

(3) the fraudulent and unauthorized opening, crediting or debiting of an unauthorized account in the name of the **Named Insured**.

Computer Crime and Electronic Funds Loss does not mean **Loss, First Party Loss, Cyber Extortion Costs, Claim Expenses, or Crisis Management Response Costs**.

(L) **“Computer Fraud”** means the intentional, unauthorized and fraudulent entry of **Data** or computer instructions directly into, or the modification of **Data** or computer instructions that resides within, the **Named Insured’s Computer System** by an unauthorized person or an authorized person in an unauthorized manner that is the predominant and direct cause of **Computer Crime and Electronic Funds Loss**.

(M) **“Crisis Management Response Costs”** means those reasonable and necessary fees, costs, charges and expenses incurred by the **Named Insured** with the **Company’s** written consent and subject to the Sublimit of Liability stated at Item 6.B on the Declarations of the Policy in the event of a **Privacy Event** for the purposes of retaining an accountant, attorney, computer forensics expert, public relations consultant or other third party to:

(1) determine if the **Insured** is obligated to notify affected individuals or government agencies of such **Privacy Event**;

- (2) create a privacy breach response plan;
- (3) conduct a computer forensic analysis of the **Named Insured's Computer System** in order to determine the cause and extent of a **Privacy Event**;
- (4) plan, implement, execute and manage a public relations campaign to counter or minimize any actual or anticipated adverse effects of negative publicity from such **Privacy Event**;
- (5) notify the **Named Insured's** affected clients and customers and requisite government agencies of such **Privacy Event** where required by a **Privacy Regulation**; provided, however, the **Company's** prior written consent is not required if such notification is mandated by a **Privacy Regulation**;
- (6) voluntarily notify the **Named Insured's** affected clients and customers and interested government agencies of such **Privacy Event** when notification is not required by a **Privacy Regulation**; and
- (7) procure identity monitoring, credit monitoring, call center and identity restoration services for individuals affected by such **Privacy Event**.

The applicable Sublimit of Liability is part of, and not in addition to, the Aggregate Limit of Liability stated on the Declarations of the Policy.

(N) "Cyber Extortion Costs" means:

- (1) the ransom paid or, if the demand is for goods or services, the fair market value at the time of surrender in connection with a **Cyber Extortion Event**; and
- (2) the reasonable and necessary fees and expenses incurred by a representative appointed by the **Company** to provide the **Named Insured** with assistance in connection with a **Cyber Extortion Event**;

provided that the **Named Insured** can demonstrate to the **Company** that the ransom has been surrendered under duress and that before agreeing to its payment, all reasonable efforts have been taken by the **Named Insured** and governmental authorities such as the United States Federal Bureau of Investigation and Secret Service to determine that the threat

is genuine and not a hoax and to ensure that at least one of the **Named Insured's** senior management executives has authorized in writing the ransom's payment. **Cyber Extortion Costs** do not include **Loss, First Party Loss, Claim Expenses, Computer Crime and Electronic Funds Loss** or **Crisis Management Response Costs**.

(O) "Cyber Extortion Event" means receipt by the **Named Insured**, directly or indirectly, of a threat during the **Policy Period** from a third party without the participation, collusion or prior knowledge of, in whole or in part, the **Insured** or a person with more than five percent (5%) ownership in the **Insured** to:

- (1) damage, destroy or corrupt the **Named Insured's** website, intranet, network, **Computer System** or **Data** the **Named Insured** holds electronically, including by introducing a computer virus, worm, malware, involuntary crypto-locking program or Trojan horse; or
- (2) use or publish **Personal Information** for which the **Named Insured** is legally responsible;

who then demands a ransom for their own benefit as a condition of not carrying out such threat.

(P) "Data" means machine readable electronic, digital information including but not limited to computer programs, text and digital media.

(Q) "Denial of Service Attack" means:

- (1) the inability of an authorized third party to access the **Named Insured's Computer System**; and
- (2) the inability of an authorized third party to access his or her computer system, where such inability is directly caused by the **Named Insured's Computer System**.

(R) "Digital Assets" means the **Named Insured's** proprietary information held in electronic, digital format on the **Named Insured's Computer System**.

(S) "Discovery Period" means the sixty (60) day period beginning on the later of the date that the Policy expires or is cancelled and ending on the sixtieth (60th) day thereafter during which time the **Insured** may report a **Claim** first made during the **Policy Period**.

(T) "Domestic Partner" has the meaning prescribed by applicable state or local law, or in the absence of such law, means one of two natural

persons who form a couple living together in a committed, longstanding relationship, provided that such persons:

- (1) have a common residence that they have shared for a period of two years or more; and
- (2) are not blood relatives and are not married or in a domestic partnership with someone else; and
- (3) are mentally competent, at least 18 years of age and registered as **Domestic Partners** in a local registry, if one exists.

(U) “Extra Expense” means the reasonable and necessary expenses incurred by the **Named Insured**, with the prior written consent of the **Company**, and directly attributable to a **Business Interruption Event** adversely impacting the **Named Insured’s Computer System**, to reduce, minimize or avoid **Loss of Income**, but only to the extent such expenses exceed the **Named Insured’s** normal operating expenses and would not have been incurred if there had been no covered cause of **First Party Loss** adversely impacting the **Named Insured’s Computer System**.

Extra Expense does not include **Loss, First Party Loss, Claim Expenses, Cyber Extortion Costs, Computer Crime and Electronic Funds Loss, Crisis Management Response Costs** and loss attributable to reputational harm or damage other than as defined herein as **Extra Expense**.

(V) “First Party Loss” means **Loss of Income, Extra Expense, and Crisis Management Response Costs**; provided, however, **First Party Loss** does not mean **Loss, Claim Expenses, Computer Crime and Electronic Funds Loss**, or any loss attributable in whole or in part to reputational harm or damage.

(W) “Funds Transfer Fraud” means an intentional, unauthorized and fraudulent instruction transmitted by electronic means to a financial institution directing such institution to debit an account and to transfer, pay or deliver securities or money from such account, which instruction purports to have been delivered by the **Insured**, without the knowledge of the **Insured** or consent.

(X) “Insured” means:

- (1) the **Named Insured** designated as such in the Declarations of the Policy;

- (2) any natural person who is a current or former partner, principal, officer, director, member or employee of the **Insured** with respect to a **Wrongful Act** committed only while acting solely within the scope of his or her duties and for the behalf of the **Insured**;
 - (3) any natural person who is contract, temporary or leased personnel rendering professional services, but only with respect to a **Wrongful Act** committed while acting with the authority, under the direct supervision of, and on behalf of the **Named Insured**;
 - (4) the lawful spouse or **Domestic Partner** of the **Insured** but only with respect to a **Claim** made against such spouse or **Domestic Partner** solely by reason of his/her status as a spouse or **Domestic Partner** of the **Insured** or his/her ownership interest in marital property/assets that are sought as recovery for such **Claim**, but only if the **Claim** does not allege any **Wrongful Act** by such spouse or **Domestic Partner**;
 - (5) the estate, heirs, assigns or legal representatives of the **Insured** (as set forth in subsections 2 or 3 above) in the event of such **Insured's** death, incapacity or insolvency, for any **Claim** made against the estate, heirs, assigns or legal representatives of such **Insured** solely by reason of his/her/its status as the estate, heirs, assigns or legal representatives of such **Insured** and only to the extent that coverage would have otherwise been provided under the Policy to such **Insured**;
 - (6) a **Subsidiary**; and
 - (7) the debtor-in-possession of any entity identified in subsections 1 and 6 above within the meaning of the United States Bankruptcy Code or similar statute or status under foreign law.
- (Y) **"Internet"** means the worldwide public network of computers commonly known as the internet, as it currently exists or may exist in the future.
- (Z) **"Interrelated Wrongful Acts", "Interrelated Claims" and "Interrelated Breaches"**, respectively, mean all **Wrongful Acts, Claims and Breaches** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances,

situations, events, transactions or causes.

A **Wrongful Act** will be deemed to have been first committed when the first such **Wrongful Act** occurs. All **Interrelated Wrongful Acts** will be deemed to be a single **Wrongful Act** first committed on the date the earliest of such **Wrongful Act** occurs, regardless of whether such date is before or during the **Policy Period**.

A **Claim** will be deemed to have been first made when the **Insured** first receives written notice of such **Claim**. All **Claims** arising out of the same **Wrongful Act, Interrelated Wrongful Acts, Breaches** or **Interrelated Breaches** will be deemed to be a single **Claim** first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**.

A **Breach** will be deemed to have first occurred when the first such **Breach** takes place. All **Interrelated Breaches** will be deemed to be a single **Breach** first occurring on the date the earliest such **Breach** takes place, regardless of whether such date is before or during the **Policy Period**.

- (AA) **“Investigation Costs”** mean the reasonable and necessary fees and expenses incurred by the **Named Insured** with the **Company’s** prior written consent to retain legal counsel to investigate a **Breach** that potentially triggers a **PCI Claim** and/or **PCI Fine/Penalty**. All **Investigation Costs** incurred are subject to the Sublimit of Liability stated at Item 6.A5 on the Declarations page of the Policy and such Sublimit of Liability is part of, and not in addition to, the Aggregate Limit of Liability stated on the Declarations of the Policy.
- (BB) **“Loss”** means a monetary judgment or award of damages against the **Insured**, including statutory attorney’s fees and costs, and pre and post judgment interest. **Loss** also includes a settlement to the extent the **Company** has consented in writing to such settlement prior to the **Insured’s** execution of a settlement agreement. **Loss** does not include:
- (1) any amount which the **Insured** is not legally obligated to pay as the result of a monetary judgment or award of damages, or a settlement to which the **Company** has not consented in writing;
 - (2) all fines, penalties, taxes or sanctions sought from or awarded against the **Insured**;

- (3) the multiple portion of any multiplied, punitive, treble or exemplary damage award;
 - (4) liquidated damages;
 - (5) discounts, coupons, prizes, awards or other incentives offered to the **Insured's** clients or customers;
 - (6) the return, reduction, loss, disgorgement, restitution or offset of money, assets, fees, charges, royalties, profits, future profits or commissions or any funds allegedly wrongfully or unjustly held or obtained;
 - (7) **First Party Loss, Claim Expenses, Cyber Extortion Costs, Computer Crime and Electronic Funds Loss or Crisis Management Response Costs;**
 - (8) all costs with respect to injunctive, non-monetary or declaratory relief orders, including costs associated with specific performance or any agreement to provide such relief;
 - (9) any matters, judgments, damages, settlements or other amounts uninsurable under the laws pursuant to which the Policy is construed;
 - (10) any amount allocable to uncovered **Loss** under the Policy;
 - (11) loss attributable in whole or in part to reputational harm or damage; or
 - (12) with respect to any one or more **Certified Acts of Terrorism** under the federal Terrorism Risk Insurance Act of 2002, any amounts for which the **Company** is not responsible under the terms of that Act (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on the **Company's** liability for payments for terrorism losses.
- (CC) **"Loss of Income"** means financial loss sustained by the **Named Insured** as the direct result of a **Business Interruption Event**, represented by the hourly average gross profit generated by the **Named Insured** in the six month period immediately precedent to a **Business Interruption Event**, provided that: the **Named Insured** supplies the **Company** with tangible evidence (i) of such amounts, and (ii) that the **Named Insured** reasonably expected **Loss of Income** less than the **Loss of Income** that occurred as

the direct result of a **Business Interruption Event**. **Loss of Income** does not include loss attributable in whole or in part to reputational harm or damage.

- (DD) **“Malicious Code”** means unauthorized, corrupting or harmful software code, including but not limited to computer viruses, Trojan horses, keystroke loggers, cookies, spyware, adware, worms and logic bombs.
- (EE) **“Matter”** means material developed by the **Named Insured** on behalf of others for a fee, or by a third party which is then published via **Media** by the **Named Insured** for others for a fee.

For the purposes of definitions (EE) and (FF):

- (a) **“Media”** means: the means of electronic publishing, dissemination, releasing, gathering, transmission, production, webcasting or other distribution of **Matter** used by the Named Insured in the performance of services for others for a fee.
- (b) **“Media”** does not mean **Technology Services** or **Technology Products**
- (FF) **“Media and Advertising Wrongful Act”** means any actual or alleged negligent act, error, omission, breach of duty, unintentional breach of contract, or **Personal Injury** committed or allegedly committed by the **Named Insured** or by an entity or individual for whom the **Named Insured** is legally liable other than by contract that results in the **Named Insured’s** liability arising from **Advertising** or the use of **Media** by the **Named Insured** for others for a fee:
- (1) in connection with the **Named Insured’s** publication of **Matter**;
 - (2) for defamation, including but not limited to, disparagement or harm to the reputation or character of any third party person or organization, liable, slander, product disparagement, trade liable, or infliction of emotional distress or mental anguish;
 - (3) for invasion, infringement, or interference with the right to privacy or right of publicity including false light, public disclosure of facts, including those of an employee, intrusion or, or commercial appropriation of name or likeness, including the breach of duty of confidentiality, unauthorized interception or recording of images, sound or code, text or session information in violation of any civil anti-wiretap statute for commercial gain;
 - (4) for plagiarism, piracy, or misappropriation of ideas; or

- (5) for infringement of trademark, service mark, service name, or trade name copyright, software copyright, domain name, title, slogan or trade dress; or the dilution or infringement of trademark, service mark, service name, or trade name copyright, software copyright, domain name, title, slogan or trade dress.
- (GG) **“Named Insured”** means the individual or entity designated as such on the Declarations of the Policy.
- (HH) **“Named Insured’s Computer System”** means interconnected computers and associated input and output devices, **Data** storage devices, networking equipment, and back-up facilities operated by, owned by or leased to the **Named Insured**, or operated for the exclusive benefit of the **Named Insured** by a **Service Contractor**, used for the purpose of providing hosted application services to the **Named Insured**, or for processing, maintaining, or storing electronic data, pursuant to written contract with the **Named Insured**.
- (II) **“Network Security”** means any hardware or software with a function or purpose of loss mitigation, avoidance or prevention of an attack on the **Named Insured’s Computer System**. **Network Security** includes firewalls, filters, perimeter network (DMZ), computer virus protection software, intrusion detection, the electronic use of passwords or similar identification of authorized users, and encryption.
- (JJ) **“Network Security and Privacy Event Wrongful Act”** means the failure of the **Insured** to:
- (1) prevent the transmission of **Malicious Code** from the **Named Insured’s Computer System**;
 - (2) provide an authorized user of the **Named Insured’s** website, or computer or communications network, with access to such website, or computer or communications network;
 - (3) prevent **Unauthorized Access** to, or **Unauthorized Use** of, **Data** containing **Personal Information** of others that is stored on the **Named Insured’s Computer System** or that of a **Service Contractor**; or
 - (4) provide notification of any actual or potential **Unauthorized Access** to, or **Unauthorized Use** of, **Data** containing **Personal Information** of others that is stored on the **Named Insured’s**

Computer System or that of a **Service Contractor** if such notification is mandated by any federal or state law, regulation or statute.

(KK) Network Security Event means any **Unauthorized Access** to, **Unauthorized Use** of, or unauthorized introduction of malware into the **Named Insured's Computer System** that directly results in:

- (1) a **Denial of Service Attack**; or
- (2) the corruption or deletion of **Digital Assets**.

A series of related or repeated **Network Security Events**, or multiple **Network Security Events** resulting from a failure(s) of **Network Security**, will be considered a single **Network Security Event** and deemed to have first occurred at the time of the first such **Network Security Event**.

(LL) "Non-Physical Property Damage" means damage to, or the loss or destruction of tangible property, including all resulting loss of use of that property, or loss of use of tangible property that has not been physically injured; provided, however, **Non-Physical Property Damage** does not mean the corruption or deletion of **Digital Assets**.

(MM) "Payment Card Association Rules" means any payment card association programs, rules, by-laws, policies, procedures, regulations or requirements, including but not limited to VISA's CISP, MasterCard's SDP, Discover Card's DISC and AMEX's DSOP, as amended.

(NN) "PCI Claim" means a Payment Card Industry claim by a payment card association seeking **PCI Fines/Penalties**, where insurable by law, as the direct result of a **Privacy Event**.

(OO) "PCI Standard" means the Payment Card Industry Data Security Standard, as amended.

(PP) "PCI Fines/Penalties" means a fine or penalty expressly defined and quantified under the Payment Card Association Rules for a violation of a **PCI Standard**; provided, however, that **PCI Fines/Penalties** will not mean and the **Company** will not be obligated to pay:

- (1) assessments, damages or other remedies for fraud, card reissuance or any amounts not expressly defined under the **Payment Card Association Rules** for a violation of a **PCI Standard**;

- (2) civil penalties;
- (3) any amounts representing a discretionary fine, whether such amount is assessed against the **Insured** or a merchant bank or payment processor with whom the **Insured** has a written agreement to pay such fines;
- (4) any amounts voluntarily agreed to by the **Insured**; or
- (5) liquidated damages other than under **Payment Card Association Rules**.

The applicable Sublimit of Liability is part of, and not in addition to, the Aggregate Limit of Liability stated on the Declarations of the Policy.

(QQ) “Personal Information” means an individual’s first and last name together with any one or more of that individual’s:

- (1) social security number;
- (2) medical or healthcare data or other protected health information;
- (3) driver’s license number, state identification number, or zip code;
- (4) account number, debit or credit card number together with any required security code, access code or password that would permit access to the individual’s financial account; or
- (5) any non-public information of an individual as such might be defined by a **Privacy Regulation**.

Personal Information does not include any information that is lawfully available to the general public for any reason including, but not limited to, any information contained in federal, state or local government records.

(RR) “Personal Injury” means any actual or alleged:

- (1) false arrest, detention, or imprisonment;
- (2) wrongful entry, wrongful eviction, or other invasions of private occupancy;

- (3) malicious prosecution; or
 - (4) libel, slander, or defamation of character.
- (SS) "Policy Period"** means the period from the Effective Date of the Policy to its Expiration Date as set forth in the Declarations of the Policy, or the Policy's earlier termination date, if any.
- (TT) "Privacy Policy"** means the **Named Insured's** policies in written or electronic form that govern the collection, use, dissemination, confidentiality, integrity, accuracy or availability of **Personal Information** provided to the **Named Insured's** employees or third parties.
- (UU) Privacy Event** means:
- (1) the unauthorized disclosure or loss of **Personal Information** while in the **Named Insured's** care, custody or control; and
 - (2) a violation of a **Privacy Regulation** or negligent failure to comply with the **Named Insured's Privacy Policy**.
- (VV) "Privacy Regulation"** means any federal, state or local statute, law or regulation governing the confidentiality, control and use of **Personal Information**, including but not limited to:
- (1) Health Insurance Portability and Accountability Act of 1996 (as amended) and its implementing regulation;
 - (2) HITECH Act;
 - (3) Gramm-Leach-Bliley Act of 1999;
 - (4) the California Security Breach Notification Act (CA SB 1386);
 - (5) Massachusetts 201 CMR 17;
 - (6) Identity Theft Red Flags under the Fair and Accurate Credit Transactions Act of 2003;
 - (7) Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), but solely for alleged violations of unfair or deceptive acts or practices in or affecting commerce; and
 - (8) any similar federal, state or local identity theft and privacy

protection statute, law or regulation that requires commercial entities that collect **Personal Information** to post privacy policies, adopt privacy policies and/or controls or notify individuals in the event **Personal Information** has potentially been compromised.

(WW) “Qualified Service Provider” means a **Service Contractor** upon which the **Named Insured** is dependent to provide core business functions. To be considered a **Qualified Service Provider**, the **Named Insured** must be able to provide evidence that the **Qualified Service Provider** is compliant in accordance with the **Named Insured’s** industry standards and regulating bodies and the **Named Insured’s Privacy Policy** as though the services provided by the **Qualified Service Provider** were those of the **Named Insured**.

(XX) “Regulatory Action” means:

- (1) a formal investigation of the **Named Insured** by an administrative or regulatory agency or similar governmental entity concerning a **Privacy Event**; and
- (2) a formal administrative adjudicative proceeding against the **Named Insured** by an administrative or regulatory agency or similar governmental entity for a **Network Security and Privacy Event Wrongful Act**, including an appeal thereof, commenced by the **Named Insured’s** receipt of a subpoena, investigative demand, complaint or similar formal document.

(YY) “Regulatory Damages” means any civil monetary penalty imposed by a federal, state or local governmental entity in such entity’s regulatory or official capacity pursuant to an order in connection with a **Regulatory Action**. **Regulatory Damages** do not include any civil monetary fines or penalties that are not insurable by law, criminal fines, the return, reduction, loss, disgorgement, restitution or offset of money, assets, fees, charges, royalties, profits, future profits or commissions or any funds allegedly wrongfully or unjustly held or obtained, or the multiple portion of any multiplied, punitive, treble or exemplary damages. **Regulatory Damages** are subject to the Sublimit of Liability stated at Item 6.A4 on the Declarations of the Policy and such Sublimit of Liability is part of, and not in addition to, the Aggregate Limit of Liability stated on the Declarations page.

(ZZ) “Restoration Period” means the period from the date and time following the **Time Retention** that the **Named Insured’s Computer System** first

suffered an interruption in services to the date and time the **Named Insured's Computer System** was restored, or could have been restored with reasonable speed, to substantially the level of operation that had existed prior to such interruption in services; provided, however, that in no event will such **Restoration Period** exceed thirty (30) or one-hundred and twenty (120) days after notice of **Loss**, whichever or shorter.

(AAA) "Retention" means the respective amounts specified on the Declarations of the Policy.

(BBB) "Service Contractor" means a third party with whom the **Named Insured** contracts to perform professional services in accordance with that contract and for whom the **Named Insured** is legally liable to third parties, but only with regard to conduct that otherwise would be covered under the Policy and that is committed while in the performance of professional services on behalf, at the request, and for the benefit of the **Named Insured**.

(CCC) "Subsidiary" means any entity in which a **Named Insured** owns more than fifty percent (50%) of the issued and outstanding voting securities, either directly or indirectly through one or more of its **Subsidiaries** before, on or after the effective date of the Policy; provided, however, that with respect to any entity that becomes a **Subsidiary** after the effective date of the Policy and the entity's gross revenues exceed ten percent (10%) of the **Named Insured's** annual gross revenues at the Inception Date of the Policy, the entity will be deemed a **Subsidiary** only for a period of ninety (90) days following the date it first became a **Subsidiary**.

In all events there is no coverage for **Wrongful Acts** related to any activities of a **Subsidiary** or **Insured** thereof, occurring prior to the time such entity became a **Subsidiary**.

(DDD) "Technology Products" means computer hardware, components or related electronic equipment, software, firmware, source code and object code, sold or distributed by or on behalf of the **Named Insured** to others for a fee that is a part of and necessary to the **Named Insured's** provision of **Technology Services**; **Technology Products** do not include products that the **Insured** sells without also providing associated material **Technology Services** that require the use of such **Technology Products**.

(EEE) "Technology Services" means professional services performed by the **Named Insured** for others for a fee, including but not limited to:

- (1) the design, installation, integration, maintenance, repair, service and support of computer hardware and software;
 - (2) the analysis, integration and design of computer systems, computer networks and related electronic systems; and
 - (3) the development of computer code, computer software, computer applications and mobile device operating system applications.
- (FFF) **“Technology Services Wrongful Act”** means any actual or alleged negligent act, error, omission, breach of duty, unintentional breach of contract, committed or allegedly committed by the **Named Insured** or by an entity or individual for whom the **Named Insured** is legally liable solely in the performance of or failure to perform **Technology Services**.
- (GGG) **“Time Retention”** means the number of hours identified on the Declarations of the Policy that must elapse prior to commencement of the **Restoration Period**.
- (HHH) **“Unauthorized Access”** means the gaining of access to the **Named Insured’s Computer System** by an unauthorized person or an authorized person in an unauthorized manner.
- (III) **“Unauthorized Use”** means the use of the **Named Insured’s Computer System** by an unauthorized person or an authorized person in an unauthorized manner.
- (JJJ) **“Wrongful Act”** means, collectively, **Media and Advertising Wrongful Acts, Network Security and Privacy Wrongful Acts and Technology Services Wrongful Acts**.

III. EXCLUSIONS

The Policy does not apply to any actual or alleged **Claim, Loss, First Party Loss, Claim Expenses, Cyber Extortion Costs, Computer Crime and Electronic Funds Loss or Crisis Management Response Costs** based upon, arising out of, resulting from, or in connection with, in whole or in part, directly or indirectly:

- (A) Any dishonest, criminal, fraudulent, knowing, malicious or intentional **Wrongful Act**; provided, however, the **Company** will pay **Claim Expenses** and defend such **Claim** to the extent the **Claim** alleges a dishonest, fraudulent, malicious or intentional act, error or omission as a single

Claim in a suit alleging multiple counts but only to the extent that one or more **Claims** alleged against the **Insured** is covered under the Policy. Notwithstanding, in no event will the **Company** be required to defend or indemnify the **Insured** with respect to any proceedings alleging criminal conduct, regardless of the nature or type of other allegations made against the **Insured**.

For purposes of this exclusion, the **Wrongful Act** of, or knowledge possessed by the **Insured's** Chief Executive Officer, Chief Financial Officer, President, General Counsel or Risk Manager (or functional equivalent) will be imputed to the **Insured**.

- (B) The **Insured's** rendering or failure to render **Technology Services** or **Advertising** services for any entity or individual (or any employee, principal, owner, shareholder, director, partner, stockholder, assignee or subsidiary of such entity or individual):
 - (1) that wholly or partly owns, operates, controls, or manages the **Insured**;
 - (2) that is or was operated, managed or controlled by the **Insured**;
 - (3) of which the **Insured** was an officer, director, partner, trustee or employee;
 - (4) in which the **Insured** or one or more of its principals has an ownership interest of five percent (5%) or more; and/or
 - (5) the **Insured**.
- (C) Any solicitations, sweepstakes, coupons, prizes, games of chance, awards or other incentive based programs, whether for the **Insured** or otherwise.
- (D) **Unauthorized Use** or **Unauthorized Access** of the **Insured's Computer System** by or on behalf of or in the name or right of any non-individual **Insured**;
- (E) Any fact, circumstance, situation, transaction, event, act, error or omission or **Wrongful Act** which has been the subject of any notice given under any insurance policy or any policy of which the Policy is a direct or indirect renewal or replacement, or any policy expiring prior to the inception date of the Policy.

- (F) Any fact, circumstance, situation, transaction, event, act, error or omission or **Wrongful Act** occurring prior to (i) the inception date of the Policy, or (ii) the inception date of the first policy in an uninterrupted series of privacy and security liability insurance policies continuously issued by the **Company** to the **Named Insured** of which the Policy is a renewal, whichever inception date is earlier, that the **Insured** knew or could have reasonably foreseen would give rise to potential or actual insurance coverage under the Policy.
- (G) Any written demand, litigation, suit, alternative dispute resolution, regulatory investigation, arbitration or mediation or proceeding pending, or order, decree or judgment entered against the **Insured** on or prior to the effective date of the Policy or the effective date of any policy issued by the **Insurer** of which the Policy is a continuous renewal, replacement, or that alleges or is derived from the same or substantially the same **Wrongful Act, Interrelated Wrongful Acts**, any fact, circumstance, situation, transaction, event, act, error or omission or **Wrongful Act** underlying or alleged therein. Solely with respect to this exclusion, only facts and knowledge possessed by the person(s) who signed the **Application** or any Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Chief Information Officer, Chief Security Officer, Chief Privacy Officer, President, General Counsel, Risk Manager, principal, partner, director or officer (or functional equivalent of any of the foregoing) of an **Insured** will be imputed to other **Insureds**.
- (H) The gathering, collection, obtaining, or publication of **Personal Information**, including drivers' license, employment status and legal status.
- (I) By or on behalf of, or at the behest or for the benefit of the **Insured**; provided, however, this exclusion will not apply to any **Claim** brought by an individual **Insured** in his or her capacity:
- (1) as a customer or client of the **Insured** for a **Privacy Event** relating to the unauthorized disclosure of such **Insured** customer's or client's **Personal Information**; or
 - (2) as an **Insured** for a **Privacy Event** relating to the unauthorized disclosure of such **Insured's Personal Information**;

notwithstanding the foregoing, there will be no coverage for collusive litigation brought for the purpose of imposing upon the **Insured** the responsibility for paying any **Loss**.

- (J) The wrongful refusal to hire, wrongful dismissal, discharge or termination of employment, violation of employment-related practices or policies, wrongful demotion, evaluation, reassignment or discipline, retaliation, discrimination, malicious prosecution or employment-related defamation, harassment, humiliation, invasion of privacy, defamation or infliction of emotional distress; provided, however, this exclusion will not apply to any **Claim** by an employee relating the unauthorized disclosure of such employee's **Personal Information**.
- (K) The theft, infringement, dilution, violation, misuse, misappropriation, gaining or taking of or any inducement to infringe any, copyright, service mark, service name, title, slogan, trade name, trademark, trade dress, confidential or proprietary information, process, idea, style of doing business or other intellectual property of any third party; provided, however, this exclusion will not apply to the extent any **Claim** that alleges copyright, service mark, service name, title, slogan, trade name, trademark or trade dress directly results from a **Media and Advertising Liability Wrongful Act**.
- (L) The theft, infringement, dilution, violation, misuse, misappropriation, gaining or taking, or any inducement to infringe of a patent, patent rights, or trade secrets.
- (M) Any violation of or **Claim** under:
- (1) the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisors Act of 1940, any Blue Sky or other securities law, or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law, including but not limited to any or any similar local, state or federal statutes or regulations or ordinances
 - (2) the Interstate Commerce Act of 1887, the Sherman Antitrust Act of 1890, the Clayton Act of 1914, the Robinson-Patman Act of 1936, the Cellar-Kefauver Act of 1950, the Federal Trade Commission Act of 1914, the Racketeer Influenced and Corrupt Organizations Act of 1970, any law involving or prohibiting any antitrust activity, price fixing (including but not limited to horizontal or other price fixing of wages, hours, salaries, compensation, benefits, or other terms or conditions of employment), price discrimination, predatory pricing, monopoly or monopolization, restraint of trade, unfair competition, conspiracy, collusion, or unfair, false, deceptive or misleading

trade or business practices or advertising, or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law, including or any similar local, state or federal statutes or regulations or ordinances;

- (3) Sections 605 and 616 of the Fair Credit Reporting Act, 15 U.S.C. Section 1681 et seq., or any other similar federal or state provisions; or any amendments thereto, including any rules or regulations issued in relation to such act, or any similar local, state or federal statutes or regulations or ordinances; or
 - (4) Section 113, Truncation of Credit Card and Debit Card numbers, of the Fair and Accurate Trade Transactions Act (FACTA), as defined in 15 USC Section 1681, or any amendment thereto, or any similar local, state or federal statutes or regulations or ordinances.;
- (N)** Any unsolicited publication or dissemination of information by fax, electronic mail (e mail), SMS (Simple Messaging System) or via any other means of communication by the **Insured** or any other third party, including actual or alleged violations of:
- (1) the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
 - (2) the CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
 - (3) any other federal, state or foreign anti-spam statute or federal, state or foreign statute, law, ordinance or regulation;

provided, however, this exclusion will not apply to the extent any **Claim** alleges a **Network Security and Privacy Liability Wrongful Act** or the **Named Insured** suffers **Loss of Income** attributable to a **Denial of Service Attack**.

- (O)** Any obligation for which the **Insured** or any insurer may be liable under any Workers' Compensation, Unemployment Compensation, Employers Liability, or Disability Benefits law, or any similar law or regulation.
- (P)** Any violation of any responsibility, duty, or obligation imposed under the Employee Retirement Income Security Act of 1974 or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law including but not limited to any

amendment thereto or any regulation promulgated thereunder; provided, however, this exclusion will not apply to any **Claim** by an employee of the **Insured** for a **Privacy Incident** relating to the unauthorized disclosure of such employee's **Personal Information**.

- (Q) Any **Bodily Injury** or **Non-Physical Property Damage**; provided, however, this exclusion does not apply to mental anguish, emotional distress, pain and suffering, or shock resulting from a **Privacy Event**.
- (R) The **Insured's** advising or requiring, or failure to advise or require, or failure to maintain any form of insurance, suretyship, or bond, either with respect to the **Insured** or any other entity or individual.
- (S) Any warranty or guarantee made by the **Insured**.
- (T) Any cost representation, contract price, or cost estimate, including the actual or alleged inaccurate, inadequate, or incomplete description of the price of the **Insured's** professional services or associated products.
- (U) Any liability assumed by or on behalf of or in the name or right of the **Insured** under any express, implied, actual, constructive, written, or oral contract, agreement, warranty, guarantee, assurance, covenant, representation, or promise; provided, however, that this exclusion will not apply to liability which would have attached in the absence of such contract, agreement, warranty, guarantee, assurance, covenant, representation, or promise.
- (V) The wear and tear, drop in performance, progressive deterioration, or aging of electronic equipment and other property used by the **Insured**.
- (W) Any inaccurate, inadequate, or incomplete description with respect to any professional service or associated product, including but not limited to price.
- (X) Any obligation to make or pay any fee, profit, royalty, commission, charge, cost, or expense incurred to obtain a license or right to use or promote the use of any good, product, service, data, or information of any type, nature, or kind.
- (Y) Any costs or expenses incurred by the insured or others to recall, repair, replace, upgrade, supplement or remove the **Insured's** professional services, including associated products.
- (Z) The inability to use, or lack of performance of, software programs due to

the expiration or withdrawal of technical support by the software vendor or software programs which are still in a testing phase and/or have not been authorized for general commercial release.

- (AA) Any **Breach**, except to the extent covered under **Insuring Agreement B**.
- (BB) The **Insured's** knowing failure to disclose the loss of **Personal Information** in violation of any federal, state or local law, regulation or ordinance.
- (CC) Any false, deceptive or unfair business practices, violation of consumer protection laws, or false **Advertising**; provided, however, that this exclusion does not apply to **PCI Fines /Penalties** or a **Regulatory Action**.
- (DD) (1) the discharge, dispersal, release, escape, migration, or seepage of any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, soot, vapors, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials, or waste materials (including materials to be recycled, reconditioned or reclaimed) on, in, into, or upon land and structures thereupon, the atmosphere, any watercourse, body of water, or groundwater; or

(2) any direction or request that the **Insured** test for, monitor, clean remove, contain, treat, detoxify or neutralize pollutants, or any voluntary decision to do so.
- (EE) Any nuclear reaction, nuclear radiation, radioactive contamination, radioactive substance, electromagnetic field, electromagnetic radiation, or electromagnetism.
- (FF) War including undeclared or civil war, 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 insurrection, rebellion, revolution, riot, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- (GG) The seizure, confiscation, expropriation, nationalization, or destruction of the **Named Insured's Computer System** or **Data** by order of any governmental authority.
- (HH) Fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event.

- (II) Any threatened **Act of Terrorism**, including but not limited to the use of force or violence, of any person(s) or group(s) of persons whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- (JJ) Brought by or on behalf of or in the name or right of any local, state, federal, or foreign administrative, governmental, or regulatory agency, body, entity, or tribunal; provided, however, this exclusion will not apply to a covered **Regulatory Action**.
- (KK) Any mechanical or electrical failure, interruption or outage, however caused, including any electrical power, utility service, satellite or teleconference interruption or surge, brownout, blackout, short circuit, over voltage, or power fluctuation or outage to gas, water, telephone, wireless communications, data transmission lines, cable, satellite, telecommunications, the internet or any component thereof including hardware, software or any other infrastructure, services, equipment or facilities not under the **Insured's** direct operational control.

IV. AGGREGATE LIMIT OF LIABILITY / RETENTION

(A) Aggregate Limit of Liability

(1) Policy Aggregate Limit of Liability

1. The amount shown at Item 6, Total Policy Aggregate, of the Declarations of the Policy is the **Company's** maximum Aggregate Limit of Liability, combined, for all coverages, including **Third Party Loss, Crisis Management Response and First Party Loss**.

(2) Third Party Loss

1. The amount shown at Item 6, for Purchased Coverage Type A1, A2, A3 A4 or A5, of the Declarations of the Policy is the **Company's** per **Claim** and maximum Aggregate Limit of Liability, combined, for all **Loss**, including **Claim Expenses**.

(3) Crisis Management Response

1. The amount shown at Item 6, for purchased Coverage Type B, of the Declarations of the Policy is the **Company's** maximum Aggregate Limit of Liability for all **Crisis Management Response Costs** on account of all **Breaches**.

(4) First Party Loss

1. The amount shown at Item 6, for Purchased Coverage Type C1, C2, C3 or C4 of the Declarations of the Policy is the **Company's** maximum Aggregate Limit of Liability for all **First Party Loss**.

(5) Sublimits

- (a) If a sublimit with respect to an Insuring Agreement is stated at Item 6 of the Declarations of the Policy, then such sublimit will be the **Company's** maximum liability for **Loss** with respect to such Insuring Agreement. Upon exhaustion of such sublimit, the **Company** will not be liable to pay any further **Loss** with respect to the coverage provided by the subject Insuring Agreement.
- (b) Each sublimit will be part of, and not in addition to, the Policy's Aggregate Limit of Liability, as stated at Item 6 on the Declarations of the Policy, and will not serve to supplement or increase such Aggregate Limit of Liability. All payments made under a sublimit will reduce the Policy's remaining Aggregate Limit of Liability.

(B) Exhaustion of Limit of Liability

The Company is not liable to pay **Loss, Crisis Management Response Costs** or **First Party Loss**, or continue the defense of any **Claim**, after the Policy's Aggregate Limit of Liability has been exhausted.

The **Company's** payment of **Claim Expenses** reduces and may totally exhaust the Policy's Aggregate Limit of Liability.

(C) Retention

- (1) The Retention amount stated in the Declarations of the Policy applies to **Loss, Crisis Management Response Costs** and **First Party Loss**. The Company is not obligated to pay **Loss, Crisis Management Response Costs** or **First Party Loss** until the **Insured** pays the applicable Retention in full. Any payments made to satisfy the Retention under another policy of insurance will not

satisfy or apply towards the applicable Retention, or any portion thereof, of the Policy.

- (2) One Retention will apply to a **Claim** alleging the same **Wrongful Act** or **Interrelated Claims** or **Interrelated Wrongful Acts**.

(D) Mediation of Claims Retention Credit

The applicable Retention amount stated in the Declarations of the Policy will be decreased by fifty percent (50%) and reimbursed to the **Insured** that paid the Retention, subject to a maximum aggregate reduction of \$15,000, if a **Claim** is fully and finally resolved through mediation. In the event such mediation does not fully and finally resolve the **Claim**, there will be no reduction of the Retention obligation.

(E) Allocation

If a **Claim** made against the **Insured** includes both covered and uncovered matters or is made against both an **Insured** and others not insured under the Policy, the **Named Insured** and the **Company** agree that there must be an allocation between insured and uninsured **Loss** and **Claim Expenses**. Additionally, the **Insured** and the **Company** agree that in determining a fair and appropriate allocation of insured and uninsured **Loss**, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with, the defense and/or settlement of a **Claim** by the **Insured** and others. If there is no agreement as to the allocation of **Claim Expenses**, the **Company** will pay the allocated portion of **Claim Expenses** that the **Company** deems fair and appropriate. In addition, if there is no agreement on allocation of **Loss**, or **Claim Expenses**, no presumption as to allocation will exist in any arbitration, suit or other proceeding.

V. DEFENSE, INVESTIGATION & SETTLEMENT OF CLAIMS

(A) Defense

The **Company** shall have the right and duty to defend any **Claim** covered by this Policy that is brought against an **Insured** by a third party alleging a **Wrongful Act** arising from **Technology Services** pursuant to the coverage afforded under Section I. (A)(1), a **Network Security Event** or **Privacy Event** a pursuant to the coverage afforded under Section I.(A)(2), **Advertising** pursuant to the coverage afforded under Section I. (A)(3), and a **Regulatory Action** pursuant to the coverage afforded under Section I. (A)(4), even if the allegations are groundless or false. The

Company has the sole right to select and appoint counsel to represent the **Insured** with respect to any **Claim** to which this Policy applies. The **Company's** duty to defend shall cease upon exhaustion of the Policy's Limit of Liability, as stated on the Declarations Page.

(B) Investigation and Settlement of Claims

- (1) The **Insured** shall not, except at its own expense, incur any **Claim Expenses**, engage in settlement negotiations, enter into any settlement agreement, make any payment, admit any liability, assume any obligation or incur any expense without the prior written consent of the **Company**. The **Company** shall not be liable for any **Claim Expenses**, settlement, expense, assumed obligation or admission to which it has not given its prior written consent.
- (3) The **Company** shall have the right and sole discretion to conduct any investigation it deems necessary, including, without limitation, any investigation with respect to the **Application**, any statements made in the **Application** and coverage.
- (4) The **Company** may, with the consent of the **Named Insured**, settle any **Claim** it deems reasonable and necessary. If the **Named Insured** refuses to consent to any settlement recommended by the **Company** and acceptable to the claimant, then the **Company's** liability for such **Claim** shall not exceed:
 - (a) the amount of the recommended settlement plus **Claim Expenses** incurred up to the date of the **Named Insured's** refusal to consent to the recommended settlement; plus
 - (b) Fifty percent (50%) of any **Claim Expenses** in excess of the amount referenced in paragraph (a) above, incurred in connection with such **Claim**, subject always to all other applicable terms and conditions of the Policy, including but not limited to the Policy's **Retention** and Limit of Liability.

The remaining fifty percent (50%) of any **Claim Expenses**, in excess of the amount referenced in paragraph (b) above, shall be the sole responsibility of and be paid by **Insured**.

VI. TERRITORY

Coverage under the Policy potentially applies to **Wrongful Acts** arising from **Professional Services** performed worldwide; provided, however, coverage is

only available for **Claims** filed and maintained and **Crisis Management Response Costs** and **First Party Loss** incurred within the United States of America, its territories and possessions or Canada.

VII. NOTIFICATION OF CIRCUMSTANCES

(A) With respect to the Third Party Coverages of the Policy only, if, during the **Policy Period**, the **Insured** first becomes aware of any circumstance that may lead to a **Claim**, and if the **Insured**, during the **Policy Period** only (and not during the **Discovery Period** or the Optional Extended Reporting Period), gives written notice, to the **Company** of:

- (1) the circumstances (including the names of the parties involved);
- (2) the specific **Wrongful Act**;
- (3) the consequences that have or may result therefrom; and
- (4) the circumstances by which the **Insured** first became aware thereof;

then any **Claim** subsequently made against the **Insured** arising in whole or in part out of such circumstances will be deemed for the purposes of the Policy to have been first made on the date such circumstances were first reported to the **Company**. There is no coverage for any fees, expenses, or other costs incurred prior to the time such circumstances become a **Claim** and written notice of such **Claim** is provided to the **Company** in accordance with this subsection of the Policy. In no event will this Section apply or potentially provide coverage for **Crisis Management Response Costs** or **First Party Loss**.

VIII. CONDITIONS

(A) **Claims Made and Reported Coverage**

Coverage is potentially available for **Loss** only for those **Claims** first made against the **Named Insured** during the **Policy Period** and reported to the **Company** in writing during the **Policy Period**, **Discovery Period** or the Optional Extended Reporting Period (if applicable). **Claims** made and reported to the **Company** after the **Policy Period**, **Discovery Period** or the Optional Extended Reporting Period (if applicable) are not covered under the Policy.

(B) Application of the Policy's Retroactive Date

Coverage is potentially available for **Loss** only if the first **Wrongful Act** or **Interrelated Wrongful Act** occurs on or after the Retroactive Date stated in the Declarations of the Policy and prior to the end of the **Policy Period**.

(C) Assistance and Cooperation

The **Insured** will cooperate with the **Company** and its representatives and, upon the **Company's** request, attend hearings, depositions and trials; assist in effecting settlement; cooperate in securing and giving evidence, obtaining the attendance of witnesses; and in the conduct of suits. The **Insured** also will cooperate with the **Company** and do whatever is necessary to secure and effectuate any rights of indemnity, contribution or apportionment that the **Insured** may have.

Expenses incurred by the **Insured** in assisting and cooperating with the **Company**, as described above, do not constitute **Claim Expenses**; provided, however, the **Company** will pay expenses incurred by the **Insured** as provided in **Insuring Agreement** A.1 and A.2 of the Policy.

As a condition precedent to the **Insured's** rights under the Policy, the **Insured** agrees not enter into any settlement agreement, engage in settlement negotiations, incur any **Claim Expenses**, legal fees and expenses or other amounts or otherwise assume any contractual obligation, or admit any liability with respect to any **Claim** without the prior written consent of the **Company**.

The **Insured** agrees that it will not take any action which in any way increases the **Company's** exposure under the Policy.

(D) Subrogation

In the event of any payment under the Policy, the **Company** will be subrogated to the extent of such payment to all rights of recovery thereof, and the **Insured** will execute all documents required and do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the **Company** to effectively bring suit in the name of the **Insured**. The **Insured** also will provide all other assistance and cooperation which the **Company** may reasonably require. The **Insured** will do nothing after a **Claim** is made against an **Insured(s)** or a **Breach** occurs or **Loss, Crisis Management Response Costs** or **First Party Loss** is incurred to prejudice the **Company's** subrogation rights.

All recoveries (after first deducting the legal fees and expenses incurred by the **Company** in obtaining such recovery) will first be paid to the **Company** to the extent of any **Loss, Crisis Management Response Costs** and **First Party Loss** incurred by the **Company**, with the balance paid to the **Insured**.

(E) Other Insurance

The Policy will be excess over any other valid and collectible insurance, including the amount of any Retentions or Deductibles, available to the **Insured**, including any insurance under which there is a duty to defend and regardless of whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such insurance is written specifically as excess insurance of the Policy by reference in such other policy to the Policy number set forth in the Declarations of the Policy.

(F) Cancellation

The **Named Insured** may cancel the Policy by giving advance written notice to the **Company** stating when thereafter cancellation will take effect.

If the **Company** decides to cancel the Policy, the **Company** will mail a written notice to the **Named Insured** stating on what date cancellation will be effective and the reason for cancellation. If the reason is because of non-payment of premium, then the date of cancellation will be at least ten (10) days from the date of the **Company's** notice of cancellation. If it is for any other reason, then the date of cancellation will be at least sixty (60) days from the date of the **Company's** notice of cancellation.

If the Policy is cancelled by the **Company** before the Expiration Date, the return portion of the premium will be computed on a prorated basis. If the **Named Insured** elects to cancel the Policy before the Expiration Date, the **Company** will return ninety percent (90%) of the unearned premium as computed on a prorated basis. Cancellation is not contingent upon acceptance by the **Named Insured** of the unearned premium.

(G) Discovery Period

As a condition precedent hereunder, the **Insured** must provide the **Company** with written notice of a **Claim**, a **Breach** and a claim for First Party Coverage no later than the last day of the **Discovery Period** or the

last day of the Optional Extended Reporting Period (if applicable).

(H) Optional Extended Reporting Period

If the Policy is cancelled or non-renewed by the **Company** for any reason other than fraud, material misrepresentation, material omission or for the non-payment of premium, or if the **Named Insured** cancels or chooses not to renew the Policy, then the **Named Insured** will have the right, following the effective date of such cancellation, if applicable, or the Expiration Date of the Policy, to purchase an Optional Extended Reporting Period, upon written request and payment of an additional premium of up to the percentage of the full annual premium not to exceed:

For 12 months: one hundred percent (100%) of the full annual premium.

For 24 months: one hundred and fifty percent (150%) of the full annual premium.

For 36 months: one hundred and eighty five percent (185%) of the full annual premium.

At the commencement of the Optional Extended Reporting Period, the entire premium will be considered earned.

Any such Optional Extended Reporting Period:

- (1) will apply only with respect to **Claims** (and not **Crisis Management Response Costs** or **First Party Loss**) first made during the Optional Extended Reporting Period and only with respect to any **Wrongful Acts** committed before the effective date of cancellation, if applicable, or the Expiration Date of the Policy;
- (2) will be evidenced by issuance of an Endorsement to the Policy;
- (3) is subject to all of the terms, conditions, limitations and exclusions of the Policy;
- (4) will require payment within thirty (30) days from the **Named Insured's** written request to bind such Optional Extended Reporting Period; and
- (5) will be effective on the effective date of such cancellation, if applicable, or the Expiration Date of the Policy.

The Aggregate Limit of Liability for the Optional Extended Reporting Period will be part of, and not in addition to, the Aggregate Limit of

Liability for the **Policy Period** set forth in the Declarations of the Policy. The purchase of the Optional Extended Reporting Period will not increase or reinstate the Aggregate Limit of Liability set forth on the Declarations page, which is the **Company's** maximum liability for all **Loss**, on account of all **Claims** first made during the **Policy Period** and Optional Extended Reporting Period.

As used herein, "full annual premium" means the equivalent annual premium level for the coverage terms in effect immediately prior to the end of the **Policy Period**.

A change in Policy terms, conditions or exclusions and/or premiums will not be considered a nonrenewal for purposes of triggering the **Named Insured's** rights to purchase the Optional Extended Reporting Period.

The rights contained in this provision automatically terminate unless the **Named Insured** provides written notice to the **Company** of its election to purchase the Optional-Extended Reporting Period within thirty (30) days of the effective date of cancellation, if applicable, or the Expiration Date of the Policy. Furthermore, as a condition precedent to the **Named Insured's** rights to purchase the Optional Extended Reporting Period, the total premium for the Policy must have been paid in full and any outstanding Retention fully satisfied.

(I) Action Against the Company

No action will lie against the **Company** unless, as a condition precedent thereto, the **Insured** has fully complied with all of the terms of the Policy, nor, with respect to Third Party Coverage, until the amount of the **Insured's** obligation to pay with respect to a **Claim** has been finally determined either by judgment against the **Insured** after actual adversarial trial or by written agreement of the **Insured**, the claimant and the **Company**.

With respect to Third Party Coverage, any individual or organization or the legal representative thereof who has secured a judgment or written agreement executed by the **Company** will be entitled thereafter to recover only to the extent of the insurance afforded by the Policy. No individual or organization will have any right under the Policy to join the **Company** as a party to any action against the **Insured**, nor will the **Company** be impleaded by any individual or organization, including the **Insured**, or their legal representative or held to be responsible for paying greater than the Policy's Aggregate Limit of Liability.

(J) Assignment

No assignment of interest under the Policy will bind the **Company** unless its prior written consent is endorsed hereon.

(K) Authorization Clause

The **Named Insured**, has the sole authority and responsibility to act on behalf of every **Insured** with respect to: (1) the payment or return of premium; (2) the receipt of and agreement to any Endorsements issued to form a part of the Policy; (3) the exercise of the rights provided in in the Policy regarding consent to settlement; and (4) the exercise of the rights provided in the Policy regarding the Optional Extended Reporting Period.

By acceptance of the Policy, the **Insured** understands and agrees that the **Named Insured** has the authority set forth in this Section of the Policy.

(L) Representations

(1) The **Named Insured's** Chief Executive Officer, Chief Financial Officer, General Counsel, Risk Manager, Directors and the signatory to the **Application**, or their functional equivalents, represent and acknowledge that statements made in the **Application**, and the information submitted therewith, are true and accurate, and that such statements and information:

(a) are the basis upon which the Policy was issued and are considered to be incorporated herein and form a part of the Policy; and

(b) are deemed material to the acceptance of the risk assumed by the **Company** under the Policy.

(2) The **Insureds** understand and agree that the Policy was issued in reliance upon the truth and accuracy of the representations, statements and information made in or submitted with the **Application**.

(3) In the event the **Application** contains misrepresentations that materially affect either the acceptance of this risk or the nature of the risk assumed by the **Company** under the Policy, the Policy in its entirety will be void.

(M) False or Fraudulent Insurance Claims

If the **Insured** commits fraud in proffering any insurance claim with regard to amount or otherwise, the Policy in its entirety will be void from the date such fraudulent insurance claim is proffered.

(N) Bankruptcy

Bankruptcy or insolvency of the **Insured** will neither relieve the **Company** of its obligations nor deprive the **Company** of its rights or defenses under the Policy.

(O) Office of Foreign Assets Control

Payment of **Loss, Crisis Management Response Costs** and **First Party Loss** under the Policy will be made only in full compliance with all United States of America economic or trade sanctions, laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

IX. MATERIAL CHANGES

In the event that after the inception date of the Policy:

- (1) the **Named Insured** merges with or is consolidated with another entity such that the **Named Insured** is the surviving entity; or
- (2) the **Named Insured** creates or directly or indirectly acquires, a **Subsidiary** whose annual gross revenues exceed ten percent (10%) if the **Named Insured's** annual gross revenues as of the acquisition date;

coverage will be afforded to the **Named Insured** or its **Subsidiary** only for **Claims** first made within ninety (90) days of the effective date of such transaction or event, involving the assets acquired or the assets, liabilities or directors, officers or employees of the entity acquired or merged with, or such **Subsidiary**, but only for **Claims** wholly involving **Wrongful Acts** occurring after the effective date of such transaction or event.

The **Company** has the option of providing coverage for the **Named Insured**, or its **Subsidiary** beyond the ninety (90) days provided that:

- (1) the **Named Insured** gives the **Company** notice of such transaction

or event as soon as possible, but in no event later than thirty (30) days after the effective date of the transaction or event

- (2) the **Named Insured** gives the **Company** information regarding the transaction or event as the **Company** may reasonably require; and
- (3) the **Named Insured** accepts any terms, conditions, exclusions, limitations and additional premium, if any, as the **Company**, in its sole discretion, may impose.

If the **Company**, at its sole discretion, elects to provide coverage, the Policy will not apply to, and the **Company** will not pay, any **Loss, Crisis Management Response Costs** or **First Party Loss** based upon, arising out of, or directly or indirectly resulting from, or in any way involving any **Wrongful Act, Breach or First Party Coverage** matter occurring before: (a) the effective date of the transaction or event; or (b) the effective date of coverage under the Policy as set forth in an Endorsement, whichever is later.

X. CHANGE OF CONTROL

If during the **Policy Period**:

- (a) the **Named Insured** merges into or consolidates with another entity such that the **Named Insured** is not the surviving entity; or
- (b) Another entity, person or group of entities and/or person acting in concert acquires securities or voting rights which results in ownership or voting control by the other entity(ies) or person(s) of more than fifty percent (50%) the outstanding securities representing the rights to vote for the election of an **Insured's** directors;

(either of the above events are hereinafter referred to as the "**Transaction**") then the insurance provided hereunder will continue until the later of the expiration date of the Policy or such other date to which the **Company** may agree, but solely for **Claims** for **Wrongful Acts** that wholly occurred prior to the **Transaction** and otherwise are covered by the Policy, and the premium will be considered fully earned.

The **Named Insured** will give written notice of such event to the **Company** within thirty (30) days of the **Transaction**.

XI. ENTIRE AGREEMENT

By acceptance of the Policy, the **Named Insured** agrees that the Policy embodies all agreements existing between it and the **Company** or any of its agents relating to the Policy. Notice to any agent or knowledge possessed by any agent or other individual acting on behalf of the **Company** will not effect a waiver or a change in any part of the Policy or estop the **Company** from asserting any rights under the terms of the Policy, nor will the terms be waived or changed except by written endorsement or rider issued by the **Company** and signed by an authorized representative of the **Company** to form a part of the Policy.