



**XL Group  
Insurance**



# Policy

## XL Eclipse Pro™ 2.0

Technology Services And Miscellaneous Professional, Technology Products, Network Security, Privacy, And Media Content Services Errors And Omissions Coverage Form

Attaching to and forming part of Policy Number:

Regulatory Office:  
505 Eagleview Boulevard, Suite 100  
Department: Regulatory  
Exton, PA 19341-0636 USA  
Phone: 800 688 1840

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# XL Eclipse Pro™ 2.0

XL Group  
Insurance



TECHNOLOGY AND MISCELLANEOUS PROFESSIONAL SERVICES,  
TECHNOLOGY PRODUCTS, NETWORK SECURITY, PRIVACY AND  
MEDIA COMMUNICATIONS INSURANCE DECLARATIONS

Indian Harbor Insurance Company  
505 Eagleview Blvd. Suite 100  
Dept: Regulatory  
Exton, PA 19341-0636  
Telephone: 800 688 1840

**THIS IS A CLAIMS MADE AND REPORTED INSURANCE POLICY.  
PLEASE READ IT CAREFULLY.**

PRODUCER:

PRODUCER  
NO.:

POLICY NO.:

RENEWAL OF:

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.

**Item 1. NAMED INSURED:**

**Item 2. ADDRESS:**

City/State/Zip Code:

**Item 3. POLICY PERIOD:**

FROM:

TO:

12:01 A.M. Standard Time at the address of the **Named Insured** as stated herein.

**Item 4. LIMITS OF LIABILITY (Inclusive of claim expenses):**

- (a) \$ \_\_\_\_\_ Each **Claim**
- (b) \$ \_\_\_\_\_ Policy Aggregate – subject to the following Aggregate sublimits:
  - for all **privacy notification costs** as per Insuring Agreements I.E.2 and IID.
  - (i) \$ \_\_\_\_\_ for all **regulatory fines** and **claim expenses** for **Privacy Liability** as per Insuring Agreement I.E.2.
  - (ii) \$ \_\_\_\_\_ for all **extortion damages** for **extortion threat** as per Insuring Agreement II. A.
  - (iii) \$ \_\_\_\_\_ for all **crisis management expenses** caused by Business Interruption as per Insuring Agreement II.B.
  - (iv) \$ \_\_\_\_\_
  - (v) \$ \_\_\_\_\_ for all **privacy notification costs** as per Insuring Agreement II. C.



**Item 5. DEDUCTIBLES (inclusive of claim expenses) and WAITING PERIOD:**

- (a) \$ \_\_\_\_\_ Each **Claim** (except as designated in 5 (b) through 5 (f))
- (b) \$ \_\_\_\_\_ Each **privacy notification costs** from each **data breach** as per Insuring Agreements I.E.2. and II.D.
- (c) \$ \_\_\_\_\_ Each **claim** and **regulatory fines** as per Insuring Agreement I.E.2.
- (d) \$ \_\_\_\_\_ For **extortion threat** and **extortion damages** as per Insuring Agreement II.A.
- (e) \$ \_\_\_\_\_ For **crisis management expenses** from each **network breach** or **privacy wrongful act** as per Insuring Agreement II.B.
- (f) \$ \_\_\_\_\_ Each **network breach** causing Business Interruption and **reduction in business income** as per Insuring Agreement II. C.
- (g) 10 hour waiting period For Business Interruption for Insuring Agreement II.C.

**Item 6. PREMIUM:** \$ \_\_\_\_\_

**Item 7. PROFESSIONAL SERVICES:** \_\_\_\_\_

**Item 8. RETROACTIVE DATE (if applicable):** \_\_\_\_\_

**Item 9. CONTINUITY DATE:** \_\_\_\_\_

**Item 10. ENDORSEMENTS ATTACHED AT POLICY EFFECTIVE DATE:**

Endorsement Number	Endorsement Form Number	Endorsement Title

Date

Authorized Representative



## XL ECLIPSE PRO 2.0

## TECHNOLOGY AND MISCELLANEOUS PROFESSIONAL SERVICES, TECHNOLOGY PRODUCTS, NETWORK SECURITY, PRIVACY, AND MEDIA COMMUNICATIONS 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. THIRD PARTY INSURING AGREEMENTS

Provided always that the act, error, omission, **personal injury** or **privacy wrongful act** 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 any reason to believe that the act, error, omission, **personal injury** or **privacy wrongful act** might be the basis of a **claim**, then the **Company** agrees as follows:

**A. Technology and Miscellaneous Professional 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** or any Extended Reporting Period, by reason of an act, error or omission in the performance of **technology services** or **miscellaneous professional services** by an **Insured**.

**B. Technology Products 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** or any Extended Reporting Period, by reason of an act, error or omission by an **Insured** that results in the failure of a **technology product** to properly perform the function intended.

**C. Media Communications 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** or any Extended Reporting Period for **personal injury** in **media communications** by an **Insured** or by someone for whom the **Insured** is legally responsible, including **liability assumed under contract**.

**D. 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** or any Extended Reporting Period, by reason of an act, error or omission by an **Insured** 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**.



## E. Privacy Liability Coverage

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** or any Extended Reporting Period by reason of a **privacy wrongful act** that the **Insured** or its **cloud service provider** commits or fails to prevent.
2. 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 **privacy notification costs** and **regulatory fines** as a result of a **claim** first made against the **Insured** and reported to the **Company** during the **policy period** or any Extended Reporting Period resulting from a violation of a **privacy law** by reason of a **privacy wrongful act** that the **Insured** or its **cloud service provider** commits or fails to prevent, but only up to the sublimit, if any, stated in Item 4.(b)(i) in the Declarations.

## II. FIRST PARTY INSURING AGREEMENTS

### A. Extortion Threat

The **Company** will pay the **Insured** for **extortion damages** in excess of the deductible incurred with the **Company's** prior written consent as a result of an **extortion threat** first made during the **policy period** against an **Insured** in its capacity as such and reported to the **Company** during the **policy period** or any Extended Reporting Period, provided that the **extortion threat** was not made by any **Insured** or any person acting or proceeding with the knowledge and consent of, at the direction or request of, or with the assistance of any **Insured**, but only up to the sublimit, if purchased, stated in Item 4.(b)(ii) in the Declarations.

### B. Crisis Management Expense

The **Company** will pay the **Insured** for **crisis management expenses** in excess of the deductible incurred with the **Company's** prior written consent for the purpose of averting or reducing damage to the **Insured's** reputation, because of a **network breach** to the **Insured's computer system** or a **privacy wrongful act**, provided that the **network breach** or **privacy wrongful act** occurs during the **policy period** and is reported to the **Company** during the **policy period** or any Extended Reporting Period, but only up to the sublimit, if purchased, stated in Item 4.(b)(iii) in the Declarations.

### C. Business Interruption

The **Company** will pay the **Insured** for the amount of **reduction in business income** in excess of the deductible that the **Insured** sustains during the **period of restoration** of an actual interruption of the use of the **Insured's computer system**, subject to the **waiting period** set forth in the Declarations, provided that the **reduction in business income** is directly caused by a **network breach** to the **Insured's computer system** that occurs during the **policy period** and is reported to the **Company** during the **policy period** or any Extended Reporting Period, but only up to the sublimit, if purchased, stated in Item 4.(b)(iv) in the Declarations.

### D. Privacy Notification Costs

The **Company** will pay **privacy notification costs**, in excess of the deductible, that the **Insured** incurs with the **Company's** prior written consent due to the failure of an **Insured** or its **cloud service provider** to prevent **unauthorized access**, to the extent such **unauthorized access** (1) results in a **data breach**, (2) results from an unintentional failure to follow the **Insured's privacy policy**, and (3) occurs and is reported in writing to the **Company** during the **policy period** or any Extended Reporting Period, but only up to the sublimit, if purchased, stated in Item 4.(b)(v) in the Declarations.



### III. DEFENSE AND SETTLEMENT

#### A. Defense

The **Company** has the right and duty to defend any **claim** against the **Insured** seeking **damages** to which this policy applies under Section I, Third Party Insuring Agreements, even if the allegations 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.

#### B. Settlement

The **Company** will have the right to settle, with the written consent of the **Named Insured**, any **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, plus fifty percent (50%) of **claims expenses** incurred after the **Company** made its recommendation, 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

The **Company's** limit of liability for **damages** and **claim expenses** for each **claim** will not exceed the amount shown in Item 4.(a) in the Declarations for "Each **Claim**."

#### B. Limit of Liability - Policy Aggregate and Aggregate Sublimits

The **Company's** total limit of liability under this policy, including the **Company's** total liability for all **damages**, **regulatory fines**, **privacy notification costs** and **claim expenses** under Section I; **extortion damages** under Section II.A; **crisis management expenses** under Section II.B; **reductions in business income** under Section II.C; and all **privacy notification costs** under Section II.D, will not exceed the aggregate amount shown in Item 4.(b) in the Declarations as the "Policy Aggregate."

The following Aggregate Sublimits, Items 4(b)(i) to 4(b)(v) in the Declarations 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 all **privacy notification costs** under Third Party Insuring Agreement I.E.2 and First Party Insuring Agreement II.D.;
2. The sublimit of liability stated in Item 4(b)(ii) in the Declarations is the aggregate limit for all **regulatory fines** and **claim expenses** for **Privacy Liability** under Third Party Insuring Agreement I.E.2.;
3. The sublimit of liability stated in Item 4(b)(iii) in the Declarations is the aggregate limit for all **extortion damages** for **extortion threat** under First Party Insuring Agreement II.A.;
4. The sublimit of liability stated in Item 4(b)(iv) in the Declarations is the aggregate limit for all **crisis management expenses** under First Party Insuring Agreement II.B.; and
5. The sublimit of liability stated in Item 4(b)(v) in the Declarations is the aggregate limit for all **reduction in business income** caused by Business Interruption under First Party Insuring Agreement II.C.

#### C. Exhaustion of Limits

The **Company** is not obligated to pay any **damages**, **claim expenses**, **regulatory fines**, **extortion damages**, **crisis management expenses**, **reduction in business income**, or **privacy notification costs** or defend or continue to defend any **claim** after the applicable limit of liability has been exhausted by the payment of **damages**, **claim expenses**, **regulatory fines**, **extortion damages**, **crisis management expenses**, **reduction in business income**, 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) of the Declarations is the **Insured's** obligation for each **claim** under Item 4(a) 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) of the Declarations is the **Insured's** obligation for each **data breach**, or series of related **data breaches**, giving rise to **privacy notification costs**. The deductible will be paid by the **Named Insured**. The sublimit set forth in Item 4.(b)(i) in the Declarations is in excess of the deductible stated in Item 5.(b).
3. The deductible amount stated in Item 5.(c) in the Declarations is the **Insured's** obligation for each **claim** under Item 4(b)(ii) and applies to the payment of **regulatory fines** and **claim 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 is in excess of the deductible stated in Item 5.(c).
4. The deductible amount stated in Item 5.(d) in the Declarations is the **Insured's** obligation for each **extortion threat**, or series of related **extortion threats**, giving rise to **extortion damages** under Item 4(b)(iii). The deductible will be paid by the **Named Insured**. The sublimit set forth in Item 4.(b)(iii) in the Declarations is in excess of the deductible stated in Item 5.(d).
5. The deductible amount stated in Item 5.(e) in the Declarations is the **Insured's** obligation for each **network breach** and **privacy wrongful act**, or series of related **network breaches** or **privacy wrongful acts**, giving rise to **crisis management expenses**. The deductible will be paid by the **Named Insured**. The sublimit set forth in Item 4.(b)(iv) in the Declarations is in excess of the deductible stated in Item 5.(e).
6. The deductible amount stated in Item 5.(f) in the Declarations is the **Insured's** obligation for each **network breach**, or series of related **network breaches**, giving rise to **reduction in business income** following the 10 hour waiting period for Business Interruption. The deductible will be paid by the **Named Insured**. The sublimit set forth in Item 4.(b)(v) in the Declarations is in excess of the deductible stated in Item 5.(f).

#### 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 the total amount of all reimbursements and credits shall not to exceed a maximum amount 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 Aggregate Limits of Liability shown in the Declarations, Items 4.(b), 4.(b)(i), 4.(b)(ii), 4.(b)(iii), 4.(b)(iv), and 4.(b)(v), are the maximum amounts the **Company** will pay under this policy for **damages, claim expenses, regulatory fines, extortion damages, crisis management expenses, reduction in business income, and privacy notification costs**, regardless of the number of **Insureds, claims, claimants, extortion threats, network breaches, business interruptions, or data breaches** giving rise to liability under this policy.
2. The each **claim** limit of liability shown in the Declarations is the maximum amount the **Company** will pay under this policy each **claim** for **damages, regulatory fines, privacy notification costs and claim expenses**, regardless of the number of **Insureds** and claimants.
3. All **claims** arising from the same or a series of related, repeated or similar acts, errors, omissions, **personal injuries**, or **privacy wrongful acts** or from any continuing acts, errors, omissions, **personal injuries**, or **privacy wrongful acts** will be considered a single **claim** for purposes of this policy, regardless 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**.

4. All **extortion threats** giving rise to **extortion damages** arising out of a series of related, repeated or similar **extortion threats** will be considered a single **extortion threat** for purposes of this policy, regardless of the number of claimants or **Insureds** involved. All such **extortion threats** shall be deemed to have occurred at the time of the earliest of all such **extortion threats**.
5. All **network breaches** or **privacy wrongful acts** giving rise to **crisis management expenses** and all **network breaches** giving rise to **reduction in business income** that arise out of a series of related, repeated or similar **network breaches** or **privacy wrongful acts** will be considered a single **network breach** or **privacy wrongful act** for purposes of this policy, regardless of the number of claimants or **Insureds** involved. All such **network breaches** and **privacy wrongful acts** shall be deemed to have occurred at the time the **Named Insured** first became aware of the earliest of such **network breaches** or **privacy wrongful act**.
6. All **data breaches** giving rise to **privacy notification costs** arising out of a series of related, repeated or similar **data breaches** will be considered a single **data breach** for purposes of this policy, regardless of the number of claimants or **Insureds** involved. All such **data breaches** shall be deemed to have occurred at the time the **Named Insured** first became aware of the first **data breach**.
7. In the event that a **claim, network breach, data breach, personal injury, privacy wrongful act and/or extortion threat** triggers in whole, or in part, more than one Insuring Agreement:
  - a. the applicable **deductible** for each such Insuring Agreement shall apply to the portion of such **claim, network breach, data breach, personal injury, privacy wrongful act and/or extortion threat** falling under such Insuring Agreement, provided that the sum of all **deductibles** applicable to such **claim** under all such Insuring Agreements shall not exceed the largest of such applicable **deductibles**; and
  - b. the remaining applicable limits of liability under each such Insuring Agreement shall apply to the portion of such **claim, network breach, data breach, personal injury, privacy wrongful act and/or extortion threat** covered under such Insuring Agreement, provided that the **Company's** maximum aggregate liability for all **claim expenses** and **damages** falling under all such Insuring Agreements, combined, on account of such **claim, network breach, data breach, personal injury, privacy wrongful act and/or extortion threat** shall not exceed the largest of such remaining applicable limits of liability. This paragraph 7 further limits and does not increase the **Company's** maximum liability with respect to such **claim, network breach, data breach, personal injury, privacy wrongful act and/or extortion threat**.

**G. Payments for Trial Attendance**

The **Company** will pay as payments for trial attendance 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 involving a **claim** against the **Insured**.

Payments for trial attendance pursuant to this section are not subject to the deductible and are in addition to the limits of liability. In no event shall the total amount of payments for trial attendance exceed five thousand dollars (\$5,000) per **policy period**.

## V. DEFINITIONS

- A. **Advertising** means material disseminated, broadcast, or published to either the general public or specific market segments which promote the service, business, or product of either (a) the **Named Insured** or (b) a client of the **Named Insured** where such material was disseminated at the prior written request of the **Named Insured**.
- B. **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.
- C. **Breach notification law** means a local, state, federal or foreign statute or regulation requiring the **Insured** to protect the confidentiality and/or security of **personally identifiable information** and requires notice to persons whose **personally identifiable information** was accessed or may have reasonably been deemed accessed by an unauthorized person or entity.





**D. Claim** means:

1. a written demand received by an **Insured** for monetary damages or services, 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; or
3. with respect to coverage provided under Third Party Insuring Clause I.E.2 only, the institution of a **regulatory proceeding** against the **Named Insured**.

**E. Claim expenses** mean:

1. reasonable and necessary fees for the defense of a **claim** 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, but the **Company** is not obligated to apply for or furnish any such bond.

In all cases, **claim expenses** do not include **regulatory fines** or attorney fees awarded to a third-party.

**Claim expenses** will be paid first and will reduce the limit of liability available to pay **damages**. **Claim expenses** do not include (a) fees, costs, or expenses of any **Employee** or officer of the **Company**, (b) salaries, wages, or other compensation of any **Employee** or officer or any **Insured**, or (c) loss of earnings or other loss of remuneration of any **Insured**.

**F. Cloud service provider** means a third-party service provider that provides infrastructure services, hardware resources, platform services, data storage services or software services contained in a remote location through a public or private network to an **Insured** pursuant to a service level agreement.

**G. Company** means the insurance company named in the Declarations.

**H. Computer system** means a system of computer hardware, software, and associated electronic devices that is operated or owned by the **Named Insured**, a **subsidiary** or a **newly acquired subsidiary**.

**I. Crisis management expenses** means reasonable and necessary fees and expenses incurred by the **Insured**, including the cost of public relations consultants, credit monitoring services, identity monitoring, and identity restoration, resulting from the **Insured's** legal obligation to comply with a privacy law.

**J. Damages** means the compensatory portion of a judgment, award or settlement entered into with the **Company's** written consent, and pre-judgment and post-judgment interest on any covered awarded against the **Insured**, and the costs associated with a covered judgment or award.

**Damages** do not include:

1. the noncompensatory portion of any monetary judgment or award, including a judgment or award for restitution or any other equitable remedy;
2. non-**regulatory fines**, penalties, forfeitures, liquidated damages, sanctions, or taxes;
3. punitive or exemplary damages;
4. the multiplied portion of any multiplied awards;
5. the cost to comply with the non-monetary portion of any judgment or award, including injunctive, equitable, or declaratory relief, specific performance, or any agreement to provide such relief;
6. costs incurred to correct, re-perform or complete any **miscellaneous professional services, technology services**, or media **communications**;
7. discounts, coupons, prizes, awards or other incentives offered to the **Insured's** customers or clients.



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

For the purposes of this policy, the term "applicable jurisdiction" shall mean that jurisdiction most favorable to the insurability of punitive or exemplary damages provided that the jurisdiction is:

- 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 the **Insured** against whom the punitive or exemplary damages are awarded is incorporated, resides, or has its principal place of business.
- K. Data breach** means the unauthorized taking, use or disclosure of **personally identifiable information**, in paper or electronic form, or information stored on a **computer system**, including but not limited to, charge, debit, and credit card information, banking, financial, and investment services account information, proprietary information, and personal, private, and confidential information.
- L. Denial of Service Attack** means an unauthorized act by a third-party that affects the normal functioning and operation of the Named Insured's **Computer System** or **Website** resulting in the prevention of authorized.
- M. Employee** means any individual whose labor and service is engaged by and directed by the Insured. This includes part-time, leased and temporary employees, independent contractors and volunteers.
- N. Extortion damages** means money paid by an **Insured** in its capacity as such, with the **Company's** prior written consent to a person reasonably believed to be making an **extortion threat**, for the purpose of ending an **extortion threat** against the **Insured**. **Extortion damages** shall include reasonable and necessary expense incurred by an **Insured** with the **Company's** prior written consent that directly relates to the **Insured's** efforts to investigate and/or end an **extortion threat**.
- O. Extortion threat** means a credible threat to:
1. hinder, restrict access to, or corrupt an **Insured's computer system or the Insured's Website**;
  2. introduce **malicious code** into an **Insured's computer system**; or
  3. disclose, damage or use the confidential information of a third party taken from an **Insured's computer system** as a result of **unauthorized access** to such **computer system**.
- P. Insured** means the **Named Insured** and any of the persons or entities listed below:
1. any **subsidiary** or **newly acquired subsidiary**;
  2. under Section I, Third Party Insuring Agreements, 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, omissions, **personal injury**, or **privacy wrongful acts** committed within the scope of such person's duties performed on behalf and for the benefit of the **Named Insured**, a **subsidiary**, or a **newly acquired subsidiary**;
  3. under Section I, Third Party Insuring Agreements, any leased **Employee** but only while acting under the direct supervision and exclusively at the direction and for the benefit of the **Named Insured**, a **subsidiary**, or a **newly acquired subsidiary**;
  4. under Section I, Third Party Insuring Agreements, 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 solely by reason of an act, error, omission, **personal injury**, or **privacy wrongful act** of such **Insured** and only to the extent that such **Insured** would have been provided coverage under this policy; and
  5. under Section I, Third Party Insuring Agreements, 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 an act, error, omission, **personal injury**, or **privacy wrongful act** of the **Insured** other than such spouse or domestic partner and only to the extent that such **Insured** also is provided



coverage under this policy.

With respect to subparagraphs 1, 2 and 3 above, a person or entity is an **Insured** only with respect to acts, errors, omissions, **personal injuries**, or **privacy wrongful acts** committed by the **Insured** in its capacity as such. With respect to subparagraphs 4 and 5 above, a person or entity is an **Insured** only with respect to acts, errors, omissions, **personal injuries**, or **privacy wrongful acts** committed by a person or entity that is a **Named Insured** or an **Insured** under subparagraphs 1, 2 or 3, in its capacity as such.

- Q. Liability assumed under contract** means liability for **damages** for **personal injury** which the Insured has assumed under a written indemnity agreement that (i) was executed by the **Insured** before the occurrence of the **personal injury** for which indemnity is sought, and (ii) applies to **personal injury** caused in whole or in part by the content of a **media communication**.
- R. Malicious code** means an 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.
- S. Media communication** means the publishing, transmission, display, broadcast, web cast, dissemination, distribution or release of information by or on behalf of the **Named Insured**.
- T. Miscellaneous professional services** means those services specified in Item 7. in the Declarations, performed by or on behalf of the **Named Insured** for others, but does not include **technology services, media communications**, or any services involving the creation, design, assembly, leasing, repair, maintenance, development, sale, distribution, installation, licensing or manufacturing of **technology products**.
- U. Named Insured** means the persons or entities specified in Item 1. in the Declarations.
- V. Network breach** means:
1. the alleged or actual **unauthorized access** to a **computer system** that results in:
    - a. theft, deletion or corruption of electronic data on a **computer system**;
    - b. a **data breach** in the **computer system**; or
    - c. Denial of Service Attacks against Internet sites or computers; or
  2. transmission of **malicious code** from a **computer system**; or
  3. negligent and/or inadvertent transmission of a computer virus to a third-party.
- W. 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; provided, however, that if the total assets of an entity that is newly formed or acquired by the **Named Insured** exceed fifteen percent (15%) of the total assets of the **Named Insured**, or if the total revenues of the entity that is newly formed or acquired by the **Named Insured** exceed fifteen percent (15%) of the total revenues of the **Named Insured**, the entity is a **newly acquired subsidiary** only if each of the following conditions take place:
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**; and
  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 required by the **Company**.
- The **Company** will only provide coverage with respect to a **Claim** when the act, error, omission, **privacy wrongful act or personal injury**, or **extortion threat, network breach, or data breach** is committed on or after the date such **newly acquired subsidiary** qualifies as a **newly qualified subsidiary**.
- X. Period of Restoration** means the time period that (a) begins after expiration of the **waiting period** following the



actual interruption of the use of the **computer system** and (b) ends when the actual interruption of the use of the **computer system** ends. In no event, however, shall the period of restoration exceed sixty (60) days.

- Y. 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, 15 U.S.C. §6809(4), and regulations issued pursuant to the Act;
  2. **protected health information**;
  3. the individual's social security number, drivers license or state identification number, credit, debit, or other financial account numbers; or
  4. security codes, access codes, passwords or personal identification numbers (PINs) that allow access to the individual's financial account information.

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.

- Z. Personal injury** means injury, other than **bodily injury**, to a third-party arising out of one or more of the following offenses by an **Insured** in a **media communication**:
1. libel, slander, or other defamatory or disparaging statements or materials;
  2. oral or written publication of material that violates an individual's right of privacy;
  3. plagiarism, piracy or misappropriation of ideas or style of doing business; and
  4. infringement or misappropriation of copyright, title, slogan, trademark, trade name, trade dress, logo, service mark or service name.
- AA. Policy period** means the period of time from the effective date shown in Item 3. in the Declarations to the date of termination, expiration or cancellation of this policy, whichever is earliest.
- BB. 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.
- CC. Privacy law** means a local, state, federal or foreign statute or regulation requiring the protection of **personally identifiable information** and that imposes a civil fine or civil monetary penalty for the unauthorized disclosure of **personally identifiable information**.
- DD. Privacy notification costs** mean reasonable and necessary:
1. costs to hire a security expert to determine the existence and cause of any theft of, **unauthorized access** to, or disclosure of **personally identifiable information**;
  2. costs to notify consumers of a **data breach**;
  3. costs to notify consumers under a **breach notification law or privacy law**; and
  4. 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** do not mean salaries, fees, costs or expenses of Employees or officers of any Insured or loss of earnings or overhead.



**EE. Privacy policy** means the **Insured's** written policies, practices and procedures for the acquisition, use, disclosure, transmission, correction, or supplementation of **personally identifiable information**.

**FF. Privacy wrongful act** means:

1. the unintentional disclosure or mishandling of **personally identifiable information** by an **Insured** or a **cloud service provider**;
2. the unauthorized taking, misappropriation or misuse of **personally identifiable information** by a third party or an **Employee**, without the knowledge of any **Insured**, including the theft of **personally identifiable information** by an **Employee** of the **Named Insured**, a **subsidiary** or a **newly acquired subsidiary**;
3. the **Insured's** unintentional failure to timely disclose a **network breach** in violation of any **breach notification law**; or
4. actual or alleged violation of any **privacy law**

**GG. 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, with respect to Third Party Insuring Agreement I.B, **property damage** does not mean the failure of a **technology product** that is not physically injured, damaged, lost, or destroyed to properly perform the function intended.

**HH. Protected health information** means an individual's medical or health care information that constitutes "protected health information" as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act, 45 C.F.R. 160.103.

**II. Reduction in business income** means:

1. the additional net profit the Insured would have earned, or the additional net loss the Insured would have avoided or not incurred, if the **network breach** had not occurred;
2. with respect to the Insured's operations dependent on the affected **computer system** only;
3. before taxes; and
4. not including other consequential losses such as contractual penalties, third party liability, and costs incurred to restore, upgrade, or remedy defects in the **computer system**.

**JJ. Regulatory fine** means a 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.

**KK. Regulatory proceeding** means an administrative proceeding or investigation commenced by or on behalf of any local, state, federal or foreign governmental entity in such entity's regulatory capacity.

**LL. 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.

**MM. Subsidiary** means any entity of which the **Named Insured** owns, either legally or beneficially, more than a fifty percent (50%) interest. On the date during the **policy period** that the **Named Insured's** legal or beneficial ownership interest in such entity becomes less than fifty 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 any act, error or omission, **privacy wrongful act or personal injury**, or **extortion threat, network breach, or data breach** 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, error, omission, **privacy wrongful act or personal injury**, or **extortion threat, network breach or data breach** that was committed on or subsequent to such date.



**NN. Technology services** means computer and electronic services,

1. including data processing; data and application hosting; computer systems analysis, consulting and training; programming; and computer systems installation, management, repair, and maintenance;
2. performed by or on behalf of the **Named Insured** for clients of the **Named Insured**; and
3. but shall not mean **technology products**.

**OO. Technology product** means a computer or telecommunications hardware or software product that is created, manufactured, developed, distributed, licensed, leased or sold by the **Named Insured**, including software updates, service packs and other maintenance releases provided for such products.

**PP. Unauthorized access** means the gaining of access to a **computer system** by a person or persons not authorized by an **Insured** to do so.

**QQ. Waiting period** means the number of hours shown in Item 5.(g) of the Declarations that must expire before the **period of restoration** begins following an actual interruption of the **computer system**.

**RR. Website** means the designated Uniform Resource Locator address and the content, software and other materials accessible at such site through the Internet.

## VI. EXCLUSIONS

This policy does not apply to any **claim**, damages, claim expenses, regulatory fines, **extortion threat**, **network breach**, **privacy wrongful act**, or **data breach**:

### 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**. 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, related to, based on, arising out of, or having a common nexus with any fact, circumstance, situation, transaction, act, error, omission, or event which has been the subject of such notice.

### 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 employer-employee relations, policies, practices, acts, or omissions, any actual or alleged refusal to employ any person, or misconduct with respect to employees, 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.

### F. Ownership

Based upon or arising out of **miscellaneous professional services**, **technology services**, **media communications** or **technology products** resulting in a **claim** by any person or entity 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 person or 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**

**Claims** by or on behalf of an **Insured** under this policy against any other **Insured** hereunder. However, this exclusion shall not apply to any **claim**, otherwise covered under this policy:

1. made by an **Employee** of either the **Named Insured** or a **subsidiary** or **newly acquired subsidiary** otherwise covered under Third Party Insuring Agreement I.E.1; or
2. made by an **Employee** of either the **Named Insured** or a **subsidiary** or **newly acquired subsidiary** if a **claim** has been made against the **Employee** because of an act, error, omission, **personal injury** or **privacy wrongful act** by the **Employee** that was not within the scope of his or her duties for an **Insured**.

#### H. **ERISA/Securities**

Based upon or arising out of actual or alleged violation 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.

However, this exclusion shall not apply to any **claim**, otherwise covered under this policy, based on the disclosure of **protected health information**.

#### 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
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 the assumption by the **Insured** of any liability, unless such liability would have attached to the **Insured** in the absence of any assumption of liability; however, solely with respect to Third Party Insuring Agreement I.C., this exclusion does not apply to **liability assumed under contract**.

#### K. **Guarantees**

Based upon or arising out of any promise, representation, or guarantee:

1. for or relating to return on investment, cost savings, or profits;
2. for or relating to time of delivery; or
3. that commits the **Insured** to a standard of care or skill higher than the applicable industry standard.

#### 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**

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. adjustment, withdrawal, recall, inspection, repair, replacement, reproduction, removal or disposal of:
  - a. any **technology products**, including any products or other property of others that incorporate **technology products**;
  - b. any products or other property on which **miscellaneous professional services** or **technology services** are performed; or
  - c. any work product resulting from or incorporating the results of **miscellaneous professional services** or **technology services**; or
2. reprinting, recall, withdrawal, removal or disposal of any **media communication**.

**N. Business Practice**

Based upon or arising out of any actual or alleged anti-trust violation, price fixing, restraint of trade, unfair competition, violation of consumer protection laws, or false, deceptive or unfair trade practices, including a violation of the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, Organized Crime Control Act of 1970 or any similar local, state, federal, or foreign law. This exclusion, however, does not apply to **claims** based on **privacy wrongful acts** under consumer privacy protection laws, the Federal Trade Commission Act, or similar state laws known as the Little FTC Acts.

**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 **Insured's** unlawful collection, acquisition or use of **personally identifiable information**, or the **Insured's** 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 Action**

**Claims** 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, except a **claim** covered under Third Party Insuring Agreement I.E.2. This exclusion does not apply to **claims** by any such governmental entity that could have been made by a non-governmental entity.

**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**. This exclusion does not apply if the practice and procedure of the **Insured** was to install available software product updates and releases and apply security-related software patches and if the failure to do so was not intentional, or grossly negligent.

**S. 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 for alleged 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 use of a person or entity's copyright, title, slogan trademark, trade name, trade dress, service mark, service name, patent, trade secret or other intellectual property right.

#### T. Acquisitions and Sales

Based upon or arising out of any act, error, omission, **personal injury**, or **privacy wrongful act** committed

1. by any entity newly formed or acquired by any **Insured** unless it becomes a **newly acquired subsidiary**,
2. by any entity that becomes a **newly acquired subsidiary** and before it became a **newly acquired subsidiary**, unless the **Company** agrees by endorsement to the policy to provide such coverage, or
3. by any entity that was a **subsidiary** or **newly acquired subsidiary** after it ceases to be a **subsidiary** or **newly acquired subsidiary**.

#### U. Mergers

Based upon or arising out of any act, error, omission, **personal injury**, or **privacy wrongful act** committed or any **extortion threat**, **network breach**, or **data breach** that occurs

1. after the **Named Insured**, or all or substantially all of its assets, are acquired by another entity,
2. after the **Named Insured** is merged or consolidated with or into another entity if the **Named Insured** is not the surviving entity, or
3. after any person or entity or group of persons and entities obtains the right to vote, select, or appoint more than fifty percent (50%) of the directors of the **Named Insured**.

#### V. Prior and Pending

Based upon or arising out of, or in any way involving

1. any prior and/or pending, litigation, administrative or regulatory proceeding, demand letter or formal or informal governmental investigation which any **Insured** had knowledge of prior to the Continuity Date set forth in Item 9. of the Declarations, or
2. any fact, circumstance, situation, transaction or event, or series of similar facts, circumstances, situations, events or transactions underlying or alleged in such litigation, administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry;

regardless of the legal theory upon which such **claim** is based.

#### W. Electrical Failure

Based upon or arising out of, or in any way involving any electrical failure including electrical power interruption, surge, brownout or blackout, except this exclusion does not apply when the electrical failure is solely caused by an **Insured's** actual negligence in performing **technology services**. Loss of use means the inability to use or access such electric products, systems, work or property resulting from withdrawal or recall of such products, systems, work or property.

#### X. Electromagnetic Discharge

Based upon, arising out of, or in any way involving the existence, emission or discharge of any electromagnetic field, radiation or magnetism that allegedly or actually affects, health, safety or condition of any person or environment, or that affects the value, marketability, condition or use of any property.

## VII. CONDITIONS

#### A. Reporting of Claims, Potential Claims, Extortion Threats, Network Breaches, and Data Breaches

1. The **Insured**, as a condition precedent to the obligations of the **Company** under this policy, will give written notice to the **Company** of any **claim** made against the **Insured**, and any **extortion threat**, **network breach**,



**privacy wrongful act**, or **data breach**, as soon as reasonably possible during the **policy period**.

The **Company** agrees that the **Insured** may have up to, but not more than, 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.

The **Company** further agrees that the **Insured** may have up to, but not more than, sixty (60) days after the policy expiration to report in writing to the **Company** an **extortion threat**, **network breach**, **privacy wrongful act**, or **data breach** that occurred during the **policy period**, if the reporting of such event is as soon as reasonably possible.

2. If during the **policy period**, any **Insured** becomes aware of any act, error omission, **personal injury** or **privacy wrongful act** 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, error omission, **personal injury** or **privacy wrongful act**, and if during the **policy period** the **Insured** gives written notice to the **Company** of all available particulars, including:
  - a. the specific act, error omission, **personal injury** or **privacy wrongful act**;
  - 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 Group  
P.O. Box 614002  
Orlando, Florida 32861-4002  
[proclaimnewnotices@xlgroup.com](mailto:proclaimnewnotices@xlgroup.com)

## 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 the obligation to pay **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 the 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. With respect to liability to pay damages or regulatory fines under Third Party Insuring Agreements I.A, I.B, I.C, I.D, and I.E, 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 applicable to a **claim, extortion threat, network breach, privacy wrongful act, or data breach**, whether such other insurance is stated to be primary, contributory, excess, contingent, or otherwise.

**F. Subrogation**

In the event of any payment for any **damages, claim expenses, extortion damages**, costs of public relations consultants, reduction of business income, 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 anywhere in the world provided that any suit is brought against the **Insured** within the United States of America, its territories or possessions, Puerto Rico or Canada.

**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 applicable period of time after the end of the **policy period** for reporting **claims** to the **Company** that are first made against the **Insured** after the **policy period** or for reporting **extortion threats, network breaches, privacy wrongful acts, or data breaches** that the **Insured** first becomes aware of after the **policy period**. In the case of **claims**, the Extended Reporting Period applies only to a **claim** by reason of an act, error, omission, **personal injury**, or **privacy wrongful act** that is committed prior to the end of the **policy period** and on or subsequent to the **retroactive date** and that is otherwise covered by this policy. In the case of **extortion threats, network breaches, privacy wrongful acts, or data breaches**, the Extended Reporting Period applies only to **extortion threats, network breaches, privacy wrongful acts, or data breaches** that occur during the **policy period** and are 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 (1) or three (3) 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 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, Extortion Threat, Network Breach** or **Data Breach** reported during such period will otherwise be governed by this policy.