

XL ECLIPSE™

MEDIA CONTENT SERVICES, NETWORK SECURITY AND PRIVACY LIABILITY INSURANCE POLICY

THIS IS A CLAIMS MADE AND REPORTED POLICY. THIS POLICY APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED IN WRITING TO THE COMPANY DURING THE POLICY PERIOD. CLAIM EXPENSES ARE WITHIN AND REDUCE THE LIMIT OF LIABILITY. PLEASE REVIEW THIS POLICY CAREFULLY.

Words and phrases that appear in **bold** print have special meanings that are defined in **SECTION V. DEFINITIONS**.

I. INSURING AGREEMENTS

Provided always that the subject act or omission was committed on or subsequent to the **retroactive date** specified in **Item 8**. in the Declarations and that prior to the inception date of this policy no **Insured** had a basis to believe that any such act or omission, or related act or omission, might reasonably be expected to be the basis of a **claim**, then the **Company** agrees as follows:

A. Media Content Services Liability Coverage

The **Company** will pay on behalf of the **Insured** all sums in excess of the deductible that the **Insured** becomes legally obligated to pay as **damages** and **claim expenses** as a result of a **claim** first made against the **Insured** and reported in writing to the **Company** during the **policy period**, for actual or alleged **personal injury**, by reason of an act, error or omission in the performance of **media communications**, by the **Insured** or by someone for whom the **Insured** is legally responsible, including liability **assumed under contract**.

B. Network Security Liability Coverage

The **Company** will pay on behalf of the **Insured** all sums in excess of the deductible that the **Insured** becomes legally obligated to pay as **damages** and **claim expenses** as a result of a **claim** first made against the **Insured** and reported in writing to the **Company** during the **policy period**, by reason of an act, error or omission by the **Insured** in providing or managing the security of a **computer system** for others for a fee that either (i) causes a **network breach**, or (ii) prevents a third party who is authorized to do so from gaining access to a **computer system**.

C. Privacy Liability Coverage

If, at the time of the respective act, error or omission described below, the **Insured** had in force a **privacy policy** pertaining to the subject matter of the corresponding subsection, then:

1. the **Company** will pay on behalf of the **Insured** all sums in excess of the deductible that the **Insured** becomes legally obligated to pay as **damages** and **claim expenses** as a result of a **claim** first made against the **Insured** and reported in writing to the **Company** during the **policy period** by reason of a **privacy wrongful act** committed by the **Insured** in the **Insured's** capacity as such.
2. the **Company** will pay **privacy notification costs**, in excess of the deductible that the **Named Insured** incurs with the **Company's** prior written consent resulting from the **Named Insured's** legal obligation to comply with a **breach notification law** due to the **Named Insured's** failure to prevent **unauthorized access**, to the extent such **unauthorized access** (1) results in a **data breach**

from a **computer system**, and (2) occurred and was reported in writing to the **Company** during the **policy period**, but only to the sublimit, if purchased, stated in **Item 4.(b)(i)** of the Declarations.

3. the **Company** will pay on behalf of the **Named Insured** all sums in excess of the deductible that the **Named Insured** becomes legally obligated to pay as **regulatory fines** and **claim expenses** as a result of a **regulatory proceeding** first made against the **Named Insured** and reported to the **Company** during the **policy period** resulting from a violation of a **privacy law** by reason of a **privacy wrongful act** by the **Named Insured** committed in the **Named Insured's** capacity as such, but only to the sublimit, if purchased, stated in **Item 4.(b)(ii)** of the Declarations.

II. FIRST PARTY INSURING AGREEMENTS

A. Extortion Threat

The **Company** will indemnify the **Named Insured** all sums incurred in excess of the deductible and with the **Company's** prior written consent for **extortion damages** as a result of an **extortion threat** first made against an **Insured** in its capacity as such and reported to the **Company** during the **policy period** by a person other than an **Insured** or any person acting or proceeding with the knowledge and consent of, at the direction or request of, or with the assistance of an **Insured**.

B. Crisis Management Expense

The **Company** will indemnify the **Named Insured** all sums incurred in excess of the deductible and with the **Company's** prior written consent, for the cost of public relations consultants for the purpose of averting or reducing damage to the **Named Insured's** reputation provided that the **claim** results from a **network breach** to the **Named Insured's computer system** or a **privacy wrongful act**.

C. Business Interruption

The **Company** will indemnify the **Named Insured** all sums in excess of the deductible for the reduction in business income the **Named Insured** sustains during the **period of restoration** of an actual interruption of the use of the **computer system** of the **Named Insured** provided the **claim** results from a **network breach** to the **Named Insured's computer system**.

III. DEFENSE AND SETTLEMENT

A. Defense

The **Company** has the right and duty to defend any **claim** against the **Insured** seeking **damages** payable under the terms of this policy, even if any of the allegations of the **claim** are groundless, false or fraudulent. Defense counsel may be designated by the **Company** or, at the **Company's** option, by the **Insured** with the **Company's** written consent and subject to the **Company's** guidelines.

B. Settlement

The **Company** will have the right and duty to make, with the written consent of the **Named Insured**, any settlement of a **claim** under this policy. If the **Named Insured** refuses to consent to a settlement within the policy's applicable limit of liability that is recommended by the **Company** and acceptable to the claimant, then the **Company's** limit of liability under this policy will be reduced to the amount of **damages** for which the **claim** could have been settled plus all **claim expenses** incurred up to the time the **Company** made its recommendation and fifty percent (50%) of **claims expenses** in

excess of the recommended settlement, the total of which will not exceed the limit of liability specified in the Declarations.

IV. LIMITS OF LIABILITY AND DEDUCTIBLE

A. Limit of Liability - Each Claim

Subject to Paragraph **C.** below, the **Company's** limit of liability for **damages** and **claim expenses** for each **claim** first made and reported in writing to the **Company** during the **policy period** will not exceed the amount shown in **Item 4.(a)** in the Declarations for "Each **Claim.**"

B. Limit of Liability - Policy Aggregate

The **Company's** limit of liability for **damages** and **claim expenses** for all **claims** first made and reported in writing to the **Company** during the **policy period** and for all **privacy notification costs** payable under Insuring Agreement I.C.2. will not exceed the aggregate amount shown in **Item 4.(b)** in the Declarations as the "Policy Aggregate," subject to the following sublimits which are part of and not in addition to the "Policy Aggregate" limit of liability:

1. The sublimit of liability stated in **Item 4.(b)(i)** in the Declarations is the aggregate limit for the **policy period**, for all **privacy notification costs** for **privacy liability** under Insuring Agreement I.C.2.; and
2. The sublimit of liability stated in **Item 4.(b)(ii)** in the Declarations is the aggregate limit for the **policy period**, for all **regulatory fines** and **claim expenses** for **privacy liability** under Insuring Agreement I.C.3.

C. Exhaustion of Limits

The **Company** is not obligated to pay any **damages**, **claim expenses**, or **privacy notification costs** or to defend or continue to defend any **claim** after the applicable limit of liability has been exhausted by the payment of **damages**, **claim expenses**, or **privacy notification costs** or any combination thereof; or after the **Company** has deposited the remaining available limit of liability into a court of competent jurisdiction or tendered the remaining available limit of liability to the **Named Insured** or, if applicable, to the excess insurer(s) of the **Named Insured**.

D. Deductible

1. The deductible amount shown in **Item 5.(a)** in the Declarations is the **Insured's** obligation for each **claim** and applies to the payment of **damages** and **claim expenses**. The deductible will be paid by the **Named Insured**. The limits of liability set forth in the Declarations are in addition to and in excess of the deductible.
2. The deductible amount stated in **Item 5.(b)** in the Declarations applies separately to each event or series of related events giving rise to an obligation to incur **privacy notification costs** for **privacy liability**. The deductible will be paid by the **Named Insured**. The sublimit set forth in **Item 4.(b)(i)** in the Declarations are part of and not in addition to the "Policy Aggregate" limit of liability and in excess of the deductible stated in **Item 5.(b)**.
3. The deductible amount stated in **Item 5.(c)** in the Declarations applies separately to each event or series of related events giving rise to an obligation to incur **regulatory fines and claims expenses** for **privacy liability**. The deductible will be paid by the **Named Insured**. The sublimit set forth in **Item 4.(b)(ii)** in the Declarations are part of and not in addition to the "Policy Aggregate" limit of liability and in excess of the deductible stated in **Item 5.(c)**.

E. Early Claim Resolution Incentive

If a **claim** is resolved or concluded, with the consent of the **Named Insured** and the **Company**, as reflected in a settlement agreement, order, dismissal, or judgment, within one (1) year following the date that the **claim** is reported in writing to the **Company**, the **Named Insured** will be reimbursed or credited fifty percent (50%) of the deductible, but not to exceed a maximum reimbursement of twenty five thousand dollars (\$25,000) per **policy period** for all such **claims** resolved or concluded in accordance with this Paragraph E.

F. Multiple Insureds, Claims and Claimants

1. The limits of liability shown in the Declarations is the maximum amount the **Company** will pay under this policy for **damages, claim expenses** and **privacy notification costs**, regardless of the number of **Insureds, claims** made, claimants, or events giving rise to **privacy notification costs**.
2. All **claims** arising from the same or a series of related, repeated or similar acts, errors or omissions or from any continuing acts, errors or omissions will be considered a single **claim** for purposes of this policy, irrespective of the number of claimants or **Insureds** involved in the **claim**. All such **claims** shall be deemed to have been made at the time of the first such **claim**.
3. All events giving rise to **privacy notification costs** arising out of a single act, error or omission or related, repeated or similar acts, errors or omissions will be considered a single event for purposes of this policy, irrespective of the number of claimants or **Insureds** involved in the event. All such events shall be deemed to have occurred and the resulting **claim** made at the time the **Insured** first became aware of the earliest of all such events.

G. Supplementary Payments

Supplementary payments are not subject to the deductible and are in addition to the limits of liability.

The **Company** will pay up to two hundred and fifty dollars (\$250) for loss of earnings to the **Insured** for each day or part of a day the **Insured** is in attendance, at the **Company's** request, at a trial, hearing or arbitration proceeding involving a **claim** against the **Insured**. In no event shall the amount payable hereunder exceed five thousand dollars (\$5,000) per **policy period**.

V. DEFINITIONS

A. Advertising

means publicly disseminated material which promotes the service, business, or product of the **Named Insured** or a client of the **Named Insured**, but only where such material was disseminated at the prior written request of the **Named Insured**.

B. Assumed under contract

means liability for **damages** for **personal injury** which the **Insured** is required to indemnify based upon a written contract, hold harmless agreement, indemnity agreement, or similar arrangement, which document: (i) was executed by the **Insured** prior to the occurrence of the **personal injury** for which indemnity is sought, and (ii) requires the **Insured** to indemnify for **personal injury** caused in whole or in part by the content of **media material** used in a **media communication**.

C. Bodily injury

means physical injury, sickness or disease sustained by any person, including death resulting from any of these at any time. **Bodily injury** also means mental illness, mental

anguish, or emotional distress, pain or suffering, or shock sustained by that person, whether or not resulting from physical injury, sickness, disease or death of any person.

D. Breach notification law

means any local, state, federal or foreign statute or regulation requiring the **Insured** to protect the confidentiality and/or security of **personally identifiable information**.

E. Claim

means:

1. a written demand received by an **Insured** for monetary damages, including the service of suit or initiation of arbitration proceedings;
2. the initiation of a suit or arbitration proceeding against an **Insured** seeking injunctive relief; and
3. with respect to coverage provided under Insuring Clause I.C.3. only, the institution of a **regulatory proceeding** against the **Named Insured**.

F. Claim expenses

means:

1. Reasonable and necessary fees charged by attorneys designated by the **Company** or designated by the **Insured** with the **Company's** prior written consent;
2. All other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, negotiation, arbitration, defense or appeal of a **claim**, if incurred by the **Company** or by the **Insured** with the **Company's** prior written consent; and
3. Premiums on appeal bonds, attachment bonds or similar bonds however, the **Company** is not obligated to apply for or furnish any such bond.

In all cases, **claim expenses** does not mean a **regulatory fine**.

Claim expenses will be paid first and will reduce the limit of liability available to pay **damages**. **Claim expenses** do not include fees, costs or expenses of employees or officers of the **Company**, or salaries, loss of earnings or other remuneration by or to any **Insured**.

G. Company

means the insurance company named in the Declarations.

H. Computer system

means computer hardware, software, networks, networking equipment, applications, associated electronic devices, electronic data storage devices, input and output devices, and back up facilities operated by and either owned by or leased to the **Insured** by written contract for such purposes.

I. Damages

means any compensatory sum and shall include a judgment, award or settlement, provided any settlement is negotiated with the **Company's** written consent, and prejudgment or post judgment interest awarded against the **Insured** on that part of the judgment the **Company** offers to pay. If the **Company** makes an offer to pay the applicable limits of liability, it will not pay any prejudgment interest based on that period of time after the offer.

Damages does not include:

1. the return or restitution of fees, expenses or costs for **media communication** performed or to be performed by the **Insured**;
2. fines, penalties, forfeitures, or sanctions;

3. punitive or exemplary amounts;
4. the multiplied portion of any multiplied awards;
5. injunctive or declaratory relief;
6. discounts, coupons, prizes, awards or other incentives offered to the **Insured's** customers or clients; or
7. **regulatory fines**; provided, however, notwithstanding the foregoing, solely with respect to Insuring Agreement I.C.3., damages includes **regulatory fines**.

However, with respect to any **claim**, it is understood and agreed that the insuring of punitive or exemplary damages is deemed permitted under the laws and public policy of the applicable jurisdiction.

The term "applicable jurisdiction" shall mean for the purposes of this policy that jurisdiction most favorable to the insurability of punitive or exemplary damages provided that the jurisdiction must be:

- a. where the punitive or exemplary damages were awarded or imposed;
- b. where any act which forms the basis of the **claim** took place; or
- c. where any **Insured** is incorporated, resides, or has its principal place of business.

J. Data breach

means the unauthorized taking, acquisition, obtaining, use or disclosure of information on a **computer system**, including but not limited to **personally identifiable information**, charge, debit, and credit card information, banking, financial, and investment services account information, proprietary information, and personal, private, and confidential information.

K. Insured means the **Named Insured** and any of the persons or entities listed below:

1. any **subsidiary** or **newly acquired subsidiary**;
2. any present or former partner, member, officer, director or employee of the **Named Insured**, a **subsidiary** or a **newly acquired subsidiary**, but only with the respect to acts, errors, or omissions committed within the scope of such person's duties performed on behalf and for the benefit of the **Named Insured** or a **subsidiary** or **newly acquired subsidiary**;
3. independent contractors but only for **miscellaneous professional services, technology services** or **media content services** (a) performed at the direction and for the benefit of the **Named Insured**, and (b) with respect to which the **Named Insured** has previously agreed in writing to provide insurance for the independent contractor's **miscellaneous professional services, technology services, or media communication**;
4. any leased employee but only while acting under the direct supervision and exclusively at the direction and for the benefit of the **Named Insured**;
5. the estate, heirs, executors, administrators, assigns and legal representatives of an **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would have been provided coverage under this policy; and
6. the lawful spouse, including any natural person qualifying as a domestic partner under the provisions of any applicable state, federal or local law in the United States, of any **Insured**, but solely by reason of any act, error or omission of an **Insured** other than such spouse or domestic partner.

L. Interrelated Act

means any fact, circumstance, situation, transaction, act, error, omission, or event which is based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving or having as a common nexus any of the same or related or series of related facts, circumstances, situations, transactions, acts, errors, omissions or events.

- M. Malicious code**
means any unauthorized, corrupting, or harmful virus, Trojan Horse, worm, logic bomb or other similar software program, code or script designed to insert itself onto a computer disk or into computer memory and migrate from one computer to another.
- N. Media communication**
means the publishing, transmission, display, broadcast, web cast, dissemination, distribution or release of **media material** to the public by or on behalf of the **Named Insured**.
- O. Media material**
means information in the form of words, sounds, numbers, images, or graphics in electronic, print, digital or broadcast form, including **advertising**.
- P. Named Insured**
means the persons or entities specified in **Item 1.** in the Declarations.
- Q. Network breach**
means:
1. the alleged or actual **unauthorized access** to a **computer system** that results in:
 - a. the destruction, deletion or corruption of electronic data on a **computer system**;
 - b. a **data breach** from a **computer system**; and
 - c. denial of service attacks against Internet sites or computers; and
 2. transmission of **malicious code** from a **computer system** to third party computers and systems.
- A series of continuing **network breaches** or related, repeated, or similar **network breaches** shall be considered a single **network breach** and be deemed to have occurred at the time of the first such **network breach**.
- R. Newly acquired subsidiary**
means any entity newly formed or acquired by the **Named Insured** during the **policy period** in which the **Named Insured** has more than fifty percent (50%) of the legal or beneficial interest, but only upon the conditions that:
1. Within sixty (60) days of such formation or acquisition, the **Named Insured** has provided the **Company** with full particulars of such **newly acquired subsidiary** and the **Company** has agreed in writing to insure such **newly acquired subsidiary**, but the **Company** shall not be required to insure such **newly acquired subsidiary**;
 2. The **Named Insured** has paid the additional premium, if any, charged by the **Company** and has agreed to any amendment of the provisions of this policy; and
 3. The **Company** will only provide coverage with respect to a **Claim** when the act or omission is committed on or after the date such **newly acquired subsidiary** became a **newly acquired subsidiary** and prior to the date such **newly acquired subsidiary** ceased to be a newly acquired subsidiary. An entity ceases to be a **newly acquired subsidiary** under this policy on the date during the **policy period** that the **Named Insured's** legal or beneficial interest in such entity becomes less than fifty percent (50%).
- S. Period of Restoration**
means the time period that begins on the specific date the actual interruption of the use of the **Named Insured's computer system** starts and ends on the specific date that the

actual interruption of the use of the **computer system** ends. In no event, however, shall the period of restoration mean a time period to exceed sixty (60) days.

T. Personally identifiable information

means an individual's name in combination with one or more of the following:

1. information concerning the individual that constitutes "non-public personal information" as defined in the Gramm-Leach Bliley Act of 1999, as amended, and regulations issued pursuant to the Act;
2. medical or health care information concerning the individual, including "protected health information" as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulation issued pursuant to the Act;
3. the individual's social security number, drivers license or state identification number, credit, debit, or other financial account numbers and associated security codes, access codes, passwords or pins that allows access to the individual's financial account information; or
4. other non-public **personally identifiable information**, as protected under any local, state, federal or foreign statute or regulation.

Provided, however, **personally identifiable information** does not mean information that is lawfully available to the public, including information from any local, state, federal or foreign governmental entity or body.

U. Personal injury

means injury other than **bodily injury** to a third-party arising out of one or more of the following offenses by reason of an **Insured's** act, error or omission in the performance of or negligence regarding the content of any **media communication**:

1. false arrest, detention or imprisonment;
2. libel, slander, or other defamatory or disparaging statement or materials;
3. oral or written publication of material that violates an individual's right of privacy;
4. wrongful entry or eviction, or other invasion of the right of private occupancy;
5. plagiarism, piracy or misappropriation of ideas or style of doing business; and
6. infringement or misappropriation of copyright, title, slogan, trademark, trade name, trade dress, logo, service mark or service name.

V. Policy period

means the period of time from the effective date shown in **Item 3**. in the Declarations to the earliest of the date of termination, expiration or cancellation of this policy.

W. Pollutants

means any substance exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, including materials to be recycled, reconditioned, or reclaimed. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, noise, dust, fibers, germs, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi) and electric or magnetic or electromagnetic field.

X. Privacy notification costs

means reasonable and necessary:

1. costs to hire a security expert to determine the existence and cause of any theft or **unauthorized access** to or disclosure of **personally identifiable information**;

2. costs to notify consumers under a **breach notification law**; and
3. fees incurred to determine the actions necessary to comply with a **breach notification law**.

Privacy notification costs will be paid first and will reduce the limit of liability available to pay **damages**. **Privacy notification costs** does not mean fees, costs or expenses of employees or officers of the **Company**, or salaries, loss of earnings, overhead, or any other remuneration by, to or of any **Insured**. **Privacy notification costs** also does not mean any fees, costs or expenses related to public relations management.

Y. Privacy policy

means written documents that set forth the **Insured's** policies, standards, practices and procedures for the acquisition, obtaining, collection, use, disclosure, sharing, transmission, dissemination, correction, access to or supplementation of **personally identifiable information**.

Z. Privacy wrongful act

means:

1. the theft or unintentional disclosure or mishandling of **personally identifiable information** that is in the care, custody, or control of the **Insured**; or
2. the **Insured's** unintentional failure to timely disclose a **network breach** in violation of any **breach notification law**.
3. Solely with respect to Insuring Agreement I.C.2., **privacy wrongful act** also means the **Insured's** unintentional failure to comply with that part of a **privacy policy** that expressly:
 - a. requires notification to a person of the **Insured's** obtaining, acquisition, compilation or use of their **personally identifiable information**;
 - b. requires the **Insured** to disclose **personally identifiable information** or correct incomplete or inaccurate **personally identifiable information** after a proper request has been made by an authorized person;
 - c. requires the **Insured** to prevent the loss of **personally identifiable information**;
 - d. prohibits, prevents, restricts, or limits the improper or intrusive obtaining, acquisition, compilation or use of **personally identifiable information**; and
 - e. allows a person to opt-in or opt-out of the **Insured's** obtaining, acquisition, compilation or use of their **personally identifiable information**.

AA. Property damage

means:

1. physical injury to tangible property, including all resulting loss of use of that property; and
2. loss of use of tangible property that is not physically injured, damaged, lost, or destroyed; however, **property damage** does not mean loss of use of **media material**.

BB. Regulatory fines

means any civil fine or civil monetary penalty imposed in a **regulatory proceeding** payable by the **Insured** to the government entity bringing such **regulatory proceeding** in such entity's regulatory or official capacity.

CC. Regulatory proceeding

means a request for information, civil investigative demand, suit, civil investigation, or civil proceeding commenced by the service of a complaint or similar pleading by or on behalf of any local, state, federal or foreign governmental entity in such entity's regulatory or

official capacity which may reasonably be expected to give rise to a **claim** covered by this policy.

DD. Retroactive date

means the date shown in **Item 8.** in the Declarations, on or after which an act or omission must have been committed for coverage under this policy to apply.

EE. Subsidiary

means any entity of which the **Named Insured** owns, either legally or beneficially, more than a fifty percent (50%) interest in such entity. On the date during the **policy period** that the **Named Insured's** legal or beneficial ownership interest in such entity becomes less than fifth percent (50%), such entity will cease to be a subsidiary under this policy. In such event, coverage will be provided under this policy, but only with respect to acts or omissions committed prior to such date in accordance with all other terms and conditions of this policy. No coverage will be afforded under this policy with respect to **claims** made against an **Insured** based on any act or omission that was committed on or subsequent to such date.

FF. Unauthorized access

means the use of or access to a **computer system** by a person unauthorized by the **Insured** to do so or the authorized use of or access to a **computer system** in a manner not authorized by the **Insured**.

VI. EXCLUSIONS

This policy does not apply to any **claim** or with respect to any **privacy notification costs** or **regulatory proceeding**:

A. Deliberate Acts

Based upon or arising out of any dishonest, intentionally or knowingly wrongful, fraudulent, criminal or malicious act or omission by an **Insured**. The **Company** will provide the **Insured** with a defense of such **claim** and pay **claim expenses** for any such suit which is brought alleging such dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission as a single allegation in a multiple allegation suit, provided any one allegation is covered under this policy. Criminal proceedings are not covered under this policy regardless of the allegations made against the **Insured**.

B. Personal Profit

Based upon or arising out of the gaining of any personal profit or advantage to which the **Insured** is not legally entitled.

C. Prior Acts

Based upon or arising out of:

1. any fact, circumstance, situation, transaction, act, error, omission, or event which, before the inception date of this policy, was the subject of any notice given under any other insurance policy; or
2. any fact, circumstance, situation, transaction, act, error, omission, or event, whenever occurring, which, together with any fact, circumstance, situation, transaction, act, error, omission, or event which has been the subject of such notice, would constitute an **interrelated act**.

D. Bodily Injury/Property Damage

Based upon or arising out of **bodily injury** or **property damage**.

E. Employment Practices

Based upon or arising out of discrimination, humiliation, harassment, or misconduct based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual preference or other classification. The **Company** will provide the **Insured** with a defense of such **claim** and pay **claim expenses** for any suit which is brought alleging such discrimination as a single allegation in a multiple allegation suit, provided any one allegation is covered under this policy.

F. Ownership

Based upon or arising out of **media content services** performed for or by, or created for or sold to, any business enterprise not named in **Item 1.** in the Declarations if on or after the date or time of the act or omission giving rise to such **claim**:

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

Control of or ownership in a business enterprise is presumed if any **Insured** owned or held ten percent (10%) or more of the equity and/or debt instruments of such enterprise.

G. Insured v. Insured

By or on behalf of an **Insured** under this policy against any other **Insured** hereunder; however, this exclusion shall not apply to a **claim** made by an employee of either the **Named Insured** or a **subsidiary** or **newly acquired subsidiary** otherwise covered under Insuring Agreement I.C 1.

H. ERISA/Securities

Based upon or arising out of:

1. the Employee Retirement Income Security Act of 1974;
2. the Securities Act of 1933;
3. the Securities Exchange Act of 1934;

or any rules, regulations or amendments issued in relation to such acts, or any similar state or federal statutes or regulations, including any **claim** based upon common law principles of liability.

I. Pollution

Based upon or arising out of, whether suddenly or over a long period of time, any:

1. actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of **pollutants** whether suddenly or over a period of time; or any injury, damage, payments, costs or expense incurred as a result of any testing for, monitoring, removal, containment, treatment, detoxification, neutralization or cleanup of **pollutants**; or
2. injury, damage, payments, costs or expense incurred as a result of any testing for, monitoring, removal, containment, treatment, detoxification, neutralization or cleanup of any **pollutants**.

J. Contract Liability

Based upon or arising out of any liability of others assumed by the **Insured** under any express, implied, actual, constructive, oral or written contract, agreement, warranty, guarantee, assurance, covenant, representation or promise, unless such liability would have attached to the **Insured** even in the absence of such contract or agreement; however, solely with respect to Insuring Agreement I.A., this exclusion does not apply to liability **assumed under contract**.

K. Guarantees

Based upon or arising out of any express, implied, actual, constructive, oral or written contract, agreement, warranty, guarantee, assurance, covenant, representation or promise:

1. for or relating to return on investment, cost savings, or profits;
2. for or relating to time of delivery; or
3. which creates or requires compliance with an expressed or implied duty to exercise a degree of care or skill higher than applicable industry standards.

L. Advertising

Based upon or arising out of:

1. fees, expenses, cost guarantees, cost representations, pricing guarantees, price representations, contract price, estimates of probable costs, or cost estimates actually or allegedly being exceeded;
2. any actual or alleged gambling, contest, lottery, promotional game or other game of chance;
3. inaccurate, inadequate, or incomplete description of the price of goods, products or services; or
4. the failure of goods, products or services to conform with any represented or implied quality or performance contained in **advertising**.

M. Product Recall – Media

Based upon or arising out of any loss, cost or expenses incurred or that may be incurred by the **Insured** or others for the:

1. reprinting, recall, withdrawal, removal or disposal of any **media material**, including any media or products containing **media material**.

N. Business Practice

Based upon or arising out of any actual or alleged anti-trust violation, price fixing, monopolization, predatory pricing, price discrimination, restraint of trade, unfair competition, violation of consumer protection laws (except consumer privacy protection laws for **claims** involving a **privacy wrongful act**), false, deceptive or unfair trade practices, false, deceptive or misleading **advertising**, or violation of the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, as amended, the Federal Trade Commission Act, or any other local, state, federal, or foreign law involving monopoly, price fixing, anti-trust, predatory pricing, price discrimination, unfair competition, false, deceptive or unfair trade practices, false, deceptive or misleading **advertising**, consumer protection or restraint of trade.

O. Patent

Based upon or arising out of any actual or alleged infringement of patent or patent rights or misuse of patent.

P. Privacy

Based upon or arising out of:

1. telemarketing or the distribution of unsolicited email, direct mail, or facsimiles;
2. the collection of information by means of electronic "spiders", "spy bots", "spyware" or similar means, wire tapping or bugging, video camera, or radio frequency identification tags; or
3. the unlawful collection or acquisition of **personally identifiable information**, or the failure to comply with a legal requirement to allow a person to opt-in or opt-out of the **Insured's** obtaining, acquisition, compilation or use of their **personally identifiable information**.

- Q. Governmental Agency**
Except with respect to Insuring Agreement I.C.3., brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any federal, state, local or foreign governmental entity, in such entity's regulatory or official capacity.
- R. Software Responsibility**
Based upon or arising out of any actual or alleged failure to install available software product updates and releases, or to apply security related software patches, to computers and other components of a **computer system**.
- S. Act of God**
Based upon or arising out of any actual or alleged fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, act of God or other physical event.
- T. Recovery of Profits, Royalties and Fees**
Based upon or arising out of:
1. accounting or recovery of profits, royalties, fees or other monies claimed to be due from an **Insured** or any **claim** brought by any such party against an **Insured** claiming excessive or unwarranted fees, compensation or charges of any kind made by an **Insured**; or
 2. licensing fees or royalties ordered, directed or agreed to be paid by an **Insured** pursuant to a judgment, arbitration award, settlement agreement or similar order for the continued use of a person or entity's copyright, title, slogan trademark, trade name, trade dress, service mark, service name or other intellectual property right.

VII. CONDITIONS

- A. Reporting of Claims, Potential Claims and Events Giving Rise to Privacy Notification Costs**
1. The **Insured**, as a condition precedent to the obligations of the **Company** under this policy, will give written notice to the **Company** as soon as reasonably possible during the **policy period** of any **claim** made against the **Insured**. The **Company** further agrees that the **Insured** may have up to, but not to exceed, sixty (60) days after the policy expiration to report in writing to the **Company** a **claim** made against the **Insured** during the **policy period**, if the reporting of such **claim** is as soon as reasonably possible.
 2. The **Insured**, as a condition precedent to the obligations of the **Company** under this policy, will give written notice to the **Company** as soon as reasonably possible during the **policy period** of any event which might reasonably be expected to give rise to **privacy notification costs**.
 3. If during the **policy period**, any **Insured** becomes aware of any act or omission which may reasonably be expected to be the basis of a **claim** against any **Insured**, including but not limited to any notice, advice or threat, whether written or verbal, that any person or entity intends to hold the **Insured** responsible for any alleged act or omission and gives written notice to the **Company** with all available particulars, including:
 - a. the specific act or omission;
 - b. the dates and persons involved;
 - c. the identity of anticipated or possible claimants;
 - d. the circumstances by which the **Insured** first became aware of the possible **claim**; and

e. potential damages or injury; then any **claim** that is subsequently made against the **Insured** arising out of such act or omission will be deemed to have been made on the date such written notice was received by the **Company**. Said documents and information should be mailed to the **Company** at the following address:

XL Insurance
XL Select Professional - Claims Department
One World Financial Center
200 Liberty Street, 21st Floor
New York, NY 10281

4. If during the **policy period**, the **Insured** gives written notice to the **Company** of an event which might reasonably be expected to give rise to **privacy notification costs**, then any **claim** that is subsequently made against the **Insured** arising out of such event will be deemed to have been made on the date such written notice was received by the **Company**.

B. Assistance and Cooperation

1. The **Insured** will cooperate with the **Company** and upon the **Company's** request, attend hearings, depositions and trials and assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and proceedings in connection with a **claim** or payment of **privacy notification costs**.
2. The **Insured** will assist in the enforcement of any right of contribution or indemnity against any person or organization who or which may be liable to any **Insured** in connection with a **claim** or payment of **privacy notification costs**.
3. The **Insured** will not, except at the **Insured's** own cost, voluntarily make any payment, assume or admit any liability or incur any expense without the prior written consent of the **Company**.

C. Action Against the Company

1. No action may be brought against the **Company** unless, as a condition precedent thereto:
 - a. The **Insured** has fully complied with all the terms of this policy; and
 - b. Other than with respect to coverage provided under Insuring Agreements I.C.2. and I.C.3., until the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after actual trial and appeal or by written agreement of the **Insured**, the claimant and the **Company**.
2. Nothing contained in this policy will give any person or organization the right to join the **Company** as a defendant or co-defendant or other party in any action against the **Insured** to determine the **Insured's** liability.

D. Bankruptcy

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate will not relieve the **Company** of any of its obligations hereunder.

E. Other Insurance

This policy is excess over any other valid and collectible insurance, self-insurance or indemnification agreement available to the **Insured**, whether such other insurance or indemnification agreement is stated to be primary, contributory, excess, contingent, self-insured or otherwise.

F. Subrogation

In the event of any payment for any **damages, claim expenses or privacy notification costs** under this policy, the **Company** will be subrogated in the amount of such payment to all the **Insured's** rights of recovery against any person or organization. The **Insured** will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** will do nothing to prejudice such rights.

G. Changes

Notice to any agent of the **Company** or knowledge possessed by any such agent or by any other person will not affect a waiver or a change in any part of this policy, and will not prevent or preclude the **Company** from asserting or invoking any right or provision of this policy. None of the provisions of this policy will be waived, changed or modified except by a written endorsement issued by the **Company** to form a part of this policy.

H. Cancellation/Nonrenewal

1. This policy may be cancelled by the **Named Insured** by returning it to the **Company**. The **Named Insured** may also cancel this policy by giving written notice to the **Company** stating at what future date cancellation is to be effective.
2. The **Company** may cancel or nonrenew this policy by sending written notice to the **Named Insured** at the address last known to the **Company**. The **Company** will provide written notice at least sixty (60) days before cancellation or nonrenewal is to be effective. However, if the **Company** cancels this policy because the **Insured** has failed to pay a premium when due, this policy may be canceled by the **Company** by mailing to the **Named Insured** written notice stating when, not less than ten (10) days thereafter, such cancellation will be effective. The time of surrender of the policy or the effective date and hour of cancellation stated in the notice will become the end of the **policy period**. Delivery of such written notice either by the **Named Insured** or by the **Company** will be equivalent to mailing.
3. If the **Company** cancels this policy, the earned premium will be computed pro rata. If the **Named Insured** cancels this policy, the **Company** will retain the customary short rate proportion of the premium. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
4. The offering of terms and conditions different from the expiring terms and conditions, including limits of liability, deductible or premium, shall not constitute a refusal to renew or a cancellation of this policy.

I. Territory

This Insurance applies to **claims** made and acts, errors or omissions committed anywhere in the world.

This policy shall not apply to any risk which would be in violation of the laws of the United States including, but not limited to, U.S. economic or trade sanction laws or export control laws administered by the U.S. Treasury, State, and Commerce Department.

J. Named Insured Sole Agent

The **Named Insured** will be the sole agent and will act on behalf of all **Insureds** for the purpose of giving or receiving any notices, any amendments to or cancellation of this policy, for the completing of any applications and the making of any statements, representations and warranties, for the payment of any premium and the receipt of any return premium that may become due under this policy, for the payment of the deductible and the exercising or declining to exercise any right under this policy including the purchase of an Extended Reporting Period.

K. Entire Contract

By acceptance of this policy the **Insured** warrants that:

1. All of the information and statements provided to the **Company** by the **Insured**, including but not limited to the application and any supplemental information, are true, accurate and complete and will be deemed to constitute material representations made by the **Insured**;
2. This policy is issued in reliance upon the **Insured's** representations;
3. This policy, endorsements thereto, together with the completed and signed application and any and all supplementary information and statements provided by the **Insured** to the **Company** (all of which are attached hereto and deemed to be incorporated herein) embody all of the agreements existing between the **Insured** and the **Company** and shall constitute the entire contract between the **Insured** and the **Company**; and
4. Any material misrepresentation or concealment by the **Insured** or the **Insured's** agent will render the policy null and void and relieve the **Company** from all liability herein.

L. Notices

Any notices required to be given by the **Insured** will be submitted in writing to the **Company** or its authorized representative at the address specified in the Declarations. If mailed, the date of mailing of such notice will be deemed to be the date such notice was given and proof of mailing will be sufficient proof of notice.

M. Assignment

No assignment of interest of the **Insured** under this policy is valid, unless the **Company's** written consent is endorsed hereon.

N. Innocent Insureds

Whenever coverage under this policy would be excluded because of dishonest, fraudulent, criminal or malicious acts or omissions, the **Company** agrees that such insurance as would otherwise be afforded under this policy, will be applicable with respect to those **Insureds** who did not personally participate or personally acquiesce in or remain passive after having knowledge of such conduct. Each **Insured** must promptly comply with all provisions of this policy upon learning of any concealment.

VIII. EXTENDED REPORTING PERIODS

Extended Reporting Period means the period of time after the end of the **policy period** for reporting **claims** to the **Company** that are first made against the **Insured**, or events giving rise to **privacy notification costs** of which the **Insured** first becomes aware, during the applicable Extended Reporting Period, by reason of an act or omission which was committed prior to the end of the **policy period** and on or subsequent to the **retroactive date**, and is otherwise covered by this policy.

A. Automatic Extended Reporting Period

If this policy is cancelled or nonrenewed by either the **Company** or by the **Named Insured**, the **Company** will provide to the **Named Insured** an automatic, noncancelable Extended Reporting Period starting at the termination of the **policy period** if the **Named Insured** has not obtained another policy of errors and omissions insurance within sixty (60) days of the termination of the **policy period**. This automatic Extended Reporting Period will terminate after sixty (60) days.

B. Optional Extended Reporting Period

1. If this policy is cancelled or nonrenewed by either the **Company** or by the **Named Insured**, then the **Named Insured** will have the right to purchase an optional Extended Reporting Period of one or three years. Such right must be exercised by the **Named Insured** within sixty (60) days of the termination of the **policy period** by providing:
 - a. written notice to the **Company**; and
 - b. with the written notice, the amount of additional premium described below.
2. The additional premium for the optional Extended Reporting Period will be:
 - a. for a one (1) year Extended Reporting Period, seventy five percent (75%) of the annual premium for the policy; or
 - b. for a three (3) year Extended Reporting Period, one hundred and fifty percent (150%) of the annual premium for the policy.
3. The first sixty (60) days of the optional Extended Reporting Period, if it is purchased, shall run concurrently with the automatic Extended Reporting Period.

C. Extended Reporting Period Limits of Liability

The limit of liability of the **Company** for all **claims** reported during the automatic and optional Extended Reporting Periods will be part of and not in addition to the limits of liability for the **policy period** set forth in **Item 4.** in the Declarations.

D. Elimination of Right to Any Extended Reporting Period

There is no right to any Extended Reporting Period if the **Company** cancels or refuses to renew this policy due to:

1. nonpayment of amounts due under this policy;
2. noncompliance by the **Insured** with any of the terms and conditions of this policy; or
3. any material misrepresentation or omission in the application or the supplementary information and statements provided by the **Insured** for this policy.

E. Extended Reporting Period - Not a New Policy

The Extended Reporting Period will not be construed to be a new policy and any **claim** or event giving rise to **privacy notification costs** reported during such period will otherwise be governed by this policy.