



ACE American Insurance Company
 Illinois Union Insurance Company
 Westchester Fire Insurance Company
 Westchester Surplus Lines Insurance Company
 [LIST ONLY THE COMPANY THAT APPLIES]

ACE Privacy Protection[®] Privacy & Network Liability Insurance Policy

This Policy is issued by the stock insurance company listed above.

THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE, AND WHICH ARE THE RESULT OF WRONGFUL ACTS COMMITTED AFTER THE RETROACTIVE DATE BUT BEFORE THE END OF THE POLICY PERIOD. PLEASE READ THIS POLICY CAREFULLY.

THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED DAMAGES SHALL BE REDUCED BY AMOUNTS INCURRED FOR CLAIMS EXPENSES. FURTHER NOTE THAT AMOUNTS INCURRED FOR DAMAGES AND CLAIMS EXPENSES SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION II, DEFINITIONS.

Policy No.		
Item 1. Named Insured:	Principal Address:	
Item 2. Policy Period:	From 12:01 a.m.	To 12:01 a.m.
	(Local time at the address shown in Item 1)	
Item 3. Insuring Agreements:	A. Privacy Liability B. Data Breach Fund C. Network Security Liability	
Item 4. Limit of Liability (including Claims Expenses):		
A. Limit of Liability for Insuring Agreements:		
1. Privacy Liability	<u>Each Claim</u>	<u>Aggregate</u>
2. Data Breach Fund	\$	\$
3. Network Security Liability	\$	\$
B. Regulatory Proceeding Sub-Limit of Liability	\$	\$
C. Maximum Policy Aggregate Limit of Liability:		\$

Item 5. Retention:		
\$	each Claim for Coverages A and C	
\$	each Claim for Coverage B	
Item 6. Notice to Insurer :		
A.	Notice of Claim, Wrongful Act :	
	Director of Claims	
	[Company]	
	[Address]	
	[Address]	
B.	All other notices:	
	Chief Underwriting Officer	
	[Company]	
	[Address]	
	[Address]	
Item 7. Policy Premium: \$		
Item 8. Optional Extended Reporting Period :		
A.	Additional Premium: _____% of Annual Premium	
B.	Additional Period: _____	
Item 9. Retroactive Date :		
A.	Privacy Liability	_____
B.	Data Breach Fund	_____
C.	Network Security Liability	_____

IN WITNESS WHEREOF, the **Insurer** has caused this **Policy** to be countersigned by a duly authorized representative of the **Insurer**.

DATE: _____

_____ Authorized Representative



ACE American Insurance Company
Illinois Union Insurance Company
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ACE Privacy Protection[®] Privacy and Network Liability Insurance Policy

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms and conditions of this **Policy**, the **Insureds** and the **Insurer** agree as follows:

I. INSURING AGREEMENTS

A. Privacy Liability

The **Insurer** will pay **Damages** and **Claims Expenses** by reason of a **Claim** first made against the **Insured** during the **Policy Period** and reported to the **Insurer** pursuant to Section VIII, Notice, for any **Wrongful Acts** taking place after the **Retroactive Date** and prior to the end of the **Policy Period**.

B. Data Breach Fund

The **Insurer** will pay **Data Breach Expenses** incurred by the **Insured** during the **Policy Period** by reason of a **Claim** reported to the **Insurer** pursuant to Section VIII, Notice, for any **Wrongful Acts** taking place after the **Retroactive Date** and prior to the end of the **Policy Period**.

C. Network Security Liability

The **Insurer** will pay **Damages** and **Claims Expenses** by reason of a **Claim** first made against the **Insured** during the **Policy Period** and reported to the **Insurer** pursuant to Section VIII, Notice, for any **Wrongful Acts** taking place after the **Retroactive Date** and prior to the end of the **Policy Period**.

II. DEFINITIONS

When used in this **Policy**:

A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy of which this **Policy** is a direct or indirect renewal or replacement. All such applications, attachments, information and materials are deemed attached to and incorporated into this **Policy**.

B. **Bodily Injury** means injury to the body, sickness, or disease, and death. **Bodily Injury** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease or death of any person.

However, **Bodily Injury** does not mean mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock resulting from a **Wrongful Act** for which coverage is provided under Section I, Insuring Agreement A.

C. **Claim** means:

1. with respect to Insuring Agreements A and C:

- a. a written demand against any **Insured** for monetary or non-monetary damages;
- b. a civil proceeding against any **Insured** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;
- c. an arbitration proceeding against any **Insured** seeking monetary damages or non-monetary or injunctive relief; or
- d. a **Regulatory Proceeding**;

2. with respect to Insuring Agreement B, a written report by the **Insured** to the **Insurer** of a failure by the **Insured** or by an independent contractor for which the **Insured** is legally responsible to properly handle, manage, store, destroy or otherwise control **Personal Information**;

including, where applicable, any appeal therefrom.

D. **Claims Expenses** means:

1. reasonable and necessary attorneys' fees, expert witness fees and other fees and costs incurred by the **Insurer**, or by the **Insured** with the **Insurer's** prior written consent, in the investigation and defense of a covered **Claim**; and
2. reasonable and necessary premiums for any appeal bond, attachment bond or similar bond, provided the **Insurer** shall have no obligation to apply for or furnish such bond.

Claims Expenses shall not include wages, salaries, fees or costs of directors, officers or employees of the **Insurer** or the **Insured**.

E. **Computer System** means computer hardware, software, firmware, and the data stored thereon, as well as associated input and output devices, data storage devices, networking equipment and Storage Area Network or other electronic data backup facilities.

F. **Consumer Redress Fund** means a sum of money which the **Insured** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment or settlement of a **Regulatory Proceeding**. **Consumer Redress Fund** shall not include any sums paid which constitute taxes, fines, penalties, injunctions or sanctions.

G. **Damages** means compensatory damages, any award of prejudgment or post-judgment interest, and settlements which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies. **Damages** shall not include:

1. any amount for which the **Insured** is not financially liable or legally obligated to pay;
2. taxes, fines (except **Regulatory Fines** as noted below), penalties, or sanctions imposed against the **Insured**;
3. matters uninsurable under the laws pursuant to which this **Policy** is construed;
4. the cost to comply with any injunctive or other non-monetary or declaratory relief, including specific performance, or any agreement to provide such relief;
5. loss of fees or profits by the **Insured**, return of fees, commissions or royalties by the **Insured**, or re-performance of services by the **Insured** or under the **Insured's** supervision;
6. disgorgement of any profit, remuneration or financial advantage to which any **Insured** was not legally entitled;
7. **Data Breach Expenses** or any other forensic, notification, crisis management or credit monitoring expenses, unless such expenses constitute compensatory damages of a direct settlement with the injured natural persons of a **Claim** for a **Wrongful Act** as defined in subparagraph 1.a.i of the definition of **Wrongful Act**;
8. liquidated damages pursuant to a contract, unless, even in the absence of such contract, the **Insured** would be liable for such damages as result of a **Wrongful Act**;
9. penalties of any nature, however denominated, arising by contract; and
10. any amounts other than those which compensate solely for a loss caused by a **Wrongful Act**.

Damages includes punitive and exemplary damages to the extent such damages are insurable under the internal laws of the applicable jurisdiction that most favors coverage for such damages.

With respect to Insuring Agreements A and C, **Damages** shall also include a **Consumer Redress Fund** and **Regulatory Fines**.

H. **Data Breach Expenses** means those reasonable and necessary expenses incurred by the **Insured** or which the **Insured** becomes legally obligated to pay:

1. to retain third party computer forensics services to determine the scope of a failure of **Network Security**;
2. to comply with **Privacy Regulations**, including but not limited to the consumer notification provisions of **Privacy Regulations** of the applicable jurisdiction that most favors coverage for such expenses;
3. with the **Insurer's** prior written consent, to voluntarily notify individuals whose **Personal Information** has been wrongfully disclosed;

4. in retaining the services of a public relations firm, crisis management firm or law firm for advertising or related communications solely for the purpose of protecting or restoring the **Insured's** reputation as a result of a **Wrongful Act**;
 5. to retain the services of a law firm solely to determine the **Insured's** indemnification rights under a written agreement with an independent contractor with respect to a **Wrongful Act** expressly covered under Insuring Agreement A of this **Policy** and actually or allegedly committed by such contractor; and
 6. for credit monitoring services, but only if such disclosure of **Personal Information** could result in the opening of an unauthorized line of credit or other financial account.
- I. **Domestic Partner** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Insured**.
- J. **Extended Reporting Period** means the period(s) for the extension of coverage, if applicable, described in Section V, **Extended Reporting Periods**.
- K. **Insured** means:
1. The **Named Insured**;
 2. **Subsidiaries** of the **Named Insured**, but only with respect to **Wrongful Acts** which occur while they are a **Subsidiary**;
 3. any past, present or future principal, partner, officer, director, trustee, employee, leased employee, or temporary employee of the **Named Insured** or a **Subsidiary**, but only with respect to the commission of a **Wrongful Act** committed within the scope of such person's duties performed on behalf of the **Named Insured** or such **Subsidiary**; and
 4. independent contractors of the **Named Insured** or of a **Subsidiary** who are natural persons, but only with respect to the commission of a **Wrongful Act** within the scope of such person's duties performed on behalf of the **Named Insured** or such **Subsidiary**.
- L. **Insured's Computer System** means a **Computer System**:
1. leased, owned, or operated by the **Insured**; or
 2. operated for the benefit of the **Insured** by a third party service provider under written contract with the **Insured**.
- M. **Insurer** means the insurance company providing this insurance.
- N. **Internet** means the worldwide public network of computers which enables the transmission of electronic data and which includes intranets, extranets and virtual private networks.
- O. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- P. **Mediation** means a non-binding process in which a neutral panel or individual assists the parties in reaching a settlement agreement. To be considered **Mediation** under this **Policy**, the process must be as set forth in the Commercial Mediation Rules of the American Arbitration Association, or such other process as the **Insurer** may, at its sole option, approve.
- Q. **Named Insured** means the organization or natural person first specified in Item 1 of the Declarations.
- R. **Network Security** means those activities performed by the **Insured**, or by others on behalf of the **Insured**, to protect against unauthorized access to, unauthorized use of, a denial of service attack by a third party directed against, or transmission of unauthorized, corrupting or harmful software code to, the **Insured's Computer System**.
- S. **Personal Information** means:
1. an individual's name, social security number, medical or healthcare data, other protected health information, drivers license number, state identification number, credit card number, debit card number, address, telephone number, account number, account histories, or passwords; and
 2. other nonpublic personal information as defined in **Privacy Regulations**;

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

- T. **Personal Injury** means injury arising out of one or more of the following offenses:
1. false arrest, detention or imprisonment;
 2. malicious prosecution;
 3. libel, slander, or other defamatory or disparaging material;
 4. publication or an utterance in violation of an individual's right to privacy; and
 5. wrongful entry or eviction, or other invasion of the right to private occupancy.
- U. **Policy** means, collectively, the Declarations, **Application**, this policy form and any endorsements.
- V. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to any applicable prior termination pursuant to Section XIV, Termination of the **Policy**.
- W. **Privacy Regulations** means the following statutes and regulations associated with the care, custody, control or use of personally identifiable financial, medical or other sensitive information:
1. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and Health Information Technology for Economic and Clinical Health Act;
 2. Gramm-Leach-Bliley Act of 1999;
 3. the California Security Breach Notification Act (CA SB 1386) and Massachusetts 201 CMR 17;
 4. Identity Theft Red Flags under the Fair and Accurate Credit Transactions Act of 2003;
 5. 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
 6. other similar state, federal, and foreign identity theft and privacy protection legislation that requires commercial entities that collect **Personal Information** to post privacy policies, adopt specific privacy or security controls, or notify individuals in the event that **Personal Information** has potentially been compromised.
- X. **Property Damage** means:
1. physical injury to, or loss or destruction of, tangible property, including the loss of use thereof; and
 2. loss of use of tangible property which has not been physically injured, lost, damaged or destroyed.
- However, **Property Damage** does not mean physical injury to, loss or destruction of, or loss of use of intangible property, including data.
- Y. **Regulatory Fines** means any civil monetary fine or penalty imposed by a federal, state, local or foreign governmental entity in such entity's regulatory or official capacity pursuant to its order under a **Regulatory Proceeding**. **Regulatory Fines** shall not include any civil monetary fines or penalties that are not insurable by law, criminal fines, disgorgement of profits or multiple damages.
- Z. **Regulatory Proceeding** means a request for information, demand, suit, civil investigation or civil proceeding by or on behalf of a government agency, commenced by a service of a complaint or similar pleading alleging the violation of **Privacy Regulations** as a result of the **Insured's Wrongful Act**, and which may reasonably be expected to give rise to a covered **Claim** under Insuring Agreements A or C of this **Policy**.
- AA. **Retroactive Date** means the date specified in Item 9 of the Declarations for the applicable Insuring Agreement.
- BB. **Subsidiary** means any entity that is not formed as a partnership or joint venture of which the **Named Insured** owns or has the right to vote more than 50% of the outstanding voting securities representing the present right to vote for election of directors, or the managers or members of the board of managers or equivalent executives of a limited liability company, on or before the inception date of the **Policy**, either directly or indirectly, in any combination, by one or more other **Subsidiaries**.
- CC. **Trade Secret** means information, including a formula, pattern, compilation, program, device, method, technique or process, that derives independent economic value, actual or potential, from not being generally known to or readily ascertainable by other persons who can obtain value from its disclosure or use, so long as reasonable efforts have been made to maintain its secrecy.

- DD. **Website** means the software, content and other materials accessible via the **Internet** at a designated Uniform Resource Locator address.
- EE. **Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect, breach of duty, or **Personal Injury** offense actually or allegedly committed or attempted by any **Insured**, in their capacity as such, resulting in:
1. With respect only to Insuring Agreement A:
 - a. the failure by the **Insured** or by an independent contractor for which the **Insured** is legally responsible to properly handle, manage, store, destroy or otherwise control:
 - i. **Personal Information**; or
 - ii. third party corporate information in any format provided to the **Insured** and specifically identified as confidential and protected under a nondisclosure agreement or similar contract with the **Named Insured** or **Subsidiary**; or
 - b. an unintentional violation of the **Insured's** privacy policy that results in the violation of any **Privacy Regulation**.
 2. With respect only to Insuring Agreement B, in the failure by the **Insured** or by an independent contractor for which the **Insured** is legally responsible to properly handle, manage, store, destroy or otherwise control **Personal Information**.
 3. With respect only to Insuring Agreement C, resulting in a failure of **Network Security**.
- FF. **Wrongful Employment Practices** means any actual or alleged:
1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
 2. employment-related misrepresentation;
 3. violation of any federal, state, or local laws (whether common or statutory) concerning employment or discrimination in employment;
 4. sexual harassment or other unlawful workplace harassment;
 5. wrongful deprivation of a career opportunity or failure to employ or promote;
 6. wrongful discipline of employees;
 7. retaliation against employees for the exercise of any legally protected right or for engaging in any legally protected activity;
 8. negligent evaluation of employees;
 9. failure to adopt adequate workplace or employment policies and procedures;
 10. employment-related libel, slander, or defamation;
 11. employment-related invasion of privacy, except with respect to that part of any **Claim** arising out of the loss of **Personal Information** which is otherwise covered under Insuring Agreement A of this **Policy**;
 12. employment-related wrongful infliction of emotional distress, except with respect to that part of any **Claim** arising out of the loss of **Personal Information** which is otherwise covered under Insuring Agreement A of this **Policy**; and
 13. any actual or alleged discrimination, sexual harassment, or violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

III. EXCLUSIONS

The **Insurer** shall not be liable for **Damages, Claims Expenses, or Data Breach Expenses** on account of any **Claim**:

- A. alleging, based upon, arising out of or attributable to any dishonest, fraudulent, criminal, or malicious act, error or omission, or any intentional or knowing violation of the law by an **Insured**. However, this exclusion shall not apply to **Claims Expenses** or the **Insurer's** duty to defend any such **Claim** until there is a judgment against, binding arbitration against, adverse admission by, finding of fact against, or plea of *nolo contendere* or no contest by the **Insured**, at which time the **Insured** shall reimburse the **Insurer** for

- any **Claims Expenses** paid by the **Insurer**. Solely with respect to the applicability of this exclusion under Insuring Agreements A and C, only facts pertaining to and knowledge possessed by any principal, partner, officer or director of an **Insured** shall be imputed to other **Insureds**.
- B. alleging, based upon, arising out of or attributable to any **Bodily Injury** or **Property Damage**.
 - C. for breach of any express, implied, actual or constructive contract, warranty, guarantee, or promise, including any actual or alleged liability assumed by the **Insured**, unless such liability would have attached to the **Insured** even in the absence of such contract, warranty, guarantee, or promise.
 - D. brought or maintained by, on behalf of, or in the right of any **Insured**, or any other natural person or entity for whom or which an **Insured** is legally liable. However, this exclusion shall not apply to **Wrongful Acts** expressly covered under Section I, Insuring Agreement A.
 - E. alleging, based upon, arising out of or attributable to any:
 - 1. illegal discrimination of any kind;
 - 2. humiliation, harassment or misconduct based upon, arising out of or related to any such discrimination;
 - 3. **Wrongful Employment Practices**.
 - F. alleging, based upon, arising out of or attributable to any price fixing, restraint of trade, monopolization, unfair trade practices or other violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, and any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world. However, with respect to a **Wrongful Act** expressly covered under Insuring Agreements A or C, this exclusion shall not apply to a **Regulatory Proceeding** or **Consumer Redress Fund** for that portion of **Damages** or **Claims Expenses** allocated to numbered paragraph 5 of **Privacy Regulations**.
 - G. alleging, based upon, arising out of or attributable to any violation of the Employee Retirement Income Security Act of 1974, any rules or regulations promulgated thereunder, amendments thereto, or any similar federal, state or common law.
 - H. alleging, based upon, arising out of or attributable to the gaining in fact of any profit, remuneration or financial advantage to which any **Insured** was not legally entitled. However, this exclusion shall not apply to **Claims Expenses** or the **Insurer's** duty to defend any such **Claim** until there is a judgment against, binding arbitration against, adverse admission by, finding of fact against, or plea of *nolo contendere* or no contest by the **Insured**, at which time the **Insured** shall reimburse the **Insurer** for any **Claims Expenses** paid by the **Insurer**. Solely with respect to the applicability of this exclusion under Insuring Agreements A and C, only facts pertaining to and knowledge possessed by any principal, partner, officer or director of an **Insured** shall be imputed to other **Insureds**.
 - I. alleging, based upon, arising out of or attributable to any fees, expenses, or costs paid to or charged by the **Insured**.
 - J. alleging, based upon, arising out of or attributable to a **Wrongful Act** actually or allegedly committed prior to the beginning of the **Policy Period** if, on or before the earlier of the effective date of this **Policy** or the effective date of any **Policy** issued by the **Insurer** of which this **Policy** is a continuous renewal or a replacement, any principal, partner, officer, director or organizational equivalent of the **Insured** knew or reasonably could have foreseen that the **Wrongful Act** did or could lead to a **Claim**.
 - K. alleging, based upon, arising out of, or attributable to:
 - 1. any prior or pending litigation, **Claims**, demands, arbitration, administrative or regulatory proceeding or investigation which was filed or commenced against an **Insured**, and of which an **Insured** had notice, on or before the earlier of the effective date of this **Policy** or the effective date of any policy issued by the **Insurer** of which this **Policy** is a continuous renewal or a replacement, or alleging or derived from the same or substantially the same fact, circumstance or situation underlying or alleged therein; or
 - 2. any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** underlying or alleged therein would constitute **Interrelated Wrongful Acts**.
 - L. alleging, based upon, arising out of, or attributable to:

1. any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy before the effective date of this **Policy**; or
 2. any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**.
- M. alleging, based upon, arising out of or attributable to any electrical or mechanical failures or interruption, including but not limited to any electrical disturbance, surge, spike, brownout or blackout, and outages to gas, water, telephone, cable, satellite, telecommunications or other infrastructure. However, this exclusion shall not apply to failures, interruptions, disturbances or outages of telephone, cable or telecommunications infrastructure under the **Insured's** operational control which are a result of the **Insured's Wrongful Act**.
- N. alleging, based upon, arising out of or attributable to any failure, interruption, or outage to **Internet** access service provided by the **Internet** service provider that hosts the **Insured's Website**, unless such infrastructure is under the **Insured's** operational control.
- O. alleging, based upon, arising out of or attributable to fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, however caused.
- P. alleging, based upon, arising out of or attributable to war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), strike, lock-out, riot, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power.
- Q. alleging, based upon, arising out of or attributable to false, deceptive or unfair business practices, violation of consumer protection laws, or false or deceptive advertising. However, with respect to a **Wrongful Act** expressly covered under Insuring Agreements A or C, this exclusion shall not apply to a **Regulatory Proceeding** or **Consumer Redress Fund** for that portion of **Damages** or **Claims Expenses** allocated to numbered paragraph 4 of **Privacy Regulations**.
- R. alleging, based upon, arising out of or attributable to any validity, invalidity, infringement, violation or misappropriation of any patent or **Trade Secret** by or on behalf of the **Insured**.
- S. alleging, based upon, arising out of or attributable to any validity, invalidity, infringement, violation or misappropriation of any copyright, service mark, trade name, trademark or other intellectual property of any third party.
- T. alleging, based upon, arising out of or attributable to any unsolicited electronic dissemination of faxes, e-mails or other communications by or on behalf of the **Insured** to multiple actual or prospective customers of the **Insured** or any other third party, including but not limited to actions brought under the Telephone Consumer Protection Act, any federal or state anti-spam statutes, and/or any other federal or state statute, law or regulation relating to a person's or entity's right of seclusion. However, with respect to a **Wrongful Act** expressly covered under Insuring Agreement C, this exclusion shall not apply.
- U. alleging, based upon, arising out of or attributable to the unauthorized or surreptitious collection of **Personal Information** by the **Insured** or the failure to provide adequate notice that such information is being collected. Solely with respect to the applicability of this exclusion under Insuring Agreements A and C, only facts pertaining to and knowledge possessed by any principal, partner, officer or director of an **Insured** shall be imputed to other **Insureds**.
- V. alleging, based upon, arising out of or attributable to the **Insured's** intentional failure to disclose the loss of **Personal Information** in violation of any law or regulation. Solely with respect to the applicability of this exclusion under Insuring Agreements A and C, only facts pertaining to and knowledge possessed by any principal, partner, officer or director of an **Insured** shall be imputed to other **Insureds**.
- W. alleging, based upon, arising out of or attributable to sections 605 and 616 of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., or any other similar federal or statutory provisions.
- X. alleging, based upon, arising out of or attributable to the rendering of or the failure to render professional services by any **Insured** to others.

IV. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of **Insureds** shall be considered **Insureds** under this **Policy**, but coverage is afforded to such estates, heirs, legal representatives,

assigns, spouses and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured** to the spouse or **Domestic Partner**. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All of the terms and conditions of this **Policy** including, without limitation, the Retention shown in Item 5 of the Declarations applicable to **Damages, Claims Expenses, or Data Breach Expenses** incurred by **Insureds**, shall also apply to **Damages, Claims Expenses, or Data Breach Expenses** incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

V. **EXTENDED REPORTING PERIODS**

If the **Insurer** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), or if the **Named Insured** terminates or does not renew this **Policy** and does not obtain replacement coverage as of the effective date of such termination or nonrenewal, the **Named Insured** shall have the right, upon payment of the additional premium described below, to a continuation of the coverage granted by this **Policy** for at least one **Extended Reporting Period** as follows:

A. **Automatic Extended Reporting Period**

The **Named Insured** shall have continued coverage granted by this **Policy** for a period of 60 days following the effective date of such termination or nonrenewal, but only for **Claims** first made during such 60 days and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This Automatic **Extended Reporting Period** shall immediately expire upon the purchase of replacement coverage by the **Named Insured**.

B. **Optional Extended Reporting Period**

The **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 8A of the Declarations, to an Optional **Extended Reporting Period**, for the period set forth in Item 8B of the Declarations following the effective date of such termination or nonrenewal, but only for **Claims** first made during such Optional **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal.

This right to continue coverage shall lapse unless written notice of such election is given by the **Named Insured** to the **Insurer**, and the **Insurer** receives payment of the additional premium within 60 days following the effective date of termination or nonrenewal.

The first 60 days of the Optional **Extended Reporting Period**, if it becomes effective, shall run concurrently with the Automatic **Extended Reporting Period**.

C. The **Insurer** shall give the **Named Insured** notice of the premium due for the Optional **Extended Reporting Period** as soon as practicable following the date the **Named Insured** gives such notice of such election, and such premium shall be paid by the **Named Insured** to the **Insurer** within 10 days following the date of such notice by the **Insurer** of the premium due. The Optional **Extended Reporting Period** is not cancelable and the entire premium for the Optional **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

D. The Automatic and Optional **Extended Reporting Periods** shall be part of and not in addition to the Limit of Liability for the immediately preceding **Policy Period**. The Automatic and Optional **Extended Reporting Periods** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and the Automatic and Optional **Extended Reporting Period**, combined.

E. A change in **Policy** terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the Automatic or Optional **Extended Reporting Period**.

VI. **LIMITS OF LIABILITY**

Regardless of the number of Insuring Agreements purchased under this **Policy**, **Insureds** against whom **Claims** are brought, **Claims** made or persons or entities making **Claims**:

A. **Limit of Liability for Insuring Agreements**

1. With respect to Insuring Agreements A and C:

a. the Each **Claim** Limit of Liability stated in Item 4A of the Declarations is the **Insurer's** maximum liability under the applicable Insuring Agreement for the sum of all **Damages** and all **Claims**

Expenses because of each **Claim**, including each **Claim** alleging any **Interrelated Wrongful Acts**, first made and reported during the **Policy Period**.

- b. the Aggregate Limit of Liability as stated in Item 4A of the Declarations is the **Insurer's** maximum liability under the applicable Insuring Agreement for the sum of all **Damages** and all **Claims Expenses** because of all **Claims** combined in the aggregate, including all **Claims** alleging any **Interrelated Wrongful Acts**, first made and reported during the **Policy Period**.
 - c. notwithstanding paragraphs a and b of this section above:
 - (1) the Each **Claim Regulatory Proceeding** Sub-Limit of Liability stated in Item 4B of the Declarations is the **Insurer's** maximum liability under Insuring Agreements A and C for the sum of all **Damages** and all **Claims Expenses** incurred because of each **Regulatory Proceeding Claim**, including each **Claim** alleging any **Interrelated Wrongful Acts**, first made and reported during the **Policy Period**.
 - (2) the Aggregate **Regulatory Proceeding** Sub-Limit of Liability stated in Item 4B of the Declarations is the **Insurer's** maximum liability under Insuring Agreements A and C for the sum of all **Damages** and all **Claims Expenses** incurred because all **Regulatory Proceeding Claims** combined in the aggregate, including all **Claims** alleging any **Interrelated Wrongful Acts**, first made and reported during the **Policy Period**.
 - (3) the **Regulatory Proceeding** Sub-Limit of Liability shall be part of and not in addition to the otherwise applicable Each **Claim** and Aggregate Limits of Liability stated in Items 4A or 4C of the Declarations and will not increase the **Insurer's** Limit of Liability as provided therein.
 - (4) the Each **Claim Regulatory Proceeding** Sub-Limit of Liability and Aggregate **Regulatory Proceeding** Sub-Limit of Liability stated in Item 4B of the Declarations shall not apply to that portion of **Damages** which are allocated to the **Consumer Redress Fund**.
2. With respect to Insuring Agreement B:
- a. the Each **Claim** Limit of Liability as stated in Item 4A of the Declarations is the **Insurer's** maximum liability under Insuring Agreement B for the sum of all **Data Breach Expenses** because of each **Claim**, including each **Claim** alleging any **Interrelated Wrongful Acts**, first made and reported during the **Policy Period**.
 - b. the Aggregate Limit of Liability stated in Item 4A of the Declarations is the **Insurer's** maximum liability under Insuring Agreement B for the sum of all **Data Breach Expenses** because of all **Claims** combined in the aggregate, including all **Claims** alleging any **Interrelated Wrongful Acts**, first made and reported during the **Policy Period**.
3. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be 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**.
4. **Claims Expenses** and **Data Breach Expenses** shall be part of and not in addition to the applicable Aggregate Limits of Liability stated in Item 4A or 4C of the Declarations, and shall reduce such Aggregate Limits of Liability. If the applicable Limit of Liability is exhausted by payment of **Damages**, **Claims Expenses**, or **Data Breach Expenses**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. The **Insurer** is entitled to pay **Damages**, **Claims Expenses**, and **Data Breach Expenses** as they become due and payable by the **Insureds**, without consideration of other future payment obligations.

B. Maximum **Policy** Aggregate Limit of Liability

The Maximum **Policy** Aggregate Limit of Liability stated in Item 4C of the Declarations is the **Insurer's** maximum liability under all Insuring Agreements for the sum of all **Damages**, all **Claims Expenses**, and all **Data Breach Expenses** because of all **Claims** under this **Policy**.

- C. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be 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**. All **Damages**, **Claims Expenses**, and **Data Breach Expenses** resulting from a single **Claim** shall be deemed, respectively, a single **Damage**, **Claims Expense**, or **Data Breach Expense**.

- D. **Damages, Claims Expenses, and Data Breach Expenses** shall be part of and not in addition to the applicable Limit(s) of Liability shown in Item 4 of the Declarations, and shall reduce such Limit(s) of Liability. If the Limit(s) of Liability are exhausted by payment of **Damages, Claims Expenses, or Data Breach Expenses**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished.

VII. RETENTION

- A. The liability of the **Insurer** shall apply only to that part of **Damages, Claims Expenses, and Data Breach Expenses** which are in excess of the applicable Retention amount shown in Item 5 of the Declarations. Such Retention shall be borne uninsured by the **Named Insured** and at the risk of all **Insureds**.
- B. A single Retention amount shall apply to **Damages, Claims Expenses, and Data Breach Expenses** arising from all **Claims** alleging **Interrelated Wrongful Acts**.
- C. If different parts of a single **Claim** are subject to different Retentions, the applicable Retention shall be applied separately to each part of the **Damages, Claim Expenses, and Data Breach Expenses**, but the sum of such Retentions shall not exceed the largest applicable Retention.

VIII. NOTICE

- A. Any principal, partner, officer, director or organizational equivalent of an **Insured** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** as soon as practicable, but in no event later than 30 days after the later of the end of the **Policy Period**, the **Automatic Extended Reporting Period**, or, if elected, the **Optional Extended Reporting Period**.
- B. If, during the **Policy Period**, any principal, partner, officer, director or organizational equivalent of an **Insured** becomes aware of any specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds** give written notice to the **Insurer** during the **Policy Period**, the **Automatic Extended Reporting Period**, or, if elected, the **Optional Extended Reporting Period** of:
1. the identity of the potential claimants;
 2. a description of the anticipated **Wrongful Act** allegations;
 3. the identity of the **Insureds** allegedly involved;
 4. the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
 5. the consequences which have resulted or may result; and
 6. the nature of the potential monetary damages;

then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

- C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier or certified mail properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address set forth in Item 6A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address set forth in Item 6B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee, or one day following the date such notice is sent, whichever is earlier.
- D. No notice that may be given during the **Policy Period** under section VIII, Notice, at subsection B may be given during the **Extended Reporting Periods**, if elected.

IX. DEFENSE AND SETTLEMENT

- A. Except as provided in Section IX, subsection B below, the **Insurer** shall have the right and duty to defend any covered **Claim** brought against the **Insured** even if such **Claim** is groundless, false or fraudulent. The **Insured** shall not:
1. admit or assume liability without the prior written consent of the **Insurer**;
 2. settle or negotiate to settle any **Claim** unless such settlement fully resolves such **Claim** within the applicable Retention; or

3. incur any **Claims Expenses** or **Data Breach Expenses** (as defined in Section II, subsection H3 of this **Policy**) without the prior written consent of the **Insurer**, and the **Insurer** shall have the right to appoint counsel and to make such investigation and defense of a covered **Claim** as it deems necessary.

B. The **Insurer** shall have the right, but not the duty, to defend any **Regulatory Proceeding**. For such **Claims** the **Insured** shall select defense counsel from the **Insurer's** list of approved law firms, and the **Insurer** reserves the right to associate in the defense of such **Claims**.

C. The **Insurer** shall not settle any **Claim** without the written consent of the **Named Insured**. If the **Named Insured** refuses to consent to a settlement or a compromise recommended by the **Insurer** and acceptable to the claimant, then the **Insurer's** Limit of Liability under this **Policy** with respect to such **Claim** shall be reduced to the amount of **Damages** for which the **Claim** could have been settled plus all **Claims Expenses** incurred up to the time the **Insurer** made its recommendation to the **Named Insured**, which amount shall not exceed that portion of any applicable Aggregate Limit of Liability that remains unexhausted by payment of **Damages**, **Claims Expenses**, or **Data Breach Expenses** or by any combination thereof.

D. The **Insurer** shall not be obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle any **Claim** after any applicable Limit of Liability specified in Item 4 of the Declarations has been exhausted by payment of **Damages**, **Claims Expenses**, or **Data Breach Expenses**, or by any combination thereof, or after the **Insurer** has deposited the remainder of any unexhausted applicable Limit of Liability into a court of competent jurisdiction. In either such case, the **Insurer** shall have the right to withdraw from the further investigation, defense, payment or settlement of such **Claim** by tendering control of such **Claim** to the **Insured**.

E. The **Insured** shall cooperate with the **Insurer**, and provide to the **Insurer** all information and assistance which the **Insurer** reasonably requests including but not limited to attending hearings, depositions and trials and assistance in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any **Claim** covered by this **Policy**. The **Insured** shall do nothing that may prejudice the **Insurer's** position. The **Insureds** shall immediately forward to the **Insurer**, at the address indicated in Item 6A of the Declarations, every demand, notice, summons, or other process or pleading received by the **Insured** or its representatives.

F. It is agreed that, except with respect to that part of **Data Breach Expenses** set forth in Section II, subsection H3 of this **Policy**, the **Insured** has the right to incur **Data Breach Expenses** without the **Insurer's** prior consent, however, the **Insurer** shall, at its sole discretion and in good faith, reimburse the **Insured** only for such expenses that the **Insurer** deems to be reasonable and necessary.

X. ALLOCATION

A. If **Damages**, in part, covered by this **Policy** and, in part, not covered by this **Policy**, are incurred on account of a single **Claim** for which the **Insurer** retains the duty to defend, the **Policy** will pay one hundred percent (100%) of reasonable and necessary **Claims Expenses** incurred in the defense of such **Claims**.

B. **Damages** and **Claims Expenses** incurred by the **Insured** on account of any **Claim** for which the **Insurer** does not retain the duty to defend shall be allocated between covered and uncovered loss based on the relative legal and financial exposures of the parties and loss at issue.

XI. OTHER INSURANCE

If any **Damages**, **Claims Expenses**, or **Data Breach Expenses** covered under this **Policy** are covered under any other valid and collectible insurance, then this **Policy** shall cover such **Damages**, **Claims Expenses**, or **Data Breach Expenses**, subject to the **Policy** terms and conditions, only to the extent that the amount of such **Damages**, **Claims Expenses**, or **Data Breach Expenses** are in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided by this **Policy**.

XII. MATERIAL CHANGES IN CONDITIONS

A. Acquisition or Creation of Another Organization

If, during the **Policy Period**, the **Named Insured**:

1. acquires voting securities in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or

2. acquires any organization by merger into or consolidation with the **Named Insured**;

then, subject to the terms and conditions of this **Policy**, such organization shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired organization, as reflected in the then most recent consolidated financial statements of the organization, exceeds 10% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, the **Named Insured**, as a condition precedent to coverage with respect to such **Insureds**, shall, no later than 60 days after the effective date of such acquisition or creation:

1. give written notice of such acquisition or creation to the **Insurer**;
2. pay any additional premium required by the **Insurer**; and
3. agree to any additional terms and conditions of this **Policy** as required by the **Insurer**.

B. Acquisition of the **Named Insured**

If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors of the **Named Insured**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event. This **Policy** may not be cancelled after the effective time of the event, and the entire premium for this **Policy** shall be deemed earned as of such time.

C. Termination of a **Subsidiary**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to such organization and its employees shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

XIII. REPRESENTATIONS

A. The **Insureds** represent and acknowledge that the statements and information contained in the **Application**, including all information provided concerning network security policies and procedures, information management policies and procedures, and business continuity plans and policies, are true and accurate and:

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

B. It is understood and agreed that:

1. this **Policy** is issued in reliance upon the truth and accuracy of such representations;
2. the **Insureds** have and will provide accurate information with regard to loss control audits and network security assessments as required by the **Insurer**; and
3. if such representations or such information are not true, accurate and complete, this **Policy** shall be null and void in its entirety and the **Insurer** shall have no liability hereunder.

C. Solely with respect to the applicability of Section XIII, Representations of the **Policy**, only facts pertaining to and knowledge possessed by the person(s) who signed the **Application** or any principal, partner, officer, director or organizational equivalent of an **Insured** shall be imputed to other **Insureds**.

XIV. TERMINATION OF THE **POLICY**

- A. This **Policy** shall terminate at the earliest of the following times:
1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
 2. 30 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer**;
 3. 10 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 10 day period;
 4. upon expiration of the **Policy Period** as set forth in Item 2 of the Declarations; or
 5. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.
- B. If the **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If the **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XV. TERRITORY AND VALUATION

- A. Coverage provided under this **Policy** shall extend to **Wrongful Acts** and **Claims** taking place, brought or maintained anywhere in the world.
- B. All premiums, limits, retentions, **Damages, Claims Expenses, Data Breach Expenses**, and any other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of loss under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of loss is due, respectively, or, if not published on such date, the next date of publication of *The Wall Street Journal*.

XVI. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

XVII. ACTION AGAINST THE **INSURER** AND BANKRUPTCY

Except as provided in Section XIX, Alternative Dispute Resolution, no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives. Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**.

XVIII. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving of notice of **Claim**, the giving or receiving of notice of termination or non renewal, the payment of premiums, the receiving of any premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, consenting to any settlement, exercising the right to the **Extended Reporting Period**, and the giving or receiving of any other notice provided for in this **Policy**, and all **Insureds** agree that the **Named Insured** shall so act on their behalf.

XIX. ALTERATION, ASSIGNMENT AND HEADINGS

- A. Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this **Policy** nor prevent the **Insurer** from asserting any right under the terms of this **Policy**.
- B. No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**.

- C. The titles and headings to the various parts, sections, subsections and endorsements of the **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XX. ALTERNATIVE DISPUTE RESOLUTION

The **Insureds** and the **Insurer** shall submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination or invalidity thereof to the alternative dispute resolution ("ADR") process set forth in this Section.

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

There shall be two choices of ADR process: (1) non-binding **Mediation** administered by any **Mediation** facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by **Mediation** in accordance with the then-prevailing commercial **Mediation** rules of the **Mediation** facility; or (2) arbitration submitted to any arbitration facility to which the **Insured** and the **Insurer** mutually agree, in which the arbitration panel shall consist of three disinterested individuals. In either **Mediation** or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs. In the event of **Mediation**, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days after the date the **Mediation** shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

Either ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with any ADR process under this Section.

XXI. INTERPRETATION

The terms and conditions of this **Policy** shall be interpreted and construed in an evenhanded fashion as between the parties. If the language of this **Policy** is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms and conditions, without regard to authorship of the language, without any presumption or arbitrary interpretation or construction in favor of either the **Insureds** or the **Insurer** and without reference to the reasonable expectations of either the **Insureds** or the **Insurer**.