



SPECIMEN

**LIBERTY SURPLUS INSURANCE CORPORATION (hereinafter called "the Company")
MISCELLANEOUS PROFESSIONAL LIABILITY,
DATA BREACH AND NETWORK PROTECTION INSURANCE**

This is a Claims Made and Reported Policy. Please Read it Carefully. All words in bold face type have special meanings set forth in Section IV. DEFINITIONS of the Policy

In consideration of and subject to the payment of the Premium, the agreement of the Named Insured to pay the Deductible amount(s) stated in the Declarations page of this Policy and described herein, and in reliance upon the statements, representations, attachments and exhibits contained in and submitted with the **Application** which shall be the basis of this Policy and deemed to be incorporated herein, and subject to all the terms, conditions, limitations and any endorsements to this Policy, the Company and **Insured** agree as follows:

I. INSURING AGREEMENTS

A. DATA BREACH LIABILITY

The Company will pay on behalf of the **Insured** all sums in excess of the Deductible amount stated in the Declarations which the **Insured** shall become legally obligated to pay as **Damages** and **Claims Expenses** resulting from **Claims** first made against the **Insured** and reported to the Company in accordance with the Notice provisions in Section VI of this policy during the **Policy Period**, or **Extended Reporting Period**, if applicable, said **Claim** or **Claims** arising as a result of a **Data Breach Wrongful Act** by the **Insured**, provided that:

- (1) Such **Data Breach Wrongful Act** was committed on or after the **Retroactive Date** and before the end of the **Policy Period**; and
- (2) prior to the **Knowledge Date** stated in the Declarations, no **Senior Executive** knew or could have been reasonably expected to know that such **Data Breach Wrongful Act** might give rise to a **Claim**.

B. MEDIA LIABILITY

The Company will pay on behalf of the **Insured** all sums in excess of the Deductible amount stated in the Declarations which the **Insured** shall become legally obligated to pay as **Damages** and **Claims Expenses** resulting from **Claims** first made against the **Insured** and reported to the Company in accordance with the Notice provisions in Section VI of this policy during the **Policy Period**, or **Extended Reporting Period**, if applicable, said **Claim** or **Claims** arising as a result of a **Media Injury** by the **Insured** arising out of the **Insured's Media Content**, provided that:

- (1) Such **Media Injury** was committed on or after the **Retroactive Date** and before the end of the **Policy Period**; and
- (2) prior to the **Knowledge Date** stated in the Declarations, no **Senior Executive** knew or could have been reasonably expected to know that such **Media Injury** might give rise to a **Claim**.

C. MISCELLANEOUS PROFESSIONAL LIABILITY

The Company will pay on behalf of the **Insured** all sums in excess of the Deductible amount stated in the Declarations which the **Insured** shall become legally obligated to pay as **Damages** and **Claims Expenses** resulting from **Claims** first made against the **Insured** and reported to the Company in accordance with the Notice provisions in Section VI of this policy during the **Policy Period**, or **Extended Reporting Period**, if applicable, said **Claim** or **Claims** arising as a result of a **Professional Services Wrongful Act** by the **Insured**, provided that:

- (3) Such **Professional Services Wrongful Act** was committed on or after the **Retroactive Date** and before the end of the **Policy Period**; and
- (4) prior to the **Knowledge Date** stated in the Declarations, no **Senior Executive** knew or could have been reasonably expected to know that such **Professional Services Wrongful Act** might give rise to a **Claim**.

D. DISCIPLINARY OR REGULATORY PROCEEDINGS, FINES AND PENALTIES

The Company will pay on behalf of the **Insured** all sums in excess of the Deductible amount stated in the Declarations, which the **Insured** shall become legally obligated to pay as **Damages** and **Claims Expenses**, resulting from a **Disciplinary or Regulatory Proceeding** first made against the **Insured** and reported to the Company in accordance with the Notice provisions in Section VI of this policy during the **Policy Period** or **Extended Reporting Period**, if applicable, said **Claim** or **Claims** arising as a result of a **Data Breach Wrongful Act** committed by the **Insured** on or after the **Retroactive Date** and reported to the Company during the **Policy Period**.

The maximum amount payable by the Company pursuant to a **Disciplinary or Regulatory Proceeding** for each **Policy Period** is subject to the Disciplinary or Regulatory Proceedings Fines and Penalties sublimit stated on the Declarations regardless of the number of incidents reported.

E. NOTIFICATION COSTS

If during the **Policy Period** the **Insured** reports a **Privacy Breach** or **Unauthorized Access** which first happened during the **Policy Period**, the Company shall pay on behalf of the **Insured**, or on behalf of an independent contractor for which the **Insured** is legally responsible via a written contract the following reasonable and necessary Notification Costs incurred by a **Data Breach First Responder** and a data breach service provider from the **Data Breach Service Provider Panel**:

- (1) **Computer Forensic Costs** following a **Privacy Breach** or **Unauthorized Access**;
- (2) Costs to provide legally required notification in compliance with any local, state, federal rule or regulation, or foreign laws following a **Privacy Breach** or **Unauthorized Access**;
- (3) Costs to provide voluntary notification to those affected individuals if in the reasonable opinion of the **Insured** such voluntary notification is necessary in order to mitigate the effects of a **Privacy Breach** or **Unauthorized Access** but only to the extent that their **Covered Personally Identifiable Information** was:
 - i. disclosed or reasonably believed to have been disclosed due to a **Privacy Breach** or **Unauthorized Access**, and
 - ii. in a useable, readable or decipherable format;
- (4) Costs to notify federal, state, local and foreign regulatory bodies as required by law, including the Federal Trade Commission, the media, Secretary of Health and Human Services and the Office of Civil Rights, in order to mitigate the effects of a **Privacy Breach** or **Unauthorized Access**;
- (5) Costs to set up a call center and manage responses to individual enquiries following notification;
- (6) Fees charged by attorney(s) to determine the applicability of and actions necessary to comply with such laws;
- (7) Credit and identity monitoring and restoration services for one (1) year to those affected individuals notified pursuant to Section E (2) and/or (3) above but only to the extent that their **Covered Personally Identifiable Information** was disclosed or could reasonably be believed to have been disclosed due to a **Privacy Breach** or **Unauthorized Access**;

The Deductible does not apply to Notification Costs incurred by the **Data Breach First Responder**, and the Company will pay ninety percent (90%) of the Notification Costs for the **Data Breach First Responder** and the **Insured** will pay the remaining ten percent (10%). Any co-insurance payable will erode the Deductible.

The **Insured** may choose a service provider not on the **Data Breach Service Provider Panel** with the Company's prior written consent and subject to all of its guidelines. However in this event the Company shall only pay the hourly rate and/or fees that would have been charged had the Company's **Data Breach Service Provider Panel** been used.

The maximum amount payable by the Company for Notification Costs for each **Policy Period** is subject to the Notification Costs sublimit(s) as stated on the Declarations regardless of the number of incidents reported. The **Computer Forensic Costs** sublimit stated on the Declarations is part of and not in addition to the Notification Costs sublimit.

F. CRISIS MANAGEMENT EXPENSES

If during the **Policy Period** the **Insured** reports an actual or alleged **Data Breach Wrongful Act**, **Privacy Breach** or **Malicious Attack** which first happened during the **Policy Period**, the Company will pay for reasonable and necessary public relations, crisis management and related expenses incurred relating to such **Data Breach Wrongful Act** or **Malicious Attack**.

The maximum amount payable by the Company for Crisis Management Expenses for each **Policy Period** is subject to the Crisis Management Expenses sublimit stated on the Declarations regardless of the number of incidents reported.

G. NETWORK EXTORTION

If during the **Policy Period** the **Insured** receives a credible threat, in the reasonable opinion of the **Insured**, from a third party for a ransom or extortion demand to:

- (1) Damage or render inoperable the **Insured's** website including the threat of a denial of service attack;
- (2) Damage or render inoperable the **Insured's Computer systems**, including the intentional introduction of **Malicious Code** into the **Insured's Computer systems**; or
- (3) Release **Covered Personally Identifiable Information** or **Non-Public Confidential Business Information** but only to the extent that it is in a useable, readable or decipherable format;

the Company will pay reasonable and necessary costs and expenses to protect the **Insured's Computer Systems** from loss including the payment of an extortion demand or current market value of services demanded in lieu of a ransom.

As a condition precedent to coverage, these costs and expenses are only payable when:

- a) every reasonable effort has been made to determine that the extortion demand has actually occurred and is not a hoax,
- b) the ransom was previously negotiated,
- c) the ransom demand is being met under duress, and
- d) the ransom demand was agreed to by **Senior Executives** and the Company.

The maximum amount payable by the Company for Network Extortion Costs for each **Policy Period** is subject to the Network Extortion Costs sublimit as stated on the Declarations regardless of the number of incidents reported.

H. NETWORK BUSINESS INTERRUPTION

If during the **Policy Period** the **Insured** suffers **Network Deterioration** as a direct result of a **Malicious Attack** on the **Insured's Computer Systems**, following the stated Waiting Period in the Declarations, the Company will pay for the **Loss of Income** and associated **Extra Expenses**.

The maximum amount payable by the Company for **Network Deterioration** coverage for each **Policy Period** is subject to the **Network Business Interruption** sublimit a stated in the Declarations regardless of the number of incidents reported.

I. NETWORK ASSET DAMAGE

If during the **Policy Period** the **Insured** suffers a **Malicious Attack** on the **Insured's Computer Systems**, the Company will pay for replacing, recreating, restoring or repairing the **Insured's Computer Systems**. The maximum amount payable by the Company for a **Malicious Attack** for each **Policy Period** is subject to the Network Asset Damage sublimit stated in the Declarations regardless of the number of incidents reported. The payment of such **Malicious Attack** costs and associated **Extra Expenses** is subject to the Company's prior written consent.

II. SUPPLEMENTAL PAYMENTS

Subject to all other terms and conditions, this Policy affords the following Supplemental Payments. Any payment made by the Company under this Section shall not affect the Insured's Deductible obligations and shall not reduce the Limits of Liability.

A. PRE-CLAIM ASSISTANCE

If during the **Policy Period** the **Insured** reports a **Privacy Breach** in accordance with the Conditions of this Policy, the Company, at its sole option, may spend reasonable and necessary costs to establish when the **Privacy Breach** occurred, its origin and factual details prior to a **Claim** being made. These Pre-Claim Assistance costs are capped at an aggregate limit of \$20,000.

B. REIMBURSEMENT OF DAILY EXPENSES

If the **Insured** is requested by the Company to attend hearings, depositions and trials relative to the defense of a **Claim**, the Company shall reimburse the **Insured's** actual loss of earnings and reasonable expenses due to such attendance up to \$500 per day subject to an aggregate limit of \$10,000 for each **Policy Period**.

III. TERRITORY, DEFENSE AND SETTLEMENT OF CLAIMS

- A. The coverage afforded by this Policy applies worldwide.
- B. The Company and the **Insured** shall mutually agree to the appointment of defense counsel but in the absence of such agreement, the Company's decision shall be final. However, at the Company's option, defense counsel may be appointed by the **Insured** with the Company's prior written consent and subject to its guidelines. If the **Insured** chooses defense counsel that is qualified to handle the matter at issue and the Company does not agree to that choice, then the Company shall only pay the hourly rate that would have been charged had the Company's choice of counsel been used.
- C. The Company has the right and duty to defend any **Claim** made against the **Insured** or **Disciplinary or Regulatory Proceeding**, even if the allegations of the **Claim, Disciplinary or Regulatory Proceeding** are groundless, false or fraudulent, subject to section B. above. The Company has the right to investigate and conduct negotiations and, with the written consent of the **Insured**, effect settlement of any **Claim** as the Company deems reasonable. The **Insured** shall not admit or assume liability for any **Disciplinary or Regulatory Proceeding, Data Breach Wrongful Act, Professional Services Wrongful Act** or **Media Injury** or settle any **Claim** or **Disciplinary or Regulatory Proceeding** or incur any expenses, including **Claims Expenses**, without the prior written consent of the Company, except the **Insured** must take all reasonable action to prevent or mitigate any **Claim** which would be covered under this Policy. The fulfillment of legal obligations under Breach Notice Laws or the payment of Data Breach Notification Costs, including **Computer Forensic Costs** as described in Section I. E. does not constitute an assumption of liability nor require the prior written consent of the Company.
- D. If the **Insured** refuses to consent to a settlement recommended by the Company and accepted by the claimant, and elects to contest or continue to contest the **Claim**, the Company's liability shall not exceed:
- i. the amount for which the Company would have been liable for **Damages** and **Claims Expenses**; plus
 - ii. fifty percent (50%) of **Claims Expenses** for services incurred after the Company recommended settlement or resolution; and
 - iii. fifty percent (50%) of **Damages** in excess of the amount of **Damages** that would have been owed if the **Claim** had been so settled when and as so recommended.

The Company shall have the right to withdraw from the further defense of the **Claim** by tendering control of the defense thereof to the **Insured**. The operation of this paragraph shall be subject to the Limits of Liability and Deductible provisions of this Policy.

IV. DEFINITIONS

1. "**Application**" means all applications, statements, representations, attachments and exhibits contained in and submitted by or on behalf of the **Insured** to the Company in connection with the consideration or underwriting of insurance for this Policy or any other related policy, including any renewal or replacement policy. All **Applications** are considered material to the issuance of any insurance policy, are relied upon by the Company for their truth, completeness and accuracy and are thus incorporated into this Policy.
2. "**Claim**" means receipt of a civil action, suit, proceeding or written demand naming the **Insured** seeking **Damages** or non-monetary relief including an injunction and alleging a **Data Breach Wrongful Act, Media Injury, Privacy Breach, Professional Services Wrongful Act** or **Unauthorized Access**. A **Claim** will be deemed first made on the earliest date any **Senior Executive** receives the civil action, suit, proceeding or demand.
3. "**Computer Forensic Costs**" means reasonable and necessary costs to hire suitably qualified computer forensic experts to source the origin, existence and extent of a **Privacy Breach**. These costs are subject to the **Computer Forensic Costs** sublimit within the Notification Costs sublimit as stated in the Declarations.
4. "**Claims Expenses**" means:
 - a) Reasonable and necessary fees charged by an attorney(s), subject to Section III. B., to defend a **Claim**; and
 - b) All other fees, costs and charges, resulting from the investigation, defense, and appeal of a **Claim**, if incurred by the Company for the benefit of the **Insured**, or by the **Insured** with the Company's prior written consent, including premiums on appeal bonds, provided that the Company shall not be obligated to apply for or furnish such appeal bonds.

The determination by the Company as to the reasonableness of **Claims Expenses** shall be conclusive on the **Insured**. **Claims Expenses** do not include salary, charges, wages or expenses of partners, principals, officers, directors, members or employees of either the Company or any **Insured**.

5. **“Computer Systems”** means computers, websites and associated input and output devices, mobile devices, data storage devices, networking equipment, and back up facilities; so long as the foregoing are:
- a) operated by and either owned or leased by an **Entity Insured**,
 - b) operated by a third party service provider and used to host computer application services to the **Entity Insured**, or
 - c) used for processing, maintaining, hosting or storing the **Entity Insured’s** data subject to a written contract by the **Entity Insured**, including but not limited to a Business Associate Agreement as required by the Health Insurance Portability and Accountability Act as amended, or substantial equivalent.
6. **“Covered Personally Identifiable Information”** means the following:
- a) information concerning the individual that constitutes “nonpublic personal information” as defined in the Gramm-Leach-Bliley Act of 1999, as amended, and regulations issued pursuant to the Act or similar federal, foreign or state laws or acts;
 - b) medical information concerning an individual person, including “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act, including the Health Information Technology for Economic and Clinical Health Act (HITECH) or similar federal, foreign or state laws or acts;
 - c) personal information as defined by Massachusetts 201 CMR 17.00 or as defined by state breach notification and consumer protection laws including the Federal Trade Commission Act as amended, or similar foreign laws or acts; or
 - d) any other information relating to an identified or identifiable natural person who can be identified in particular by reference to an identification number or multiple factors specific to his or her physical, physiological, mental, economic, cultural or social identity.
7. **“Damages”** means:
- a) a compensatory monetary amount, for which the **Insured** is legally liable, including judgments (inclusive of any pre- or post-judgment interest), awards, or settlements negotiated with the approval of the Company,
 - b) punitive or exemplary damages or the multiple portion of any multiplied damage award pursuant to applicable law which most favors coverage for such damages unless such damages are uninsurable by law,
 - c) injunctive relief, and
 - d) amounts agreed to under settlement with a regulator for consumer redress or amounts imposed by a court as equitable relief for consumer redress following a **Privacy Breach**, with the exception of charitable donations.

Damages do not include:

- a) any return, withdrawal or reduction of professional fees;
- b) profits or other charges;
- c) fines, sanctions, taxes, penalties or awards, except **Regulatory Fines**;
- d) fines, sanctions, taxes, penalties or awards imposed by payment card brands or payment processors, including any contractual indemnity or obligation the **Insured** has agreed to arising out of a breach of the Payment Card Industry Data Security Standards (PCI DSS);
- e) discounts, coupons, awards or other incentives offered to the **Insured’s** customers or clients;
- f) any reprinting, recall, removal or disposal of any **Media Content**, including any products containing such **Media Content**;
- g) any financial trading losses, trading liabilities, change in account values, loss, transfer or theft of monies, securities or value associated with electronic fund transfer; or
- h) liquidated damages.

8. **“Data Breach First Responder”** means the provider engaged by the Company to provide initial assessment and support services in the event of a **Privacy Breach** or **Unauthorized Access**.
9. **“Data Breach Service Provider Panel”** means providers pre-approved by the Company to provide specialist data breach related services in the event of a **Privacy Breach** or **Unauthorized Access**.
10. **“Data Breach Wrongful Act”** means any actual or alleged act, failure to act, error, omission, misstatement, misleading statement, neglect, or breach of duty that causes:
 - a) **Personal Injury** arising out of a **Privacy Breach** or the **Insured’s Media Content**;
 - b) **Unauthorized Access** as a result of any unauthorized act caused by an employee of an **Entity Insured**;
 - c) the failure to prevent **Unauthorized Access** to **Computer Systems**;
 - d) the inability of a third party, who is authorized to do so, to gain access to **Computer Systems**;
 - e) the failure to prevent transmission of **Malicious Code**; and
 - f) breach of privacy and security obligations under federal, state, local or foreign statutes, rules or regulations including but not limited to section 5 of the Federal Trade Commission Act arising from a **Privacy Breach**, the Health Insurance Portability and Accountability Act and state breach notification laws.
11. **“Disciplinary or Regulatory Proceeding”** means any proceeding by a regulatory or disciplinary official, board or agency to investigate a **Data Breach Wrongful Act**, **Privacy Breach** or **Unauthorized Access** including a request for information, civil investigative demand or civil proceeding commenced by service of a complaint or similar pleading, brought by, or on behalf of, a governmental agency that alleges a violation of any federal, state, foreign or local privacy statute.
12. **“Entity Insured”** means any partnership, or corporation or other form of association recognized as such by law which qualifies as an **Insured** under this Policy.
13. **“Extended Reporting Period”** means the applicable period of time after the end of the **Policy Period** for reporting **Claims** arising out of **Data Breach Wrongful Act**, **Disciplinary or Regulatory Proceeding**, **Media Injury**, **Privacy Breach**, **Professional Services Wrongful Act** or **Unauthorized Access** committed or alleged to have been committed prior to the end of the **Policy Period** and on or subsequent to the **Retroactive Date**, and otherwise covered by this Policy.
14. **“Extra Expenses”** means reasonable and necessary costs and expenses incurred in order to minimize or mitigate **Network Deterioration** or a **Malicious Attack** on the **Insured’s Computer Systems**, including public relations services to restore the **Insured’s** reputation following **Network Deterioration** or a **Malicious Attack**. This does not include:
 - a) Expenses to upgrade, update or improve the **Insured’s Computer Systems** including information security systems to a higher grade than prior to the **Malicious Attack**;
 - b) Costs more than the **Loss of Income** value;
 - c) Penalties in any format arising from a contractual agreement;
 - d) Costs not approved with prior written consent by the Company;
 - e) Costs incurred for research and development, or the current market value of trade secrets; or
 - f) Consequential losses relating to a **Network Deterioration** or a **Malicious Attack**.
15. **“Insured”** means only the following:
 - a) The Named Insured designated in Item 1. of the Declarations, or by endorsement to this Policy, and any **Subsidiary**;
 - b) Any person who is, was, or hereafter becomes a member, or employee of the Named Insured or a **Subsidiary**, but only while acting on behalf of the Named Insured or such **Subsidiary**;
 - c) **Senior Executives**;
 - d) Independent contractors who are natural persons, or any temporary or leased personnel or retired personnel, but only while acting under the direct supervision and on behalf of the Named Insured or a **Subsidiary**;

- e) The estate, heirs, executors, administrators, and legal representatives of an **Insured**, in the event of such **Insured's** death, disability, incapacity, insolvency, or bankruptcy, but only to the extent such **Insured** would have otherwise been provided coverage under this Policy; and
- f) The lawful spouse or domestic partner of any **Insured** solely by reason of:
 - i. Spousal or domestic partner status, or
 - ii. a spouse's or domestic partner's ownership interest in property or assets that are sought as recovery

but this shall not apply to the extent a **Claim** alleges any **Data Breach Wrongful Act, Disciplinary or Regulatory Proceeding, Media Injury, Privacy Breach, Professional Services Wrongful Act** or **Unauthorized Access** by such spouse or domestic partner.

- 16. "**Interrelated Matter**" means any **Data Breach Wrongful Act, Malicious Attack, Media Injury, Network Deterioration, Privacy Breach, Professional Services Wrongful Act** or **Unauthorized Access** that has as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- 17. "**Knowledge Date**" means the effective date of the first Policy issued by the Company to the Named Insured and continuously renewed and maintained in effect to the inception of this **Policy Period**.
- 18. "**Loss of Income**" means the lesser of the:
 - a) **Insured's** net profit before tax that is lost as a result of a consecutive period of **Network Deterioration**, compared with the previous twelve months immediately prior to the **Network Deterioration**, taking into account:
 - i. Seasonality of net profit of the **Insured**;
 - ii. The reduction in fixed operating expenses as a result of the **Network Deterioration**. These costs are calculated on an hourly basis specifically during the consecutive time period that the **Insured's Computer Systems** are affected by **Network Deterioration**; or
 - b) Hourly Loss Amount stated in Item 4. G. of the Declarations, following the applicable Waiting Period, stated in Item 4.G. of the Declarations.
- 19. "**Malicious Attack**" means intentional hacking, damaging, corrupting or misusing the **Insured's Computer Systems**, including **Unauthorized Access** or the insertion of **Malicious Code** by a third party or an employee. A **Malicious Attack** does not include hacking or the insertion of **Malicious Code** by a **Senior Executive**;
- 20. "**Malicious Code**" means any virus, trojan horse, worm or other similar software program, code or script intentionally designed to insert itself into computer memory, onto a computer disk or spread itself from one computer to another.
- 21. "**Media Content**" means any information including words, sounds, numbers, images, or graphics and shall include advertising, brochures, product literature, video, streaming content, web-casting, online forum, bulletin board, chat room and social **Media Content** published, disseminated, released, gathered, distributed or transmitted in electronic, paper or digital format on behalf of the **Insured** or by the **Insured** for others. **Media Content** does not include:
 - a) **Media Content** published, disseminated, released, gathered, distributed or transmitted in a personal capacity for non-business purposes by employees or **Senior Executives**;
 - b) computer software except to the extent that it displays digital content; or
 - c) actual goods, products or services described, illustrated or displayed in such **Media Content**.
- 22. "**Media Injury**" means:
 - a) infringement of copyright, slogan, trademark, trade dress, service mark or service name;
 - b) misappropriation of any name or likeness for commercial advantage, trademark dilution, cyber-squatting violations, moral rights violations;
 - c) any act of passing-off, or any misappropriation of content, formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic material or artwork;
 - d) negligent publication of the **Insured's Media Content** or email marketing information;

- e) unfair competition or deceptive trade practices based solely on items a), b) and c) of **Media Injury** and only if based on the same facts as pleaded in connection with a **Claim** arising from items a., b. and c. above.
23. **“Mediation”** means a non-binding process in which a neutral panel or individual assists the parties in reaching their own settlement. To be considered **Mediation** under this Policy, the process must be of a kind set forth in the Commercial Mediation Rules of the American Arbitration Association or the Judicial Arbitration and Mediation Service and must conclude no more than six months after the Company’s receipt of notice of a **Claim**. The Company, however, at its sole option, may recognize any **Mediation** process or forum presented for approval.
24. **“Network Deterioration”** means the material deterioration, failure or interruption of the network performance of the **Insured’s Computer Systems** such that the network capacity is on average at least 25% reduced during the period of deterioration compared with the average network capacity of the previous 90 days.
25. **“Non-Public Confidential Business Information”** means information of any third party, including strategic, systems-related and/or financial data, business plans, customer information, employee information, or market information; provided that such information is:
- a) in the **Insured’s** care, custody or control in the normal course of business and not available to the general public; and
 - b) identified in writing by the disclosing third party as “confidential” or physically bears a stamp, or other marking, confirming its “confidential” status or was provided to the **Insured** under a written non-disclosure agreement or confidentiality clause in a contract.

Non-Public Confidential Business Information shall not include:

- a) information which is or becomes publicly available or is in the public domain, unless due to any unauthorized act or omission on the part of the **Insured** or any other party;
 - b) information which was in the **Insured’s** possession or knowledge prior to disclosure by the disclosing third party and which can be shown to have so been by proper documentation and which is not otherwise subject to any obligation of confidentiality or non-disclosure;
 - c) information which becomes rightfully known to the **Insured** from a third party not bound by any restriction of non-disclosure;
 - d) information that is expressly authorized to be disclosed by the **Insured** or other disclosing party in writing, unless such authorization is given in an unauthorized manner;
 - e) patents of any kind; or
 - f) trade secrets, unless they are listed in a non-disclosure agreement signed by a **Senior Executive**.
26. **“Personal Injury”** means defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress, the tort of outrage, any other tort related to disparagement or harm to the reputation or character of any person or organization, invasion of or interference with the right to privacy or publicity, false light, public disclosure of private facts, intrusion of privacy, or invasion of privacy.
27. **“Policy Period”** means the period specified in Item 2. of the Declarations, or any shorter period that may occur as a result of a cancellation of this Policy, and specifically excludes any **Extended Reporting Period** hereunder.
28. **“Pollutants”** means any substance exhibiting hazardous characteristics as is or may be identified on any list of hazardous substances issued by the United States Environmental Protection Agency, or any state, local, or foreign counterpart. This definition shall include, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products, waste (including material to be recycled, reconditioned or reclaimed), and any electric, magnetic or electromagnetic field of any frequency, as well as any air emission, waste water, infectious medical waste, nuclear materials, nuclear waste, or any mold, mildew, fungus, bacterial matter, mycotoxins, spores, scents or by products produced or released by fungi, and any non-fungal micro-organism or non-fungal colony form organism that causes infection or disease.
29. **“Privacy Breach”** means the actual or alleged unauthorized release, disclosure or failure to protect from theft, loss or other misappropriation **Non-Public Confidential Business Information** or **Covered Personally Identifiable Information**, and shall include:
- a) identity theft and identity fraud;
 - b) the violation by an employee of the **Insured’s** procedures and policies intended to protect the confidentiality of **Non-Public Confidential Business Information** or **Covered Personally Identifiable Information**;

- c) the unintentional violation by a **Senior Executive** of the **Insured's** procedures and policies intended to protect the confidentiality of **Non-Public Confidential Business Information** or **Covered Personally Identifiable Information**; or
- d) actual or alleged violation of any federal, state, foreign or local privacy statute directly resulting from the foregoing.

Privacy Breach shall also include any actual or alleged failure to provide any required notices in connection with the matters described in this paragraph.

- 30. "**Professional Services Wrongful Act**" means any actual or alleged act, failure to act, error, omission, misstatement, misleading statement, neglect, breach of duty or **Personal Injury** due to the rendering of or failure to render the Professional Services specified in Item 7. of the Declarations.
- 31. "**Regulatory Fines**" means any civil monetary fine or penalty imposed as a result of a **Disciplinary or Regulatory Proceeding**. **Regulatory Fines** shall not include any criminal fines, disgorgement of profits, multiple damages or civil monetary fines or penalties that are not insurable by law.
- 32. "**Retroactive Date**" means the date specified in Item 5. of the Declarations.
- 33. "**Senior Executives**" means any partner, principal, officer, director, executive board member, in-house counsel, risk manager, chief information officer, chief privacy officer, chief financial officer, chief executive officer or organizational equivalent.
- 34. "**Subsidiary**" means any organization in which the Named Insured:
 - a) owns either directly or indirectly 50% or more of the outstanding voting stock; or
 - b) has recognized the revenue in the **Application**.

An organization ceases to be a **Subsidiary** on the date, during the **Policy Period**, that the Named Insured's ownership, either directly or indirectly, ceases to be 50% of the outstanding voting stock.

If during the **Policy Period**, the Named Insured acquires or creates another organization in which the Named Insured has an ownership interest of greater than 50%, such organization shall be considered an **Insured** under this Policy, but only for a **Data Breach Wrongful Act, Disciplinary or Regulatory Proceeding, Media Injury, Privacy Breach, Professional Services Wrongful Act, Unauthorized Access** or happening which triggers any other Insuring Agreement and which is committed or happens after the date of acquisition or creation.

As a condition precedent to coverage, the Named Insured shall give written notice to the Company of the acquisition or creation of such organization no later than thirty (30) days after the effective date of such acquisition or creation, together with such information that the Company may require. Automatic coverage until the end of the **Policy Period** is granted subject to the following criteria:

- a) The newly created or acquired **Subsidiary** has substantially similar business operations;
- b) The new **Subsidiary's** gross revenue is equal to or less than 10% of the total gross revenue the Named Insured has listed on the **Application**; and
- c) Prior to the effective date of such acquisition or creation, no **Senior Executive** of the Named Insured or of the acquired or created organization, knew or could have reasonably expected that a **Claim** would be made or coverage triggered under any other Insuring Agreement.

Upon receipt of such acquisition or creation, the Company may at its sole option agree to appropriately endorse this Policy subject to additional premium and/or changed terms and conditions. If the Named Insured does not agree to the additional premium and/or changed terms and conditions, if any, coverage otherwise afforded under this provision for such acquired or created organization shall terminate ninety (90) days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier.

If the Named Insured ceases to have an ownership interest of greater than 50% in such acquired or created organization, coverage otherwise afforded under this provision shall terminate effective on the date such ownership interest ceases.

- 35. "**Unauthorized Access**" means the use, transmission or access to **Non-Public Confidential Business Information** or **Covered Personally Identifiable Information** by a person not authorized to do so, or in a manner not authorized by the **Entity Insured**.

V. EXCLUSIONS

This Policy does not apply to and the Company shall not be liable for **Damages, Claims Expenses** and all other payments pursuant to any other Insuring Agreement resulting from any **Claim** made against an **Insured** or happening:

1. for, based upon, or arising from any actual or alleged dishonest, fraudulent, criminal, collusive, or malicious act or omission of any **Senior Executive**; however, this Exclusion shall not apply to **Claims Expenses** or the Company's duty to defend any such **Claim** unless or until a judgment or a final adjudication adverse to such **Senior Executives** establishes the **Senior Executives** committed such dishonest, fraudulent, criminal, collusive or malicious act or omission, at which time the Named Insured shall reimburse the Company for all **Claims Expenses** incurred defending such **Claim** and the Company shall have no further liability for **Claims Expenses**. This Exclusion shall not apply to a crime committed on the internet if the conduct giving rise to that crime would have been legal in the state such person or **Entity Insured** resided in while engaging in such conduct;
2. that is brought by or on behalf of or with the assistance of any:
 - a) **Insured**, or
 - b) Any organization or association which at the time of the **Data Breach Wrongful Act, Disciplinary or Regulatory Proceeding, Media Injury, Privacy Breach, Professional Services Wrongful Act or Unauthorized Access** or the time of the **Claim** or during the process of the **Claim**:
 - i. is or was to any extent owned by or controlled by an **Insured**;
 - ii. is or was affiliated with any **Insured** through any common ownership or control; or
 - iii. is or was acting with any **Insured** as a director, officer, partner, or principal stockholder.

For the purpose of this exclusion, a 10% or more owner of a publicly held corporation or a 30% or more owner of a privately held corporation shall be deemed to control such organization or association. Also for the purposes of this exclusion an employee who brings a **Claim** arising out of a **Data Breach Wrongful Act, Privacy Breach, Professional Services Wrongful Act or Unauthorized Access** does not qualify as an **Insured**;

3. for, based upon, or arising from any actual or alleged wrongful employment practices or any discrimination of any person or entity on any basis; except this exclusion shall not apply to the extent that an employee brings a **Claim** arising out of a **Data Breach Wrongful Act, Privacy Breach or Unauthorized Access**;
4. for, based upon, or arising from any internal salary or overhead expenses of the **Insured**;
5. by an employee, former employee or job applicant of the **Insured** in their capacity as such, except this exclusion shall not apply to any **Claim** or payment arising from a **Data Breach Wrongful Act, Privacy Breach, Professional Services Wrongful Act, Unauthorized Access** or a **Disciplinary or Regulatory Proceeding**;
6. for, based upon, or arising from any actual or alleged infringement of any patent or trade secret, except this exclusion shall not apply to a trade secrets **Claim** solely arising out of a **Malicious Attack**;
7. for, based upon, or arising from bodily injury, sickness, disease or death, except this exclusion shall not apply to **Claims** seeking **Damages** for mental anguish or emotional distress where such damages solely arise from a **Data Breach Wrongful Act or Media Injury**;
8. for, based upon, or arising from injury to or destruction of any tangible property including loss of use thereof except this exclusion shall not apply to **Claims** arising from **Malicious Code**; for the purposes of this exclusion, data does not constitute tangible property;
9. for, based upon, or arising from the gaining in fact of any profit, remuneration or advantage to which the **Insured** is not legally entitled; however, this exclusion shall not apply to **Claims Expenses** or the Company's duty to defend any such **Claim** unless or until a judgment or a final adjudication adverse to such **Insured** gaining any profit, remuneration or advantage to which the **Insured** is not legally entitled is entered. Also this exclusion shall not apply to any **Insured** that did not commit, participate in, or have knowledge of any profit, remuneration or advantage;
10. for, based upon, or arising from any liability or obligation of an **Insured** under any contract or agreement, either oral or written, including but not limited to all warranties, representations, liquidated damages or guarantees, however this exclusion shall not apply to:
 - a) the extent an **Insured** would have been liable in absence of such contract or agreement; or
 - b) a **Privacy Breach** arising out of a non-disclosure or confidentiality agreement;
11. for, based upon, or arising from any actual or alleged violation of:

- a) the Employee Retirement Income Security Act of 1974;
- b) the Securities Act of 1933;
- c) the Securities Exchange Act of 1934;
- d) state securities laws;
- e) the Organized Crime Control Act of 1970 (RICO); or
- f) with respect to a) through e) above, any other similar federal law, state law, common law, foreign law or the law of any country, province, district or territory, or any amendments of any of the foregoing.

However, this exclusion shall not apply to **Claims** seeking **Damages** or payments under Insuring Agreement I.D. Notification Costs where such **Damages** or payments solely arise from a **Privacy Breach**;

12. for, based upon, or arising from any actual or alleged:

- a) inaccurate, inadequate or incomplete description of the price of any **Entity Insured's** goods, products or services;
- b) cost guarantees, cost representations, contract price estimates, cost estimates;
- c) false or misleading advertising including the failure of any **Entity Insured's** goods, products or services to conform with any represented quality or performance contained in advertising, except this exclusion shall not apply to a **Claim** alleging the infringement of intellectual property; or
- d) gambling, contest, lottery, promotional game, the over or under redemption of coupons, prizes, or other games of chance;

13. for, based upon, or arising out of any actual or alleged:

- a) antitrust violation;
- b) restraint of trade;
- c) unfair competition except for unfair competition in connection with a **Media Injury**;
- d) violation of the Sherman Anti-Trust Act
- e) violation of the Clayton Act;
- f) violation of the Robinson-Patman Act, as amended;
- g) violation of consumer protection laws except for consumer privacy protection laws; or
- h) false, deceptive or unfair trade practices unless arising solely from a breach of privacy and security obligations under section 5 of the Federal Trade Commission Act arising from a **Privacy Breach**, or as set forth in Section IV. Definition 22. e) if applicable;

14. that is brought by or on behalf of any governmental entity, quasi-governmental entity or other regulatory entity, except this exclusion shall not apply to a **Claim** brought by an entity in its capacity as a customer or client of any **Entity Insured** and shall not apply to a **Claim** brought under a **Disciplinary or Regulatory Proceeding** in Section I. D.;

15. for, based upon, or arising from the bankruptcy or insolvency of any **Entity Insured**;

16. for, based upon, or arising from:

- a) any written notice given under any other policy before the effective date of this Policy, or
- b) any **Interrelated Matter** which is subject to any written notice given under any other policy before the effective date of this Policy;

17. for, based upon, or arising directly or indirectly out of or attributable to war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not) 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, strike, lock-out, riot, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, the military or usurped power;

18. for, based upon, or arising from:

- a) any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** at any time; or

- b) any request, demand or order that any **Insured** or others detect, report, test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**; including without limitation any **Claim**, suit or proceeding by or on behalf of a governmental authority, a potentially responsible party or any other person or entity for **Damages** because of detecting, reporting, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or on any way responding to, or assessing the effects of **Pollutants**.

This exclusion applies regardless of whether any other causes, events, materials or products contributed concurrently or in any sequence to the injury, damage, expense, cost, loss, liability or legal obligation claimed;

19. for, based upon, or arising from any actual or alleged commercial dispute between an **Insured** and a business partner or client such as a reseller, distributor, sales agent, or joint venture but only specifically relating to:
- a) breach of exclusivity, non-competition, non-solicitation, or similar commercial contractual terms;
 - b) commission, royalty, fee or compensation promised or owed to such business partner or client for doing business with an **Insured**; or
 - c) the commercial decision to stop working with such business partner or client, except this part 19. c) shall not apply to a **Claim** arising out of a **Data Breach Wrongful Act** or **Professional Services Wrongful Act** which took place prior to the decision to stop working with such business partner or client;
20. for, based upon, or arising from any chargeback, liability or fee incurred by an **Entity Insured** due to a merchant service provider, payment processor, credit card company or bank reversing or freezing payment transactions as a result of fraud, except this exclusion shall not apply to a **Claim** arising out of a **Data Breach Wrongful Act** or **Professional Services Wrongful Act**;
21. for, based upon, or arising from any fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide or other physical event;
22. that is brought by or on behalf of any intellectual property licensing bodies or organizations, including but not limited to the American Society of Composers, Authors and Publishers (ASCAP), the Society of European Stage Authors and Composers (ESAC) or Broadcast Music, Inc (BMI);
23. for, based upon, or arising from any prior or pending litigation, **Claim**, **Interrelated Matter** or **Disciplinary or Regulatory Proceeding** made against or which happened to an **Entity Insured** prior to the **Knowledge Date**;
24. for, based upon, or arising from the electrical or mechanical failure or interruption (including blackouts, brownouts, power surge or other outage), of a third party infrastructure provider; including telecommunications, internet service, satellite, cable, electricity, gas, water or other utility service providers;
25. for, based upon, or arising out of any architectural services or industrial design services for others, for a fee; except this exclusion shall not apply to a **Claim** as a result of a **Privacy Breach** or **Media Injury**.

VI. CONDITIONS

A. NOTICE

As a condition precedent to coverage, in the event of a **Claim**, **Loss of Income**, **Extra Expense** or any other happening triggering an Insuring Agreement the **Senior Executives** shall within sixty (60) days following the **Senior Executive's** knowledge of the **Claim**, **Loss of Income**, **Extra Expense** or any other happening triggering an Insuring Agreement; but in any event no later than thirty (30) days after expiration or termination of this Policy, or during the **Extended Reporting Period** if applicable:

- i. promptly forward to the Company every demand, notice, summons or other process including institution of arbitration proceedings received by the **Insured**; and
- ii. give written notice containing particulars sufficient to identify the **Insured** and claimant, if applicable, and full information with respect to the time, place and circumstances of the event, to the Company.

Notice shall be given in writing to the Company at the address shown in Item 9. of the Declarations and shall include the Policy Number indicated in Item 1. of the Declarations. Notice shall not be effective until the date of receipt by the Company at this address. Notice by email constitutes notice as provided under this provision.

B. REPORTING OF ACTS THAT MAY GIVE RISE TO A CLAIM, LOSS OF INCOME OR EXTRA EXPENSE

If during the **Policy Period** the **Senior Executives** become aware of a **Data Breach Wrongful Act**, **Disciplinary or Regulatory Proceeding**, **Media Injury**, **Professional Services Wrongful Act**, **Unauthorized Access**, **Malicious Attack**, **Network Deterioration** or **Privacy Breach** or become aware of facts that may reasonably be

expected to give rise to a **Claim** against the **Insured**, or to **Loss of Income** or **Extra Expense** and if the **Senior Executives** report such **Data Breach Wrongful Act, Disciplinary or Regulatory Proceeding, Media Injury, Professional Services Wrongful Act, Unauthorized Access, Malicious Attack, Network Deterioration** or **Privacy Breach** to the Company during the **Policy Period** in writing, then any **Claim** or happening subsequently arising from such **Data Breach Wrongful Act, Disciplinary or Regulatory Proceeding, Media Injury, Professional Services Wrongful Act, Unauthorized Access, Malicious Attack, Network Deterioration** or **Privacy Breach** duly reported in accordance with this paragraph shall be deemed under this Policy to be a **Claim** made during the **Policy Period**, or shall trigger an Insuring Agreement for **Loss of Income** or **Extra Expense** under this **Policy Period**. Such written notice to the Company shall include:

- i. particulars as to the reasons for anticipating such a **Claim** or **Loss of Income** or **Extra Expense**;
- ii. the nature and dates of the alleged **Data Breach Wrongful Act, Disciplinary or Regulatory Proceeding, Media Injury, Professional Services Wrongful Act, Unauthorized Access, Malicious Attack, Network Deterioration** or **Privacy Breach**;
- iii. the alleged injuries or damages sustained;
- iv. the names of potential claimants, if available; and
- v. the manner in which the **Insured** first became aware of the **Data Breach Wrongful Act, Disciplinary or Regulatory Proceeding, Media Injury, Professional Services Wrongful Act, Unauthorized Access, Malicious Attack, Network Deterioration** or **Privacy Breach**.

C. COOPERATION

The **Insured** shall cooperate with the Company. Upon the Company's request, the **Insured** shall submit to examination by a representative of the Company, under oath if required, shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits, as well as in the giving of a written statement or statements to the Company's representatives and meeting with such representatives for the purpose of investigation and/or defense, and shall provide the Company with any available information and documentation relevant to any matter under investigation by the Company, without charge to the Company.

Additionally, upon the Company's request the **Insured** shall attend hearings, depositions and trials relative to the defense of a **Claim**. The **Insured** shall take such action as may be necessary to secure and effect any rights of indemnity, contribution or apportionment which the **Insured** and/or the Company may have.

D. LIMITS OF LIABILITY

The Company's maximum liability for all **Damages, Claims Expenses** and all other payments pursuant to any other Insuring Agreement shall be the aggregate Limit of Liability set forth in Item 4. of the Declarations.

All **Claims** or happenings triggering an Insuring Agreement alleging, based upon, arising out of or attributable to the same **Interrelated Matter** shall be deemed to be a single **Claim** or happening regardless of whether made against or paid on behalf of one or more than one **Insured**, and such **Claim** or happening shall be deemed to be first made, or deemed to first happen on the date the earliest of such **Claims** is first made or **Interrelated Matter** happens, even if such date is before the **Policy Period**. Each separate **Claim** or happening shall be treated as a separate **Claim** or happening. All such **Claims** or happenings shall be subject to the aggregate Limit of Liability as set forth in Item 4. of the Declarations.

The Limits of Liability of the Company for the **Extended Reporting Period**, if applicable, shall be part of, and not in addition to, the Limits of Liability of the Company for the **Policy Period**. Any payment by the Company of **Damages** and/or **Claims Expenses** and/or any other payment pursuant to any other Insuring Agreement shall reduce the Limits of Liability. **Claims** made against or payments made on behalf of more than one **Insured** under this Policy shall not operate to increase the aggregate limit of the Company's liability.

The Company shall not be obligated to pay any **Damages, Claims Expenses** and/or any other payment pursuant to any other Insuring Agreement, or to undertake or continue the defense of any **Claim** after the applicable limit or sublimit of the Company's liability has been exhausted by such payment or after deposit of the applicable limit of the Company's liability with or subject to control of a court of competent jurisdiction.

E. DEDUCTIBLE

The Company shall only be liable for those amounts payable under this Policy for **Damages, Claims Expenses** and/or all other payments pursuant to any other Insuring Agreement which are in excess of the applicable Deductible or Waiting Period stated in Item 4. of the Declarations.

The Deductible shall apply to each **Claim** made, and/or all other happenings pursuant to any other Insuring Agreement and shall be borne by the **Insured** and remain uninsured. Multiple **Claims** made or happenings made on behalf of the **Insured** involving the same **Interrelated Matter** shall be considered one **Claim** or happening and only one Deductible amount shall apply thereto, which shall be the highest Deductible applicable as stated on the Declarations. The Deductible shall not reduce or increase the Limits of Liability.

The **Insured** shall promptly make direct payments within the Deductible to appropriate parties as designated by the Company. The Company shall have no obligation to make payments within the Deductible and to then seek reimbursement from the **Insured**.

F. DEDUCTIBLE CREDIT

If a **Claim** is fully and finally resolved to the satisfaction of all parties including the Company as a result of **Mediation**, the **Insured's** Deductible obligation for such **Claim** shall be reduced by fifty (50) percent up to a maximum reduction of \$50,000.

G. NOTICE OF CANCELLATION

This Policy may be cancelled by the Named Insured by surrender of this Policy to the Company or by giving written notice to the Company stating when thereafter such cancellation shall be effective. The Company may cancel this Policy by mailing to the Named Insured at the address shown in Item 1. of the Declarations, written notice stating when, not less than sixty (60) days thereafter (or ten (10) days thereafter when cancellation is due to non-payment of premium), the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Policy shall terminate at the date and hour specified in such notice. If this Policy shall be cancelled by the Named Insured, the Company shall retain the customary short rate proportion of the premium hereon, except as otherwise provided in this Policy. If this Policy shall be cancelled by the Company, the Company shall retain the pro rata proportion of the premium hereon.

H. EXTENDED REPORTING PERIOD

In case of cancellation or non-renewal of this Policy, by either the Named Insured or the Company, for reasons other than material misrepresentation in the **Application** for this Policy or non-payment of premium or Deductible, the Named Insured shall have the right upon payment of an additional premium, to an extension of coverage under this Policy subject to all other terms, conditions, limitations of and any endorsements to this Policy for a period of either one year for an additional premium of 100% of the total annual premium; or two years for an additional premium of 150% of the total annual premium; or three years for an additional premium of 200% of the total annual premium following the effective date of such cancellation or refusal to renew but only with respect to any **Data Breach Wrongful Act, Disciplinary or Regulatory Proceeding, Media Injury, Professional Services Wrongful Act, Privacy Breach or Unauthorized Access** or happening which triggers any other Insuring Agreement which is committed or happens before the date of such cancellation or non-renewal. The offer of renewal terms, conditions, Limits of Liability and/or premiums different from those of this Policy shall not constitute a cancellation or refusal to renew.

The **Extended Reporting Period** shall terminate on the effective date and hour of any other insurance issued to the Named Insured or successor to the Named Insured which replaces in whole or in part the coverage afforded by the **Extended Reporting Period**.

As a condition precedent to the Named Insured's right to purchase the **Extended Reporting Period**, the full premium for this Policy and **Policy Period** must have been paid.

The Named Insured's right to purchase the **Extended Reporting Period** must be exercised in writing not later than sixty (60) days following the non-renewal or cancellation date of this Policy, and must include payment of premium for the applicable **Extended Reporting Period** as well as payment of all premiums due the Company. If such written notice is not so given to the Company, the Named Insured shall not, at a later date, be able to exercise such right.

At the commencement of any **Extended Reporting Period**, the entire premium thereafter shall be deemed earned and in the event the Named Insured terminates the **Extended Reporting Period** before its expiration date, the Company shall not be liable to return to the Named Insured any portion of the premium for the **Extended Reporting Period**.

The fact that this Policy may be extended by virtue of an **Extended Reporting Period** shall not in any way increase the Limits of Liability as stated in the Declarations. The **Extended Reporting Period** shall be renewable at the sole option of the Company.

I. OTHER INSURANCE

If any **Claim, Loss of Income, Extra Expense, Data Breach Wrongful Act, Privacy Breach, Professional Services Wrongful Act, Unauthorized Access, Media Injury** or any other happening which triggers any other Insuring Agreement is noticed to the Company under this Policy and is insured by another valid and collectible policy or policies, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy to the Policy Number indicated on this Policy's Declarations.

J. SUBROGATION

In the event of any payment under this Policy, the Company shall be subrogated to all of the **Insured's** rights of recovery against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing after a **Claim** is made to prejudice such rights.

Any amount recovered upon the exercise of such rights of subrogation shall first be applied to the repayment of expenses incurred by the Company toward subrogation, second toward reimbursement of any payments made by the **Insured** pursuant to the **Insured's** Deductible or co-insurance, and any remaining balance shall be the Company's.

K. ALTERATION AND ASSIGNMENT

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement signed by an authorized representative of the Company.

L. MATERIAL CHANGES

The **Insured** agrees to notify the Company as soon as practicable after a material change, of the details of a material change to the **Insured's** business or **Computer Systems**. A material change includes but is not limited to:

- i. a significant new product or service which has a material impact on the volume or type of **Covered Personally Identifiable Information** being stored or processed,
- ii. revenue or employee headcount change of more than 50% compared with the last completed **Application**.

The Company reserves the right to re-underwrite this Policy and amend terms, conditions and premiums based on these changes.

M. REIMBURSEMENT OF THE COMPANY

If the Company has made any payment under this Policy in excess of the applicable Limit of Liability or within the amount of the applicable Deductible, the **Insured** shall be liable to the Company for any and all such amounts and, upon demand, shall pay such amounts to the Company promptly.

N. REPRESENTATIONS

The **Insured** represents and acknowledges that the statements and information contained in the **Application** are true, accurate and not misleading, and are deemed material to the acceptance of this risk, and associated hazard assumed by the Company under this Policy. Additionally the **Insured** agrees to provide accurate information regarding any information security assessments or other audits as required by the Company. If such representations or information are not true, accurate and complete, this Policy shall be null and void in its entirety and the Company shall have no liability hereunder. Solely with respect to this Section N, Representations, only facts pertaining to and knowledge possessed by the person(s) who signed the **Application** or **Senior Executive** shall be imputed to other **Insureds**.

O. ENTIRE CONTRACT

By acceptance of this Policy the **Insured** agrees that this Policy is issued in reliance upon the truth and accuracy of the **Application** and that this Policy embodies all agreements existing between the **Insured** and the Company.

P. NAMED INSURED SOLE AGENT

The Named Insured shall be the sole agent of all **Insureds** hereunder for the purpose of effecting or accepting any amendments to or cancellation of this Policy, for the purpose of receiving such notices as may be required by law and/or any provision(s) of this Policy, for the completing of any Application and the making of any representations, for the payment of any premium and the receipt of any return premium that may become due under this Policy, for the payment of any Deductible obligations that may become due under this Policy, and the

exercising or declining to exercise any right under this Policy, including declining or exercising any **Extended Reporting Period**.

Q. BANKRUPTCY OR INSOLVENCY

The bankruptcy or insolvency of any **Insured** or an **Insured's** estate will not relieve the Company of its obligations under this Policy.

R. CHOICE OF LAW

This policy, including its construction, application and validity, is governed by the laws of the State of New York without reference to that state's choice of law principles.

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