

- **Professional and Technology Services Liability**
- **Technology Products Liability**
- **Media Liability**
- **Network Security and Privacy Liability**
- **Breach Event**



PORTIONS OF THIS POLICY APPLY ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE UNDERWRITER DURING THE POLICY PERIOD OR APPLICABLE EXTENDED REPORTING PERIOD. CLAIM EXPENSES ARE PART OF AND NOT IN ADDITION TO THE LIMITS OF LIABILITY. PLEASE READ THE ENTIRE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Underwriter, and subject to all of the terms and conditions of this Policy (including all endorsements hereto), the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

Coverage may apply under an INSURING AGREEMENT only if such INSURING AGREEMENT is indicated as having been purchased in ITEM 3 of the Declarations.

(A) Professional and Technology Services Liability

The Underwriter will pay on behalf of the **Named Insured** any **Damages** and **Claim Expenses**, in excess of the Retention, that the **Named Insured** is legally obligated to pay as a direct result of any covered **Claim** for:

- (1) a **Professional Services Wrongful Act**; or
- (2) a **Technology Services Wrongful Act**,

first committed or allegedly committed on or after the **Retroactive Date**; provided that such **Claim** is first made against the **Named Insured** during the **Policy Period** or applicable Extended Reporting Period and reported to the Underwriter in accordance with GENERAL CONDITION (D) of this Policy.

(B) Technology Products Liability

The Underwriter will pay on behalf of the **Named Insured** any **Damages** and **Claim Expenses**, in excess of the Retention, that the **Named Insured** is legally obligated to pay as a direct result of any covered **Claim** for a **Technology Products Wrongful Act** first committed or allegedly committed on or after the **Retroactive Date**; provided that such **Claim** is first made against the **Named Insured** during the **Policy Period** or applicable Extended Reporting Period and reported to the Underwriter in accordance with GENERAL CONDITION (D) of this Policy.

(C) Media Liability

The Underwriter will pay on behalf of the **Named Insured** any **Damages** and **Claim Expenses**, in excess of the Retention, that the **Named Insured** is legally obligated to pay as a direct result of any covered **Claim** for a **Media Wrongful Act** first committed or allegedly committed on or after the **Retroactive Date**; provided that such **Claim** is first made against the

Named Insured during the **Policy Period** or applicable Extended Reporting Period and reported to the Underwriter in accordance with GENERAL CONDITION (D) of this Policy.

(D) Network Security and Privacy Liability

The Underwriter will pay on behalf of the **Insured** any **Damages** and **Claim Expenses**, in excess of the Retention, that the **Named Insured** is legally obligated to pay as a direct result of any covered **Claim** or covered **Regulatory Claim** for:

- (1) a **Network Security Wrongful Act**; or
- (2) a **Privacy Wrongful Act**,

first committed or allegedly committed on or after the **Retroactive Date**; provided that such **Claim** is first made against the **Insured** during the **Policy Period** or applicable Extended Reporting Period and reported to the Underwriter in accordance with GENERAL CONDITION (D) of this Policy.

(E) Breach Event

The Underwriter will:

- (1) provide the **Named Insured** with **Breach Consultation Services** as a direct result of any **Breach Event**;
- (2) pay the **Named Insured** for **Breach Notification Costs**, in excess of the Retention, that the **Named Insured** pays as a direct result of any **Breach Event**; and
- (3) pay the **Named Insured** for **Breach Management Expenses**, in excess of the Retention, that the **Named Insured** pays as a direct result of any **Breach Event**,

that first occurs during the **Policy Period**; provided that such **Breach Event** is reported to the Underwriter in accordance with GENERAL CONDITION (D) of this Policy.

II. DEFINITIONS

- (A) "Advertising"** means publicly disseminated material in electronic form that promotes the products, services, or business of the **Named Insured** or a client of the **Named Insured**, but only where such material was disseminated by the **Named Insured** or with the prior written consent of the **Named Insured**.
- (B) "Bodily Injury"** means bodily or physical injury, sickness, or disease sustained by any person, including but not limited to death resulting from any of these at any time. **Bodily Injury** also includes mental or emotional illness, anguish, injury, or distress, or pain or suffering or shock, sustained by any person, regardless of whether it results from bodily or physical injury, sickness, or disease.
- (C) "Breach Consultation Services"** means the following consulting services provided by the **Designated Service Provider** on behalf of the **Named Insured** as a direct result of a **Breach Event**:
- (1) review of any notification requirement under any **Breach Notification Law**;

- (2) drafting of a **Breach Notification Letter** to a customer or client of the **Named Insured**;
- (3) creation of a toll free response line for a recipient of a **Breach Notification Letter** with questions about such **Breach Event**; and
- (4) response to a media inquiry, where requested in writing by the **Named Insured**,

provided that before any such services are rendered by the **Designated Service Provider**, the **Named Insured** shall give the Underwriter and the **Designated Service Provider** notice in accordance with GENERAL CONDITION (D) of this Policy and shall obtain the Underwriter's prior written consent for any such services.

The amount of any **Breach Consultation Services** shall be determined by the Underwriter based on the fees and costs of the **Designated Service Provider**.

- (D) "**Breach Event**" means the unauthorized taking, obtaining, use, or disclosure of **Personally Identifiable Information** where: (1) the **Named Insured** is required to issue a **Breach Notification Letter** to a customer or client of the **Named Insured** informing such customer or client of such taking, obtaining, use, or disclosure; or (2) a **Designated Service Provider** reasonably recommends that the issuance of a **Breach Notification Letter** to a customer or client of the **Named Insured** informing such customer or client of such taking, obtaining, use, or disclosure even though an applicable **Breach Notification Law** may not require such notification.
- (E) "**Breach Management Expenses**" means the reasonable and necessary expenses incurred by the **Named Insured** for the public relations services of an independent public relations company for the purpose of mitigating any material damage to the reputation of the **Named Insured** as a direct result of a **Breach Event**; provided that before incurring any such expenses, the **Named Insured** shall give the Underwriter notice in accordance with GENERAL CONDITION (D) of this Policy and shall obtain the Underwriter's prior written consent for any such expenses.
- (F) "**Breach Notification Costs**" means the reasonable and necessary costs incurred by the **Named Insured** for the printing, postage, and posting of **Breach Notification Letters** as a direct result of a **Breach Event**; provided that before incurring any such costs, the **Named Insured** shall give the Underwriter notice in accordance with GENERAL CONDITION (D) of this Policy and shall obtain the Underwriter's prior written consent for any such costs.

Breach Notification Costs shall also mean the reasonable and necessary costs incurred by the **Named Insured** for the printing, postage, or posting of **Breach Notification Letters** as a direct result of a **Breach Event** where the **Designated Service Provider** reasonably recommends the issuance of such **Breach Notification Letters** even though an applicable **Breach Notification Law** may not require such notification; provided that before incurring any such costs, the **Named Insured** shall give the Underwriter notice in accordance with GENERAL CONDITION (D) of this Policy and shall obtain the Underwriter's prior written consent for any such costs.

- (G) "**Breach Notification Law**" means any local, state, federal or foreign act, statute, rule, regulation, requirement, or other law that requires the **Named Insured** to notify any customer or client of the **Named Insured** where: (1) **Personally Identifiable Information** of such customer or client has been accessed; or (2) the **Named Insured** reasonably believes **Personally Identifiable Information** of such customer or client has been accessed by an unauthorized person in an unauthorized manner.

- (H) **"Breach Notification Letter"** means a notification letter or other electronic or print notification that the **Named Insured** is required to issue or post in compliance with a **Breach Notification Law**.
- (I) **"Circumstance"** means any **Professional Services Wrongful Act, Technology Services Wrongful Act, Technology Products Wrongful Act, Media Wrongful Act, Network Security Wrongful Act, or Privacy Wrongful Act** that may subsequently give rise to a **Claim**.
- (J) **"Claim"** means:
- (1) solely with respect to and limited to the coverage afforded under INSURING AGREEMENTS (A), (B), (C), and (D), a written demand for money or services, or a civil or arbitration proceeding for money or services commenced by the service of a complaint or similar pleading or the issuance of an arbitration demand, against an **Insured** for a **Professional Services Wrongful Act, Technology Services Wrongful Act, Technology Products Wrongful Act, Media Wrongful Act, Network Security Wrongful Act, or Privacy Wrongful Act**; or
 - (2) solely with respect to and limited to the coverage afforded under INSURING AGREEMENT (D), a **Regulatory Claim**.
- (K) **"Claim Expenses"** means the reasonable and necessary legal fees, costs and expenses incurred in the investigation, adjustment, defense, or appeal of a **Claim**. **Claim Expenses** includes the cost of any bond or appeal bond required in any defended suit; provided that the Underwriter shall not be obligated to apply for or furnish any such bond. **Claim Expenses** does not include:
- (1) remuneration, salaries, wages, fees, expenses, overhead, or benefit expenses of any **Insured**;
 - (2) any fees, costs, or expenses incurred prior to the time that a **Claim** is first made against the **Insured**; or
 - (3) any fine, penalty, forfeiture, sanction, tax, or fee.
- (L) **"Damages"** means any damages, settlements, judgments, pre-judgment interest, post-judgment interest or other amounts (including punitive or exemplary damages if insurable under the applicable law most favorable to the insurability thereof) which an **Insured** is legally obligated to pay as a direct result of a **Claim**. **Damages** does not include:
- (1) any fine, penalty, forfeiture, sanction, tax, fee, liquidated damages, or the multiple portion of any multiplied damage award, other than a governmental or regulatory fine or penalty directly resulting from a **Regulatory Claim** that is otherwise covered under this Policy;
 - (2) any non-monetary or equitable relief or redress awarded against any **Insured**, including but not limited to any cost or expense of complying with any injunctive, declaratory, or administrative relief or specific performance award;
 - (3) any payment, restitution, return, or disgorgement of any fees, profits, royalties, commissions, charges, or any funds allegedly wrongfully or unjustly held or obtained;
 - (4) any fee, profit, royalty, commission, charge, cost, or expense incurred to obtain a license or right to use or promote the use of any good, product, service, property, data, or

information of any type, nature, or kind, including but not limited to any **Media Communication**;

- (5) any loss, cost, or expense of updating, upgrading, enhancing, restoring, reprinting, recalling, removing, disposing, withdrawing, repairing, replacing, reproducing, correcting, performing, completing, adjusting, inspecting, researching, or developing any good, product, service, property, data, or information of any type, nature, or kind, including but not limited to any **Media Communication**;
 - (6) any discount, coupon, prize, award, redemption, or other incentive; or
 - (7) any matter that is uninsurable under applicable law.
- (M) **"Denial of Service Attack"** means any unauthorized attack directed at the **Named Insured's Operating System** or the **Named Insured's Website** that successfully corrupts, damages, destroys, deletes, or impairs the **Named Insured's Operating System** or the **Named Insured's Website**.
- (N) **"Designated Service Provider"** means a service provider selected and approved in writing by the Underwriter.
- (O) **"Electronic Data"** means any data, including **Personally Identifiable Information** and confidential and proprietary marketing, financial, and other information that exists on the **Named Insured's Operating System**. **Electronic Data** does not include any funds, currency, securities or other financial, debt, credit, bond, or equity instruments of any type, nature, or kind.
- (P) **"First Inception Date"** means the date stated in ITEM 6 of the Declarations.
- (Q) **"First Named Insured"** means the entity designated as such in ITEM 1 of the Declarations.
- (R) **"Insured"** means:
- (1) the **Named Insured**;
 - (2) any current or former officer, director, or employee of the **Named Insured**, but only for acts, errors, or omissions committed within the capacity and scope of such person's duties as such;
 - (3) any current or former independent contractor of the **Named Insured**, but only for **Professional Services Wrongful Acts, Technology Services Wrongful Acts, or Media Wrongful Acts** committed: (a) within the capacity and scope of such independent contractor's duties as such; and (b) at the direction and for the benefit of the **Named Insured** and pursuant to the terms of a written contract or agreement between such independent contractor and the **Named Insured**;
 - (4) any current or former natural person who is leased to the **Named Insured** as an employee through a temporary employment or staffing agency, but only for acts, errors, or omissions committed: (a) within the capacity and scope of such natural person's duties as such; and (b) under the direct supervision, at the direction, and for the benefit of the **Named Insured**; and
 - (5) solely with respect to and limited to the coverage afforded under Section I INSURING AGREEMENT (D) of this Policy, the lawful spouse of a natural person **Insured** and, in the

event of the death, incapacity, or bankruptcy of a natural person **Insured**, the estate, heirs, legal representatives, or assigns of such natural person **Insured**.

- (S) **"Liability Assumed Under Contract"** means liability of a customer or client of the **Named Insured** that: (1) results from a **Media Wrongful Act** committed or allegedly committed by the **Named Insured**; and (2) is assumed by the **Named Insured** under a written hold harmless and indemnification contract or agreement with such customer or client; provided that the **Named Insured** entered into such hold harmless and indemnification contract or agreement before such **Media Wrongful Act** was committed or allegedly committed.
- (T) **"Malicious Code"** means any unauthorized computer virus, contaminant, worm, trojan horse, logic bomb, or other similar application, program, software, code, or script that successfully corrupts, damages, destroys, deletes, or impairs the **Named Insured's Operating System**.
- (U) **"Media Communication"** means the broadcast, dissemination, or publication by the **Named Insured** to the general public of any words, sounds, numbers, images, or graphics in any form, including any such broadcast, dissemination, or publication in any **Advertising**; provided that **Media Communication** does not include any broadcast, dissemination, or publication of words, sounds, numbers, images, or graphics in any application, program, software, code, or script.
- (V) **"Media Wrongful Act"** means any of the following offenses committed or allegedly committed by the **Named Insured** in any **Media Communication** in connection with the rendering of **Professional Services** or **Technology Services**:
- (1) a **Personal Injury Offense**;
 - (2) plagiarism, piracy, or misappropriation of ideas; or
 - (3) infringement of copyright, title, slogan, trademark, trade name, trade dress, logo, service mark or service name.
- Media Wrongful Act** also means infringement of copyright committed or allegedly committed by the **Named Insured** in connection with the creation, development, manufacture, leasing, licensing, distribution, or sale by the **Named Insured** of a **Technology Product**.
- Media Wrongful Act** does not include any offense involving any patent, process, style of doing business, trade secret, or other similar information or property of any type, nature, or kind.
- (W) **"Named Insured"** means: (1) the **First Named Insured**; and (2) any **Subsidiary**.
- (X) **"Named Insured's Operating System"** means a computer, and its hardware, software, network, application, terminal device, data storage devices, input and output device, and back up facility by which **Electronic Data** is electronically collected, stored, transmitted, and processed, that are operated and owned by the **Named Insured** or operated on behalf of the **Named Insured** by a third party pursuant to a written contract.
- (Y) **"Named Insured's Website"** means a website that is operated and owned by the **Named Insured** or operated on behalf of the **Named Insured** by a third party pursuant to a written contract.
- (Z) **"Network Security Wrongful Act"** means any actual or alleged act, error or omission, or series of acts, errors or omissions, by the **Named Insured** that directly results in the failure of the **Security System** to properly protect the **Named Insured's Operating System** or the **Named Insured's Website**, where such failure directly results in:

- (1) an **Unauthorized Access** that directly results in:
 - (a) the inability of a third party, who is so authorized, from gaining access to the **Named Insured's Operating System**;
 - (b) the unauthorized taking, obtaining, use, or disclosure of: (i) **Personally Identifiable Information** from the **Named Insured's Operating System**; or (ii) a confidential and proprietary business trade secret of a customer or client of the **Named Insured** from the **Named Insured's Operating System** where such confidential and proprietary business trade secret is stored on the **Named Insured's Operating System** pursuant to a written contract or agreement between the **Named Insured** and such customer or client; or
 - (c) the corrupting, damaging, destroying, deleting, or impairing, from the **Named Insured's Operating System**, of **Electronic Data** of a customer or client of the **Named Insured** and that is in the care, custody, and control of the **Named Insured**;
- (2) a **Denial of Service Attack** that directly results in the inability of a third party, who is so authorized, from gaining access to the **Named Insured's Operating System** or the **Named Insured's Website**; or
- (3) the transmission of **Malicious Code** from the **Named Insured's Operating System** to a third party's computer system.

(AA) "Personal Injury Offense" means any of the following offenses:

- (1) False arrest, detention, or imprisonment;
- (2) Libel, slander, defamation, or disparagement; or
- (3) Invasion of or interference with the right of privacy.

(BB) "Personally Identifiable Information" means a natural person's name used in combination with one or more of the following:

- (1) health care or other medical information, including "protected health information" as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and any regulation issued pursuant to the Act;
- (2) "non-public personal information" as defined in the Gramm-Leach Bliley Act of 1999, as amended, and any regulation issued pursuant to the Act;
- (3) social security, driver's license, or other state identification numbers or credit, debit, or other financial account numbers with their related security and access codes, passwords or pin numbers that provide access to the natural person's financial account information; or
- (4) any other non-public personally identifiable information protected under any local, state, federal or foreign act, statute, rule, regulation, requirement, or other law.

Personally Identifiable Information does not include information that is lawfully available to the general public, including but not limited to information from any local, state, federal, or foreign administrative, governmental, or regulatory agency, body, entity, or tribunal.

- (CC) **"Policy Period"** means the period from the Inception Date of this Policy stated in ITEM 2(a) of the Declarations to the Expiration Date of this Policy stated in ITEM 2(b) of the Declarations or to any earlier cancellation or termination of this Policy.
- (DD) **"Pollutants"** means (1) any substance located anywhere in the world 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 similar local, state, federal, or foreign administrative, governmental, or regulatory agency, body, entity, or tribunal, including but not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials; or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.
- (EE) **"Privacy Policy"** means the **Named Insured's** policies, practices, and procedures, in written or electronic form, established with respect to the use, disclosure, or protection of **Personally Identifiable Information** in the care, custody, or control of the **Named Insured**.
- (FF) **"Privacy Law"** means any local, state, federal or foreign act, statute, rule, regulation, requirement, or other law that requires persons or entities that collect **Personally Identifiable Information** to post privacy policies, adopt certain privacy or security measures, or notify natural persons in the event of the unauthorized taking or use or the unintentional disclosure of **Personally Identifiable Information**.
- (GG) **"Privacy Wrongful Act"** means any actual or alleged act, error or omission, or series of acts, errors or omissions, by or on behalf of the **Named Insured** that directly results in:
- (1) unauthorized taking or use or the unintentional disclosure of: (i) **Personally Identifiable Information** that is in the care, custody, and control of the **Named Insured**; or (ii) a confidential and proprietary business trade secret of a customer or client of the **Named Insured** that is in the care, custody, and control of the **Named Insured** pursuant to a written contract or agreement between the **Named Insured** and such customer or client;
 - (2) the **Named Insured's** unintentional failure to timely disclose an unauthorized taking or use or unintentional disclosure of **Personally Identifiable Information** that is in the care, custody, or control of the **Named Insured** in violation of any **Breach Notification Law**; or
 - (3) an unintentional violation by the **Named Insured** of its **Privacy Policy** that directly results in the **Named Insured's** violation of any **Privacy Law**.
- (HH) **"Professional Services"** means those professional services performed by or on behalf of the **Named Insured** for customers or clients of the **Named Insured** for a fee; provided that the **Named Insured**, or the person or entity performing such professional services on behalf of the **Named Insured**, possesses the requisite skill, experience, and knowledge to perform such professional services and is legally and professionally qualified to perform such professional services.

Professional Services does not include: (1) **Technology Services**; (2) any services involving any **Media Communication**; (3) the creation, development, manufacture, leasing, licensing, distribution, sale, service, or other involvement of any type, nature, or kind of or with any

Technology Product; or (4) any accounting, legal, medical, or financial services of any type, nature, or kind.

(II) "Professional Services Wrongful Act" means any actual or alleged act, error or omission, or series of acts, errors or omissions, by the **Named Insured** in rendering, or failing to render, **Professional Services**.

(JJ) "Property Damage" means:

(1) physical injury to, or loss or destruction of, tangible property, including but not limited to all loss of use of that property; or

(2) loss of use of tangible property that is not physically injured.

(KK) "Regulatory Claim" means a civil proceeding commenced by the service of a complaint or similar pleading brought by a local, state, federal, or foreign governmental or regulatory agency, body, entity, or tribunal against the **Named Insured** for a **Network Security Wrongful Act** or **Privacy Wrongful Act**.

(LL) "Related Claims" means **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions, decisions, or events or the same or related series of facts, circumstances, situations, transactions, decisions, or events, whether related logically, causally, or in any other way.

(MM) "Related Losses" means **Breach Events** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions, decisions, or events or the same or related series of facts, circumstances, situations, transactions, decisions, or events, whether related or similar logically, causally, or in any other way.

(NN) "Retroactive Date" means the date stated in ITEM 7 in the Declarations.

(OO) "Security System" means network, hardware, and software devices, including anti-virus and intrusion detection software, firewalls, and electronic systems, that control access by means of passwords or other similar identification methods and that are operated and installed on the **Named Insured's Operating System** or the **Named Insured's Website** to prevent an **Unauthorized Access**, the transmission of **Malicious Code**, or a **Denial of Service Attack** to the **Named Insured's Operating System** or the **Named Insured's Website**.

(PP) "Subsidiary" means any entity in which the **First Named Insured** owns, either beneficially or legally, greater than fifty percent (50%) of the issued or outstanding voting securities.

(QQ) "Technology Product" means the computer, telecommunication, and network software and hardware device, including component and incorporated service packs, applications, terminal devices, data storage devices, input and output devices, and back-up facilities, which are created, developed, manufactured, leased, licensed, distributed, or sold by the **Named Insured** to customers or clients of the **Named Insured** for a fee.

Technology Product does not include any services, including but not limited to **Professional Services**, **Technology Services**, any services involving any **Media Communication**, or any accounting, legal, medical, financial, or other similar services of any type, nature, or kind.

(RR) "Technology Services" means those electronic technology and computer services, including: customized software programming and application development; data hosting; data processing; Internet services; network management services; technology consulting and training; hardware and software installation, integration, analysis, and repair; and system management, maintenance, and support, which are performed by or on behalf of the **Named Insured** for customers or clients of the **Named Insured** for a fee.

"Technology Services" does not include: (1) **Professional Services**; (2) any services involving any **Media Communication**; (3) the creation, development, manufacture, leasing, licensing, distribution, or sale of any **Technology Product**; or (4) any accounting, legal, medical, financial, or other similar services of any type, nature, or kind.

(SS) "Technology Services Wrongful Act" means any actual or alleged act, error or omission, or series of acts, errors or omissions, by the **Named Insured** in rendering, or failing to render, **Technology Services**.

(TT) "Technology Products Wrongful Act" means any actual or alleged act, error or omission, or series of acts, errors or omissions, by the **Named Insured** in the creation, development, manufacture, leasing, licensing, distribution, or sale of a **Technology Product** that directly results in the failure of such **Technology Product** to properly perform the function, or properly serve the purpose, for which such **Technology Product** was intended.

(UU) "Unauthorized Access" means the use of or access to the **Named Insured's Operating System** by a natural person unauthorized by the **Named Insured** to do so or the authorized use of or access to the **Named Insured's Operating System** by a natural person in a manner not authorized by the **Named Insured**.

III. EXCLUSIONS

This Policy does not apply to, and no coverage will be available under this Policy for, any **Claim, Breach Event, Damages, Claim Expenses, Breach Consultation Services, Breach Notification Costs, or Breach Management Expenses**:

- (A)** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event, act, error, or omission that, before the **First Inception Date**, was the subject of any notice under any prior or concurrent policy;
- (B)** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any prior or pending demand, litigation, or alternative dispute resolution, administrative, regulatory, investigation, or arbitration proceeding as of the **First Inception Date**, or the same or substantially similar fact, circumstance, situation, transaction, event, act, error, or omission underlying or alleged therein;
- (C)** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event, act, error, or omission if any former, current, or future director, chief executive officer, chief operating officer, chief financial officer, chief technology officer, chief privacy officer, president, in-house general counsel, , partner, or principal, or any equivalent position thereof, of any **Insured**, before the **First Inception Date**, knew or reasonably could have foreseen that such fact, circumstance, situation, transaction, event, act, error, or omission might give rise to a **Claim** or **Breach Event**;
- (D)** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

(1) any **Professional Services Wrongful Act, Technology Services Wrongful Act, Technology Products Wrongful Act, Media Wrongful Act, Network Security Wrongful Act, or Privacy Wrongful Act** that was first committed or allegedly committed before the **Retroactive Date**; or

(3) any **Breach Event** that first occurs before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations;

(E) brought by or on behalf of or in the name or right of:

(1) any **Insured** or any business entity or venture that is currently or was formerly owned, controlled, managed or operated, directly or indirectly or in whole or in part, by any **Insured**; or

(2) any parent company, affiliate, subsidiary, predecessor, successor, or assign of any **Insured** or any business entity or venture that is currently or was formerly owned, controlled, managed or operated, directly or indirectly or in whole or in part, by any **Insured**;

provided that this EXCLUSION (E) shall not apply to a **Claim** for a **Privacy Wrongful Act** brought by an employee of the **Named Insured**;

(F) brought by or on behalf of or in the name or right of any local, state, federal, or foreign administrative, governmental, or regulatory agency, body, entity, or tribunal, including but not limited to the Federal Trade Commission or the Federal Communications Commission, provided that this EXCLUSION (F) shall not apply to a **Regulatory Claim**;

(G) brought by or on behalf of or in the name or right of any trade or licensing agency, body, entity, society, or tribunal, including but not limited to the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers, the Recording Industry Association of America, or Broadcast Music, Inc.;

(H) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Claim** made against any **Insured** for any act, error, or omission committed or allegedly committed during any time when such person or entity was not an officer, director, partner, principal, or employee of any **Insured** or was not a **Subsidiary** or affiliate of the **First Named Insured**;

(I) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

(1) the gaining of any profit, remuneration, or advantage to which any **Insured** is not legally entitled;

(2) any dishonest, fraudulent, deceptive, misleading, illegal, unlawful, criminal, malicious, unfair, false, or bad faith act, error, or omission of any **Insured**, or any collusion with or any assistance, knowledge, consent, or direction of any **Insured**;

(3) any willful, intentional, or knowing violation of any local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law by or on behalf of or in the name or right of any **Insured**, including but not limited to any **Privacy Law**;

- (4) any unlawful or unauthorized gathering, collecting, acquiring, using, obtaining, or taking of any information of any type, nature, or kind, including but not limited to **Personally Identifiable Information**; or
- (5) any unauthorized use or accessing by or on behalf of or in the name or right of any **Insured** of any computer, computer component (including but not limited to any hardware, network, terminal device, data storage devices, input and output device, or back up facility), application, program, software, code, script, or data of any type, nature, or kind, including but not limited to any **Electronic Data**,

provided that, for the purposes of determining the applicability of this EXCLUSION (D), no act, error, or omission of any **Insured** will be imputed to any other **Insured** who was not aware of or did not participate in such act, error, or omission, except that any act, error, or omission of any former, current, or future director, chief executive officer, chief operating officer, chief financial officer, chief technology officer, chief privacy officer, president, in-house general counsel, partner, or principal, or any equivalent position thereof, of any **Insured** shall be imputed to all **Insureds**;

- (J) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any adjustment, inspection, repair, correction, replacement, reproduction, reprinting, restoration, withdrawal, recall, removal, disposal, updating, upgrading, or enhancing of:
 - (1) any **Technology Product** or any good, product, service, property, data, or information of any type, nature, or kind that includes or otherwise incorporates any **Technology Product**; or
 - (2) any good, product, service, property, data, or information of any type, nature, or kind on or with respect to which any **Professional Services** or **Technology Services** are performed or any good, product, service, property, data, or information of any type, nature, or kind that includes or otherwise incorporates any **Professional Services** or **Technology Services**;
- (K) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any adjustment, inspection, repair, correction, completion, development, performance, replacement, reproduction, reprinting, restoration, withdrawal, recall, removal, disposal, updating, upgrading, enhancing, or research of any **Media Communication** or any content contained in any **Media Communication**;
- (L) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of any responsibility, duty, or obligation imposed under:
 - (1) the Employee Retirement Income Security Act of 1974 or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law, including but not limited to any amendment thereto or any regulation promulgated thereunder;
 - (2) the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisors Act of 1940, any Blue Sky or other securities law, or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law, including but not limited to any amendment thereto or any regulation promulgated thereunder; or

- (3) the Interstate Commerce Act of 1887, the Sherman Antitrust Act of 1890, the Clayton Act of 1914, the Robinson-Patman Act of 1936, the Cellar-Kefauver Act of 1950, the Federal Trade Commission Act of 1914, the Racketeer Influenced and Corrupt Organizations Act of 1970, any law involving or prohibiting any antitrust activity, price fixing (including but not limited to horizontal or other price fixing of wages, hours, salaries, compensation, benefits, or other terms or conditions of employment), price discrimination, predatory pricing, monopoly or monopolization, restraint of trade, unfair competition, conspiracy, collusion, or unfair, false, deceptive or misleading trade or business practices or advertising, or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law, including but not limited to any amendment thereto or any regulation promulgated thereunder;
- (M) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged **Bodily Injury**, other than mental or emotional illness, anguish, injury, or distress sustained by a natural person as a direct result of a covered **Claim** for a **Privacy Wrongful Act** or for a **Personal Injury Offense** in connection with a **Media Wrongful Act**;
- (N) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged **Property Damage**, other than the loss of use of: (1) any **Technology Product**; or (2) any tangible property that is the direct work product of any **Professional Services** or any **Technology Services**;
- (O) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged employment-related act, error, or omission or any actual or alleged discrimination, humiliation, or harassment, including but not limited to discrimination, humiliation, or harassment of a sexual nature or involving race, creed, color, age, gender, national origin, religion, disability, marital status, sexual preference, or other classification of any type, nature, or kind;
- (P) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged infringement, misappropriation, misuse, gaining, or taking of, or any inducement to infringe, misappropriate, misuse, gain, or take, any patent, process, idea, style of doing business, intellectual property, copyright, title, slogan, trademark, trade name, trade dress, service mark, service name, trade secret, confidential or proprietary information, or other similar information or property of any type, nature, or kind, other than an offense specifically enumerated in the definitions of **Media Wrongful Act** and otherwise covered under INSURING AGREEMENT (C);
- (Q) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (1) any actual or alleged liability assumed by or on behalf of or in the name or right of any **Insured** under any express, implied, actual, constructive, written, or oral contract, agreement, warranty, guarantee, assurance, covenant, representation, or promise; provided that this EXCLUSION (Q)(1) shall not apply to: (a) liability which would have attached in the absence of such contract, agreement, warranty, guarantee, assurance, covenant, representation, or promise; or (b) **Liability Assumed Under Contract**;
 - (2) any express, implied, actual, constructive, written, or oral contract, agreement, warranty, guarantee, assurance, covenant, representation, or promise: (a) for or involving any cost savings, performance, time of delivery, investment, or profit; or (b) that creates or requires compliance with any duty to exercise a degree or standard of care or skill higher than applicable industry standards;

- (3) any fee, expense, cost, or price guarantee, representation, warranty, or estimate that is actually or allegedly exceeded or any actual or alleged inaccurate, inadequate, or incomplete description with respect to any good, product, or service, including but not limited to any cost or price of any good, product, or service; or
 - (4) any actual or alleged failure of any good, product, or service to conform with any represented, warranted, guaranteed, or estimated delivery, performance, skill, quality, or quantity, including but not limited to any actual or alleged delay in delivery or performance or failure to deliver or perform by or within any period of time;
- (R)** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged gambling, contest, lottery, sweepstake, discount, coupon, promotional game, or other game of chance, including but not limited to any redemption in connection therewith;
- (S)** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:
- (1) distribution, dissemination, or transmission of any unsolicited facsimile, wireless or telephone communication, electronic mail, direct mail, voice mail, or telemarketing, including but not limited to Short Message Service or Multimedia Message Service;
 - (2) gathering, collecting, acquiring, using, obtaining, or taking of any information of any type, nature, or kind by means of any electronic spider, spy bots, spyware, wire tapping, bugging, videoing, radio frequency identification tags, or other similar means; or
 - (3) failure to comply with any local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law requiring that individuals be provided with the ability to assent, consent to, or opt-in or withhold or withdraw assent to, consent to, or opt-out from the gathering, collecting, acquiring, using, obtaining, or taking of any information of any type, nature, or kind, including but not limited to **Personally Identifiable Information**,
- by, for, on behalf of or in the name or right of any **Insured**;
- (T)** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any gradual deterioration, wear or tear, malfunction, mechanical failure, or defect of any computer, computer component (including but not limited to any hardware, network, terminal device, data storage devices, input and output device, or back up facility), application, program, software, code, script, or data of any type, nature, or kind, including but not limited to any **Electronic Data**; provided that this EXCLUSION (T) shall not apply to a malfunction or mechanical failure of a **Technology Product**;
- (U)** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any seizure, nationalization, confiscation, destruction, or deletion by or on behalf of or in the name or right of any local, state, federal, or foreign administrative, governmental, or regulatory agency, body, entity, or tribunal of any computer, computer component (including but not limited to any hardware, network, terminal device, data storage devices, input and output device, or back up facility), application, program, software, code, script, or data of any type, nature, or kind, including but not limited to any **Electronic Data**, or other property or information of any type, nature, or kind;

- (V) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual, alleged, or threatened: (1) inhalation of, ingestion of, contact with, exposure to, generation, storage, transportation, discharge, emission, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any **Pollutants** or any mold, mildew, spore, mycotoxin, fungus, pathogen, organism or microorganism, rust, smut, or mushroom of any type, nature, or kind; (2) any order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, detect, disclose, or report any **Pollutants** or any mold, mildew, spore, mycotoxin, fungus, pathogen, organism or microorganism, rust, smut, or mushroom of any type, nature, or kind; or (3) failure to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, detect, disclose, or report any **Pollutants** or any mold, mildew, spore, mycotoxin, fungus, pathogen, organism or microorganism, rust, smut, or mushroom of any type, nature, or kind;
- (W) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, radioactive substance, electromagnetic field, electromagnetic radiation, or electromagnetism;
- (X) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fire, flood, earthquake, volcanic eruption, explosion, lighting, wind, hail, tidal wave, landslide, act of god or other physical event;
- (Y) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any war or any war-like action, including but not limited to any undeclared or civil war or any action in hindering or defending against an actual or expected attack by any government, sovereign or other authority using military personnel or other agents; or
- (Z) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any electrical or satellite power interruption, surge, brownout, blackout, or other failure, including but not limited to any failure, malfunction, or defect of telephone, telecommunications, wireless communications, or data transmission lines, equipment, facilities, infrastructure, systems, or services, provided that this EXCLUSION (Z) shall not apply to any failure where the infrastructure responsible for such failure was under the **Named Insured's** operational control at the time of such failure.

IV. GENERAL CONDITIONS

(A) LIMITS OF LIABILITY

- (1) **Professional and Technology Services Liability.** The amount stated in ITEM 4(A) of the Declarations shall be the maximum Limit of Liability of the Underwriter for all **Damages** and all **Claim Expenses** from each **Claim** or **Related Claims** for which this Policy provides coverage under INSURING AGREEMENT (A). This Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4(F) of the Declarations.
- (2) **Technology Products Liability.** The amount stated in ITEM 4(A) of the Declarations shall be the maximum Limit of Liability of the Underwriter for all **Damages** and all **Claim Expenses** from each **Claim** or **Related Claims** for which this Policy provides coverage under INSURING AGREEMENT (B). This Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4(F) of the Declarations.
- (3) **Media Liability.** The amount stated in ITEM 4(A) of the Declarations shall be the maximum Limit of Liability of the Underwriter for all **Damages** and all **Claim Expenses** from each **Claim** or **Related Claims** for which this Policy provides coverage under

INSURING AGREEMENT (C). This Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4(F) of the Declarations.

- (4) **Network Security and Privacy Liability.** The amount stated in ITEM 4(A) of the Declarations shall be the maximum Limit of Liability of the Underwriter for all **Damages** and all **Claim Expenses** from each **Claim** (other than a **Regulatory Claim**) or **Related Claims** for which this Policy provides coverage under INSURING AGREEMENT (D). The amount stated in ITEM 4(B) of the Declarations shall be the maximum Limit of Liability of the Underwriter for all **Damages** and all **Claim Expenses** from each **Regulatory Claim** or **Related Claims** for which this Policy provides coverage under INSURING AGREEMENT (D). The Each Claim Limit of Liability stated in ITEM 4(A) and the Each Regulatory Claim Limit of Liability stated in ITEM 4(B) shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4(F) of the Declarations.
- (5) **Breach Event – Breach Consultation Services.** The amount stated in ITEM 4(C) of the Declarations shall be the maximum Limit of Liability of the Underwriter for all **Breach Consultation Services** for all **Breach Events** or **Related Losses** for which this Policy provides coverage under INSURING AGREEMENT (E). This Limit of Liability shall be in addition to, and not part of, the Policy Aggregate Limit of Liability stated in ITEM 4(F) of the Declarations.
- (6) **Breach Event – Breach Notification Costs.** The amount stated in ITEM 4(D) of the Declarations shall be the maximum Limit of Liability of the Underwriter for all **Breach Notification Costs** for all **Breach Events** or **Related Losses** for which this Policy provides coverage under INSURING AGREEMENT (E). This Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4(F) of the Declarations.
- (7) **Breach Event – Breach Management Expenses.** The amount stated in ITEM 4(E) of the Declarations shall be the maximum Limit of Liability of the Underwriter for all **Breach Management Expenses** for all **Breach Events** or **Related Losses** for which this Policy provides coverage under INSURING AGREEMENT (E). This Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4(F) of the Declarations.
- (8) **Policy Aggregate Limit of Liability.** The amount stated in ITEM 4(F) of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriter for all **Damages**, all **Claim Expenses**, all **Breach Consultation Services**, all **Breach Notification Costs**, and all **Breach Management Expenses** from all **Claims**, all **Breach Events**, all **Related Claims**, and all **Related Losses** for which this Policy provides coverage.
- (9) Each Limit of Liability described in this GENERAL CONDITION (A) of this Policy shall apply regardless of the time of the payment or service under this Policy, the number of persons or entities included within the definition of **Insured**, or the number of **Claims**, **Professional Services Wrongful Acts**, **Technology Services Wrongful Acts**, **Technology Products Wrongful Acts**, **Media Wrongful Acts**, **Network Security Wrongful Acts**, **Privacy Wrongful Acts**, or **Breach Events** under this Policy.
- (10) With respect to **Claims** under this Policy, **Claim Expenses** are part of, and not in addition to, the Underwriter's applicable Limits of Liability, and payment of **Claim Expenses** by the Underwriter will reduce, and may exhaust, the Policy's applicable Limits of Liability.

(B) RETENTION

The **Insured** shall be responsible for payment in full of the applicable Retention amount as stated with respect to the each of the following:

- (1) The Retention amount stated in ITEM 5(A) shall apply to **Damages and Claim Expenses** for each **Claim** for which this Policy provides coverage under INSURING AGREEMENT (A);
- (2) the Retention amount stated in ITEM 5(A) shall apply to **Damages and Claim Expenses** for each **Claim** for which this Policy provides coverage under INSURING AGREEMENT (B);
- (3) the Retention amount stated in ITEM 5(A) shall apply to **Damages and Claim Expenses** for each **Claim** for which this Policy provides coverage under INSURING AGREEMENT (C);
- (4) the Retention amount stated in ITEM 5(A) shall apply to **Damages and Claim Expenses** for each **Claim** (other than a **Regulatory Claim**) for which this Policy provides coverage under INSURING AGREEMENT (D);
- (5) the Retention amount stated in ITEM 5(B) shall apply to **Damages and Claim Expenses** for each **Regulatory Claim** for which this Policy provides coverage under INSURING AGREEMENT (D);
- (6) the Retention amount stated in ITEM 5(C) shall apply to **Breach Notification Costs** for each **Breach Event** for which this Policy provides coverage under INSURING AGREEMENT (E); and
- (7) the Retention amount stated in ITEM 5(D) shall apply to **Breach Management Expenses** for each **Breach Event** for which this Policy provides coverage under INSURING AGREEMENT (E);

The Underwriter's obligation to pay any amount with respect to any applicable coverage shall be excess of the applicable Retention as stated above. If any **Insured** is unable or unwilling to pay the full amount of the applicable Retention, the **First Named Insured** shall be responsible for payment in full of such Retention on behalf of such **Insured**. The Underwriter shall have no obligation whatsoever, either to the **Insured** or to any other person or entity, to pay all or any portion of the Retention on behalf of the **Insured**. The Underwriter shall, however, at its sole discretion have the right and option to do so, in which event the **Insured** will repay the Underwriter any amounts so paid, and the amounts so paid will be credited against and will reduce the Underwriter's Limits of Liability unless and until they are repaid in full to the Underwriter.

(C) RELATED CLAIMS, RELATED LOSSES, AND LOSSES SUSTAINED

- (1) All **Related Claims**, whenever made, shall be deemed to be a single **Claim**, regardless of:
 - (a) the number of **Related Claims**;
 - (b) the number or identity of claimants;

- (c) the number or identity of **Insureds** involved or against whom **Related Claims** have been or could have been made;
- (d) whether the **Related Claims** are asserted in a class action or otherwise; and
- (e) the number and timing of the **Related Claims**, even if the **Related Claims** comprising such single **Claim** were made in more than one **Policy Period**.

All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with GENERAL CONDITION (D)(3) of this Policy, whichever is earlier.

- (2) All **Related Losses**, whenever occurring, shall be deemed to be a single loss, regardless of:
 - (a) the number of **Related Losses**;
 - (b) the number or identity of **Insureds** involved; and
 - (c) the number and timing of the **Related Losses**, even if the **Related Losses** comprising such single loss occurred in more than one **Policy Period**.

All **Related Losses** will be treated as a single loss occurring when the earliest of such **Related Losses** first occurred.

- (3) With respect to any **Breach Event**, such **Breach Event** must first occur during the **Policy Period** and the Underwriter shall only be liable for the portion of any **Breach Consultation Services, Breach Notification Costs, or Breach Management Expenses** incurred during the **Policy Period**.

(D) REPORTING

- (1) With respect to any **Claim** first made against an **Insured** during the **Policy Period** or any applicable Extended Reporting Period, the **Insured** must, as a condition precedent to any right to coverage under this Policy, give the Underwriter written notice of such **Claim** as soon as practicable thereafter and in no event later than:
 - (a) sixty (60) days after the Expiration Date or earlier cancellation or termination of this Policy; or
 - (b) the expiration of any Extended Reporting Period.

Timely and sufficient notice by one **Insured** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim**. Such notice shall give full particulars of the **Claim**, including but not limited to: a description of the **Claim** and the **Professional Services Wrongful Act, Technology Services Wrongful Act, Technology Products Wrongful Act, Media Wrongful Act, Network Security Wrongful Act, or Privacy Wrongful Act**; the identity of all potential claimants and any **Insureds** involved; a description of the damages that resulted from the **Professional Services Wrongful Act, Technology Services Wrongful Act, Technology Products Wrongful Act, Media Wrongful Act, Network Security Wrongful Act, or Privacy Wrongful Act**; information on the time, place, and nature of the

Professional Services Wrongful Act, Technology Services Wrongful Act, Technology Products Wrongful Act, Media Wrongful Act, Network Security Wrongful Act, or Privacy Wrongful Act; and the manner in which an Insured first became aware of the Professional Services Wrongful Act, Technology Services Wrongful Act, Technology Products Wrongful Act, Media Wrongful Act, Network Security Wrongful Act, or Privacy Wrongful Act.

- (2) With respect to any **Breach Event** that first occurs during the **Policy Period**, the **Insured** must, as a condition precedent to any right to coverage under this Policy, give the Underwriter written notice of such **Breach Event** as soon as practicable thereafter and in no event later than sixty (60) days after the Expiration Date or earlier cancellation or termination of this Policy.

Timely and sufficient notice by one **Insured** of a **Breach Event** shall be deemed timely and sufficient notice for all **Insureds** involved in such **Breach Event**. Such notice shall give full particulars of the **Breach Event**, including but not limited to: a description of the **Breach Event**; the identity of any **Insureds** involved; a description of the loss that resulted from the **Breach Event**; information on the time, place, and nature of the **Breach Event**; and the manner in which an **Insured** first became aware of the **Breach Event**.

- (3) If, during the **Policy Period**, an **Insured** first becomes aware of a **Circumstance**, and the **Insured**:
- (a) gives the Underwriter written notice of such **Circumstance** with full particulars as soon as practicable thereafter but in any event before the Expiration Date or earlier cancellation or termination of this Policy; and
 - (b) requests coverage under this Policy for any covered **Claim** subsequently arising from such **Circumstance**;

then any covered **Claim** subsequently made against the **Insured** arising out of such **Circumstance** and for which written notice is given to the Underwriter as soon as practicable thereafter shall be treated as if it had been first made and reported to the Underwriter during the **Policy Period**. Full particulars shall include but are not to be limited to: a description of the **Circumstance**; the identity of all potential claimants and any **Insureds** involved; information on the time, place, and nature of the **Circumstance**; the manner in which the **Insured** first became aware of such **Circumstance**; and the reasons the **Insured** believes the **Circumstance** is likely to result in a **Claim**.

(E) DEFENSE AND SETTLEMENT

- (1) The Underwriter has the right and duty to defend any covered **Claim**, even if the allegations of such **Claim** are groundless, false or fraudulent. The **Insured** may propose to the Underwriter counsel to represent the **Insured** in connection with a covered **Claim**; provided that the Underwriter, in its sole discretion, shall have the right to select counsel to represent the **Insured** in connection with any such **Claim**. The Underwriter, in its sole discretion, may elect to appeal any judgment in connection with a covered **Claim**, but the Underwriter has no duty to appeal any such judgment. No **Insured** shall, except at its own cost, incur any expense, make any payment, admit any liability, assume any obligation, or settle any **Claim** without the Underwriter's prior written consent.

- (2) With respect to any **Claim**, the Underwriter will have the right to make investigations, direct the defense, and conduct negotiations and, with the consent of the **Insured**, enter into a settlement of any **Claim** as the Underwriter deems appropriate. If the **Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the Underwriter's recommendation, then, subject to the Underwriter's applicable Limits of Liability stated in ITEM 4 of the Declarations, the Underwriter's liability for such **Claim** shall not exceed:
- (a) the amount for which such **Claim** could have been settled plus **Claim Expenses** incurred up to the date the **Insured** refused to settle such **Claim** (the "Potential Resolution Amount"); plus
 - (b) fifty percent (50%) of any **Damages** or **Claim Expenses** in excess of the Potential Resolution Amount incurred in connection with such **Claim**, with the remaining fifty percent (50%) of any **Damages** or **Claim Expenses** in excess of the Potential Resolution Amount being the responsibility of the **Insured**.

(F) EXHAUSTION OF LIMITS

- (1) The Underwriter will have no obligation to pay or provide for **Damages, Claim Expenses, Breach Consultation Services, Breach Notification Costs, or Breach Management Expenses**, or to defend or to continue to defend any **Claim**, after the Underwriter's applicable Limit of Liability has been exhausted by payments under this Policy.
- (2) If the Underwriter's Policy Aggregate Limit of Liability, as stated in ITEM 4(F) of the Declarations, is exhausted by payments under this Policy, the premium will be fully earned, all obligations of the Underwriter under this Policy will be completely fulfilled and exhausted, and the Underwriter will have no further obligations of any type, nature, or kind under this Policy.

(G) TERRITORY

- (1) This Policy applies to a **Professional Services Wrongful Act, Technology Services Wrongful Act, Technology Products Wrongful Act, Media Wrongful Act, Network Security Wrongful Act, or Privacy Wrongful Act, or Breach Event** taking place anywhere in the world. If a **Claim** is made against the **Insured** outside the United States or its territories or possessions, the Underwriter will have the right but not the duty to defend, investigate or settle such **Claim**.
- (2) If the Underwriter elects not to defend, investigate or settle such **Claim**, the **Insured** will, under the Underwriter's supervision, make such defense and investigation as is reasonably necessary and, subject to the Underwriter's prior authorization, may effect settlement. The Underwriter will reimburse the **Insured** for **Claim Expenses** or **Damages** in connection with any such defense, investigation and settlement, subject to the applicable Retention and Limits of Liability and all other terms and conditions of this Policy.
- (3) If any amounts for **Claim Expenses, Damages, Breach Consultation Services, Breach Notification Costs, or Breach Management Expenses** are sustained or incurred in currency other than United States dollars, the amounts will be converted into United States dollars according to the prevailing rate of exchange on the date the amounts are sustained or incurred.

(H) ASSISTANCE AND COOPERATION

In the event of a **Claim** or **Breach Event**, the **Insured** shall provide the Underwriter with all information, assistance, and cooperation that the Underwriter reasonably requests. At the Underwriter's request, the **Insured** shall assist in: the investigation, defense, settlement, or other resolution of any matter; the pursuit or enforcement of any right of contribution or indemnity against another who may be liable to any **Insured**; conduct with respect to any action, suit, appeal, or other proceeding, including but not limited to attending any trial, hearing, or deposition, securing and giving evidence, or obtaining the attendance of any witness.

(I) SUBROGATION

In the event of any payment hereunder, the Underwriter shall be subrogated to the extent of any payment to all of the rights of recovery of the **Insured**. The **Insured** shall execute all papers and do everything necessary to secure such rights, including but not limited to the execution of any documents necessary to enable the Underwriter effectively to bring suit in its name. The **Insured** shall do nothing that may prejudice the Underwriter's position or potential or actual rights of recovery. The obligations of the **Insureds** under this GENERAL CONDITION (I) shall survive the expiration, cancellation, or termination of this Policy.

With respect to a **Claim**, any amount recovered upon the exercise of such rights of subrogation will be applied as follows: first, to the repayment of expenses incurred in recovery by exercise of such subrogation rights; second, to **Damages** or **Claim Expenses** paid by the **Insured** in excess of the Limits of Liability; third, to **Damages** or **Claim Expenses** paid by the Underwriter; and last, to **Damages** or **Claim Expenses** paid by the **Insured** toward the Retention. With respect to any **Breach Event**, any amount recovered upon the exercise of such rights of subrogation will be applied as follows: first, to the repayment of expenses incurred in recovery by exercise of such subrogation rights; second, to amounts paid by the **Insured** in excess of the Limits of Liability; third, to amounts paid by the Underwriter; and last, to amounts paid by the **Insured** toward the Retention.

Notwithstanding the foregoing, the Underwriter agrees to waive any right of subrogation under this GENERAL CONDITION (I) against the **Insured**, and against a customer or client of the **Insured**, with respect to any payment made in connection with a **Claim** if, and to the extent that, prior to the occurrence of any **Professional Services Wrongful Act, Technology Services Wrongful Act, Technology Products Wrongful Act, Media Wrongful Act, Network Security Wrongful Act, or Privacy Wrongful Act** giving rise to such **Claim**, the **Insured** had agreed to waive its rights of subrogation against such customer or client pursuant to a written contract or agreement.

(J) CHANGE IN RISK

- (1) If, during the **Policy Period**, the **First Named Insured** acquires or creates another entity (other than a joint venture or partnership) whose annual revenues are more than ten percent (10%) of the **First Named Insured's** total annual revenues as set forth in the application submitted for this Policy or the **First Named Insured** merges or consolidates with another entity such that the **First Named Insured** is the surviving entity (any such acquired, created, merged, or consolidated entity will be referred to as an "Acquired Entity"), then for a period of sixty (60) days after the effective date of the transaction, such Acquired Entity shall be included within the term "**Named Insured**" but only with respect to: **Professional Services Wrongful Acts, Technology Services Wrongful Acts, Technology Products Wrongful Acts, Media Wrongful Acts, Network Security Wrongful Acts, or Privacy Wrongful Acts** first committed or allegedly committed after the effective date of such transaction; or **Breach Events**

that first occur after the effective date of such transaction. Upon the expiration of the sixty (60) day period, there will be no coverage available under this Policy for any **Claim, Breach Event, Damages, Claim Expenses, Breach Consultation Services, Breach Notification Costs, or Breach Management Expenses** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the Acquired Entity unless within such sixty (60) day period:

- (a) the **First Named Insured** gives the Underwriter such information regarding such transaction as the Underwriter requests; and
 - (b) the Underwriter has specifically agreed by written endorsement to this Policy to provide coverage with respect to such Acquired Entity, and the **First Named Insured** accepts any terms, conditions, exclusions or limitations, including payment of additional premium, as the Underwriter, in its sole discretion, imposes in connection with the transaction.
- (2) If, during the **Policy Period**, the **First Named Insured** becomes a member of a new joint venture or partner in a new partnership, there will be no coverage available under this Policy for any **Claim, Breach Event, Damages, Claim Expenses, Breach Consultation Services, Breach Notification Costs, or Breach Management Expenses** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving such joint venture or partnership, unless:
- (a) the **First Named Insured** gives the Underwriter such information regarding such new joint venture or partnership as the Underwriter requests; and
 - (b) the Underwriter specifically agrees by written endorsement to this Policy to provide coverage with respect to such new joint venture or partnership, and the **First Named Insured** accepts any terms, conditions, exclusions or limitations, including payment of additional premium, as the Underwriter, in its sole discretion, imposes in connection with such transaction.
- (3) If, during the **Policy Period**, any of the following events occur:
- (a) the **First Named Insured** is dissolved, sold, acquired by, merged into, or consolidated with another entity such that the **First Named Insured** is not the surviving entity; or
 - (b) a third party receiver, conservator, trustee, liquidator, rehabilitator or any similar official is appointed for or with respect to the **First Named Insured**;

coverage under this Policy shall continue in full force and effect until the Expiration Date or any earlier cancellation or termination date, but this Policy shall only apply to: **Professional Services Wrongful Acts, Technology Services Wrongful Acts, Technology Products Wrongful Acts, Media Wrongful Acts, Network Security Wrongful Acts, or Privacy Wrongful Acts** first committed or allegedly committed before the effective date of such event; or **Breach Events** that first occur before the effective date of such event. There will be no coverage available under this Policy based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving: any **Professional Services Wrongful Acts, Technology Services Wrongful Acts, Technology Products Wrongful Acts, Media Wrongful Acts, Network Security Wrongful Acts, or Privacy Wrongful Acts** committed or allegedly committed on or after the effective date of such event; or any **Breach Event** that occurs on or after the effective date of such event.

- (4) If, during the **Policy Period**, any of the following events occur:
- (a) any **Named Insured**, other than the **First Named Insured**, is dissolved, sold, acquired by, merged into, or consolidated with another entity such that such **Named Insured** is not the surviving entity;
 - (b) the **First Named Insured's** beneficial or legal ownership interest in any **Named Insured** becomes less than 50%; or
 - (c) a third party receiver, conservator, trustee, liquidator, rehabilitator or any similar official is appointed for or with respect to any **Named Insured**, other than the **First Named Insured**;

coverage under this Policy shall continue in full force and effect with respect to such **Named Insured** and its **Insureds** until the Expiration Date or any earlier cancellation or termination date, but this Policy shall only apply to: **Professional Services Wrongful Acts, Technology Services Wrongful Acts, Technology Products Wrongful Acts, Media Wrongful Acts, Network Security Wrongful Acts, or Privacy Wrongful Acts** first committed or allegedly committed by such **Named Insured** or its **Insureds** before the effective date of such event; or **Breach Events** involving such **Named Insured** or its **Insureds** that first occur before the effective date of such event. There will be no coverage available under this Policy based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving: any **Professional Services Wrongful Acts, Technology Services Wrongful Acts, Technology Products Wrongful Acts, Media Wrongful Acts, Network Security Wrongful Acts, or Privacy Wrongful Acts** committed or allegedly committed by such **Named Insured** or its **Insureds** on or after the effective date of such event; or any **Breach Event** involving such **Named Insured** or its **Insureds** that occurs on or after the effective date of such event.

(K) OTHER INSURANCE

The coverage afforded under this Policy shall be specifically excess of and will not contribute with any other valid and collectible insurance available to the **Insured**, whether such other insurance is stated to be primary, *pro rata*, contributory, excess, contingent or otherwise, unless such other insurance is specifically written as excess insurance over the limits of liability provided in this Policy.

(L) EXTENDED REPORTING PERIODS

If this Policy is canceled for any reason other than fraud, misrepresentation or non-payment of premium or is not renewed by the Underwriter or the **First Named Insured**, an additional period of time during which **Claims** for **Professional Services Wrongful Acts, Technology Services Wrongful Acts, Technology Products Wrongful Acts, Media Wrongful Acts, Network Security Wrongful Acts, or Privacy Wrongful Acts** may be reported (an "Extended Reporting Period") shall be made available as described in this GENERAL CONDITION (L), but any such Extended Reporting Period shall apply only to **Claims** for **Professional Services Wrongful Acts, Technology Services Wrongful Acts, Technology Products Wrongful Acts, Media Wrongful Acts, Network Security Wrongful Acts, and Privacy Wrongful Acts** first committed or allegedly committed before the effective date of such cancellation or non-renewal (the "Termination Date") or the effective date of any event described in GENERAL CONDITION (J)(3) or (J)(4) of this Policy (as applicable), whichever is earlier. No Extended Reporting Period shall in any way increase the Underwriter's Limits of Liability stated in

ITEM 4 of the Declarations, and the Underwriter's Limit of Liability for all such **Claims** made during any Extended Reporting Period shall be part of, and not in addition to, the Underwriter's Policy Aggregate Limit of Liability stated in ITEM 4(F) of the Declarations. The Extended Reporting Period will apply as follows:

- (1) An Extended Reporting Period of sixty (60) days, beginning as of the Termination Date, will apply automatically and requires no additional premium; provided that such Extended Reporting Period will remain in effect only as long as no other policy of insurance is in effect that would apply to any **Claim** made during such Extended Reporting Period.
- (2) The **First Named Insured** may purchase an additional Extended Reporting Period for the period of time stated in ITEM 9 of the Declarations by notifying the Underwriter in writing of its intention to do so no later than sixty (60) days after the Termination Date. The additional premium for this additional Extended Reporting Period shall be equal to the applicable amount stated in ITEM 9 of the Declarations and must be paid no later than sixty (60) days after the Termination Date. Such additional premium shall be deemed fully earned upon inception of such Extended Reporting Period.

If no election to purchase an additional Extended Reporting Period is made as described in GENERAL CONDITION (L)(2) above, or if the additional premium for any such Extended Reporting Period is not paid within sixty (60) days after the Termination Date, there will be no right to purchase an additional Extended Reporting Period at any later time.

(M) CANCELLATION/NONRENEWAL

- (1) The Underwriter may cancel this Policy by mailing written notice to the **First Named Insured** stating when, not less than sixty (60) days thereafter, such cancellation shall be effective; except that, in the event of cancellation for non-payment of premium, the Underwriter may make the cancellation effective upon written notice of only ten (10) days. If the Underwriter cancels this Policy, earned premium will be computed *pro rata*.
- (2) Except as set forth in GENERAL CONDITION (F), the **First Named Insured** may cancel this Policy by mailing the Underwriter written notice stating when, not later than the Expiration Date of this Policy, such cancellation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedure.

Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

- (3) The Underwriter will not be required to renew this Policy upon its expiration. If the Underwriter elects not to renew this Policy, the Underwriter will mail to the **First Named Insured** written notice of nonrenewal at least sixty (60) days prior to the Expiration Date of this Policy. Any offer of renewal on terms involving a change of retention, premium, limit of liability, or other terms and conditions shall not constitute, nor be construed as, a failure or refusal by the Underwriter to renew this Policy.

(N) REPRESENTATIONS; INCORPORATION OF APPLICATION

The **Insureds** represent that the particulars and statements contained in the application or other materials submitted for this Policy are true, accurate and complete and agree that:

- (1) this Policy is issued and continued in force by the Underwriter in reliance upon the truth

of such representations;

- (2) those particulars and statements are the basis of this Policy; and
- (3) the application and those particulars and statements are incorporated in and form a part of this Policy.

No knowledge or information possessed by any **Insured** shall be imputed to any other **Insured**, except for material facts or information known to the person or persons who signed the application. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the application, this Policy shall be void with respect to any **Insured** who knew of such untruth, misrepresentation or omission or to whom such knowledge is imputed.

(O) NO ACTION AGAINST UNDERWRITER

- (1) No action shall be taken against the Underwriter by any **Insured** unless, as conditions precedent thereto, the **Insured** has fully complied with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings or by written agreement of the **Insured**, the claimant and the Underwriter.
- (2) No individual or entity shall have any right under this Policy to join the Underwriter as a party to any **Claim** to determine the liability of any **Insured**; nor shall the Underwriter be impleaded by the **Insured** or his/her/its legal representative in any such **Claim**.

(P) DESIGNATED SERVICE PROVIDER

Any **Designated Service Provider** selected and approved by the Underwriter under this Policy shall have a direct relationship with the **Insureds** and any services provided by any **Designated Service Provider** are for the **Insureds**.

(Q) AUTHORIZATION AND NOTICES

The **First Named Insured** will act on behalf of all **Insureds** with respect to: the giving and receiving of any notices under this Policy; the payment of premiums to, and the receiving of return premiums from, the Underwriter; the receiving and acceptance of any endorsements issued to form a part of this Policy; and the exercising or declining to exercise any Extended Reporting Period.

(R) NOTICE

- (1) Notice sent to the **Insured** shall be sent to the **First Named Insured** at the address stated in ITEM 1 of the Declarations.
- (2) Notice to the Underwriter shall be sent to the address designated in ITEM 10 of the Declarations.

(S) CHANGES

Notice to or knowledge possessed by any agent or other person acting on behalf of the Underwriter shall not effect a waiver or change in any part of this Policy or prevent or estop the Underwriter from asserting any right under this Policy. This Policy can only be altered, waived, or changed by written endorsement issued to form a part of this Policy.

(T) LIBERALIZATION

If the Underwriter files with the appropriate regulator any revision to the terms and conditions of this Policy that would broaden the coverage under this Policy without an additional premium charge at any time during the **Policy Period**, this Policy will automatically provide such broadened coverage as of the date such revision is effective in the state shown in the address stated in ITEM 1 of the Declarations for the **First Named Insured**.

(U) INSOLVENCY

The Underwriter will not be relieved of any of its obligations under this Policy by the bankruptcy or insolvency of any **Insured** or his/her/its estate.

(V) ASSIGNMENT

No assignment of interest under this Policy shall bind the Underwriter without the Underwriter's written consent issued as a written endorsement to form a part of this Policy.

(W) ENTIRE AGREEMENT

The **Insureds** agree that this Policy, including the application, Declarations and any endorsements, constitutes the entire agreement between them and the Underwriter or any of its agents relating to this insurance.

(X) ECONOMIC AND TRADE SANCTIONS OR VIOLATIONS OF LAW

Any **Claim, Breach Event**, or matter or transaction uninsurable under any act, statute, rule, regulation, requirement, ordinance, common law, or other law of the United States of America concerning trade or economic sanctions or export control laws are not covered under this Policy.

(Y) HEADINGS

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

In witness whereof, the Underwriter has caused this Policy to be executed by its authorized representative.