



## BEAZLEY VIRTUAL CARE

### MISCELLANEOUS MEDICAL PROFESSIONAL LIABILITY, TECHNOLOGY BASED SERVICES, TECHNOLOGY PRODUCTS, GENERAL LIABILITY, PRODUCTS/COMPLETED OPERATIONS, EMPLOYEE BENEFITS LIABILITY, INFORMATION SECURITY AND PRIVACY AND MULTIMEDIA AND ADVERTISING LIABILITY INSURANCE INCLUDING PRIVACY BREACH RESPONSE SERVICES - COMBINATION CLAIMS MADE AND REPORTED/OCCURRENCE BASIS

**NOTICE:** Insuring Agreements I.A., I.B., I.C., I.E., I.H., I.I., I.K., I.L. and I.M. of this Policy provide coverage on a Claims Made and Reported basis and apply only to those **Claims** which are first made against the **Insured** and reported in writing to the Underwriters during the **Policy Period** or the **Extended Reporting Period** (if applicable). Insuring Agreements I.D., I.F. and I.G., of this Policy provide coverage on an Occurrence basis and apply only to those **Accidents** taking place during the **Policy Period**. **Damages** and **Claims Expenses** shall be applied against the Deductible. **Claims Expenses** under this Policy shall reduce and may exhaust the Limits of Liability. Certain words and phrases which appear in bold type have special meaning; please refer to Clause VI., Definitions. Please review the coverage afforded under this Insurance Policy carefully and discuss the coverage hereunder with your insurance agent or broker.

Insuring Agreement I.J. of this Policy provides first party coverage on an incident or loss discovered and reported basis. Coverage under this Insuring Agreement applies only to incidents or losses first discovered by the **Insured** and reported to the Underwriters during the **Policy Period**.

This Policy only affords coverage under those insuring agreements below that are indicated as purchased in Item 3. of the Declarations. Under no circumstances shall any one **Claim** trigger multiple insuring agreements.

In consideration of the payment of premium and reliance upon the statements, representations and warranties made in the application which is made a part of this insurance policy (hereinafter referred to as the "Policy" or "Insurance") and subject to the Limits of Liability, exclusions, conditions and other terms of this Insurance, the Underwriters agree with the **Named Insured** (set forth in Item 1. of the Declarations, made a part hereof) as follows:

#### I. INSURING AGREEMENTS

##### A. Professional Liability (Claims Made and Reported Coverage)

The Underwriters will pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** or **Claims** first made against any **Insured** during the **Policy Period** or **Extended Reporting Period** (if applicable) and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause XI. of this Policy, for:

1. **Personal Injury** to any **Patient** arising out of any negligent act, error or omission, misstatement, misleading statement or misrepresentation of the **Insured**; or
2. **Personal Injury** or **Property Damage** to any **Patient** caused by an **Accident**;

which occurred during the rendering or failing to render **Professional Services** for others, on behalf of the **Insured Organization** and on or after the Retroactive Date stated in Item 8.1 of the Declarations and prior to the end of the **Policy Period**.

##### B. Technology Based Services Liability (Claims Made and Reported Coverage)

The Underwriters will pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** or **Claims** first made against any **Insured** during the **Policy Period** or **Extended Reporting Period** (if applicable) and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause XI. of this Policy arising out of:

1. any negligent act, error or omission of the **Insured** in rendering or failing to render **Technology Based Services**;
  2. any unintentional breach of a contractual obligation to perform **Technology Based Services**;
- for others, on behalf of the **Insured Organization** which occurred on or after the Retroactive Date stated in Item 8.2 of the Declarations and prior to the end of the **Policy Period**.

#### C. **Technology Products Liability (Claims Made and Reported Coverage)**

The Underwriters will pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** or **Claims** first made against any **Insured** during the **Policy Period** or **Extended Reporting Period** (if applicable) and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause XI. of this Policy, arising out of:

1. any negligent act, error or omission, misstatement, misleading statement or misrepresentation or unintentional breach of contractual obligation that results in the failure of **Technology Products** to perform the function or serve the purpose intended; or
2. infringement of copyright with respect to software **Technology Products**.

which occurred or was committed by the **Insured** on or after the Retroactive date stated in Item 8.2 of the Declarations and prior to the end of the **Policy Period**

#### D. **General Liability (Occurrence Coverage)**

The Underwriters will pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay or assumed by the **Insured** under contract because of any **Claim** or **Claims** for **Personal Injury** or **Property Damage** caused by an **Accident** which occurred during the **Policy Period**.

#### E. **Products/Completed Operations Liability (Claims Made and Reported Coverage)**

The Underwriters will pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay, or assumed by the **Insured** under contract, because of any **Claim** or **Claims** first made against any **Insured** during the **Policy Period** or **Extended Reporting Period** (if applicable) and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause XI. of this Policy for **Personal Injury** or **Property Damage** caused by an **Accident** and included within the **Products/Completed Operations Liability Hazard** which occurred on or after the Retroactive Date stated in Item 8.3 of the Declarations and prior to the end of the **Policy Period**.

#### F. **Fire Legal Liability (Occurrence Coverage)**

The Underwriters will pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay or assumed by the **Insured** under contract because of any **Claim** or **Claims** for **Property Damage** to the premises, while rented to the **Named Insured**, or temporarily occupied by the **Named Insured** with permission of the owner, arising out of any one fire which occurred during the **Policy Period**.

This coverage is subject to the sublimit of liability as described in Clause VII.C (General Liability Tower) and stated in Item 4.3.a.i of the Declarations. Under no circumstances will this coverage be extended to cover First Party **Property Damage** or **Property Damage** to personal property.

#### G. Medical Payments (Occurrence Coverage)

The Underwriters will pay medical payments, in excess of the Deductible, as described below for **Bodily Injury** caused by an **Accident**:

1. on premises the **Named Insured** owns or rents;
2. on ways next to the premises the **Named Insured** owns or rents; or
3. because of the **Named Insured's** operations;

Provided that:

4. the **Accident** takes place in the territory stated under Clause IV. and during the **Policy Period**;
5. the **Accident** is reported to the Underwriters during the **Policy Period**;
6. the expenses are incurred and reported to the Underwriters within one year of the date of the **Accident**;
7. the injured person submits to an examination, at the Underwriters' expense, by medical providers of the Underwriters choosing as often as the Underwriters reasonably require.

The Underwriters will make these payments regardless of fault. These payments will not exceed the applicable sublimit of liability stated in the Declarations. The Underwriters will pay reasonable expenses for:

8. first aid administered at the time of the **Accident**;
9. necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
10. necessary ambulance, hospital, professional nursing and funeral services.

#### H. Employee Benefits Liability (Claims Made and Reported Coverage)

The Underwriters will pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** or **Claims** first made against any **Insured** during the **Policy Period** or **Extended Reporting Period** (if applicable), and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause XI. of this Policy, arising out of any negligent act, error or omission of the **Insured** in the **Administration** of the **Insured's Employee Benefits Program**, which occurred on or after the Retroactive Date stated in Item 8.3 of the Declarations and prior to the end of the **Policy Period**.

#### I. Information Security and Privacy Liability (Claims Made and Reported Coverage)

The Underwriters will pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim**, including a **Claim** for violation of a **Privacy Law**, first made against any **Insured** during the **Policy Period** or **Extended Reporting Period** (if applicable) and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause XI. of this Policy for:

1. theft, loss, or **Unauthorized Disclosure of Personally Identifiable Information or Third Party Information** that is in the care, custody or control of the **Insured Organization**, or a third party for whose theft, loss or **Unauthorized Disclosure of Personally Identifiable Information or Third Party Information** the **Insured Organization** is legally liable (a third party shall include a Business Associate as defined by the Health Insurance Portability and Accountability Act ("HIPAA")), provided such theft, loss or **Unauthorized Disclosure** first takes place on or after the Retroactive Date set forth in Item 8.4 of the Declarations and before the end of the **Policy Period**;
2. one or more of the following acts or incidents that directly result from a failure of **Computer Security** to prevent a **Security Breach**, provided that such act or incident first takes place on or after the Retroactive Date and before the end of the **Policy Period**;
  - (a) the alteration, corruption, destruction, deletion, or damage to data stored on **Computer Systems**;
  - (b) the failure to prevent transmission of malicious code from **Computer Systems** to computer or network systems that are not owned, operated or controlled by an **Insured**; or
  - (c) the participation by the **Insured Organization's Computer System** in a denial-of-service attack directed against computer or network systems that are not owned, operated or controlled by an **Insured**;
3. the **Insured Organization's** failure to timely disclose an incident described in Insuring Agreement I.I.1. or I.I.2. in violation of any **Breach Notice Law**; provided such incident giving rise to the **Insured Organization's** obligation under a **Breach Notice Law** must first take place on or after the Retroactive Date set forth in Item 8.4 of the Declarations and before the end of the **Policy Period**;
4. failure by the **Insured** to comply with that part of a **Privacy Policy** that specifically:
  - (a) prohibits or restricts the **Insured Organization's** disclosure, sharing or selling of a person's **Personally Identifiable Information**;
  - (b) requires the **Insured Organization** to provide access to **Personally Identifiable Information** or to correct incomplete or inaccurate **Personally Identifiable Information** after a request is made by a person; or
  - (c) mandates procedures and requirements to prevent the loss of **Personally Identifiable Information**;

provided the acts, errors or omissions that constitute such failure to comply with a **Privacy Policy** must first take place on or after the Retroactive Date set forth in Item 8.4 of the Declarations and before the end of the **Policy Period**, and the **Insured Organization** must, at the time of such acts, errors or omissions have in force a **Privacy Policy** that addresses those subsections above that are relevant to such **Claim**; or

5. failure by the **Insured** to administer (a) an identity theft prevention program required by regulations and guidelines promulgated pursuant to 15 U.S.C. §1681m(e), as amended, or (b) an information disposal program required by regulations and guidelines promulgated pursuant to 15 U.S.C. §1681W, as amended; provided the acts, errors or omissions that constitute such failure must first take place on or after the Retroactive Date set forth in Item 8.4 of the Declarations and before the end of the **Policy Period**.

**J. Privacy Breach Response Services (Incident or loss Discovered and Reported Coverage)**

The Underwriters will provide **Privacy Breach Response Services** to the **Insured Organization** in excess of the Deductible because of an incident (or reasonably suspected incident) described in Insuring Agreement I.I.1. or I.I.2. that first takes place on or after the Retroactive Date set forth in Item 8.5 of the Declarations and before the end of the **Policy Period** and is discovered by the **Insured** and is reported to the Underwriters during the **Policy Period**.

**Privacy Breach Response Services** means the following:

1. **Computer Expert Services;**
2. **Legal Services;**
3. **Notification Services** to provide notification to:
  - (a) individuals who are required to be notified by the **Insured Organization** under the applicable **Breach Notice Law**; and
  - (b) in the Underwriters' discretion, to individuals affected by an incident in which their **Personally Identifiable Information** has been subject to theft, loss, or **Unauthorized Disclosure** in a manner which compromises the security or privacy of such individual by posing a significant risk of financial, reputational or other harm to the individual;
4. **Call Center Services;**
5. **Breach Solution and Mitigation Services;** and
6. **Public Relations and Crisis Management Expenses.**

**Privacy Breach Response Services** also includes assistance from the BBR Services Team and access to educational and loss control information at no charge.

**Privacy Breach Response Services** will be provided subject to the terms and conditions of this Policy and the **Information Packet**, will be subject to the applicable deductibles and limits set forth in the Declarations, and shall not include any internal salary or overhead expenses of the **Insured Organization**.

#### K. **Regulatory Defense and Penalties (Claims Made and Reported Coverage)**

The Underwriters will pay on behalf of the **Insured Claims Expenses** and **Penalties** in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** in the form of a **Regulatory Proceeding**, first made against any **Insured** during the **Policy Period** or **Extended Reporting Period** (if applicable) and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause XI. of this Policy, resulting from a violation of a **Privacy Law** and caused by an incident described in Insuring Agreement I.I.1., I.I.2. or I.I.3. that first takes place on or after the Retroactive Date set forth in Item 8.4 of the Declarations and before the end of the **Policy Period**.

#### L. **PCI Fines, Expenses and Costs (Claims Made and Reported Coverage)**

The Underwriters will indemnify the **Insured** for **PCI Fines, Expenses and Costs**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of a **Claim** first made against any **Insured** during the **Policy Period** or **Extended Reporting Period** (if applicable) and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause XI. of this Policy. Coverage under this Insuring Agreement is sublimited to the amount set forth Item 4.4.a.ii. of the Declarations, and the Underwriters shall have no duty to defend any **Claim** or pay **Claims Expenses** with respect to any **Claim** under this Insuring Agreement.

### M. Multimedia and Advertising Liability (Claims Made and Reported Coverage)

The Underwriters will pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of liability imposed by law or **Assumed Under Contract** resulting from any **Claim** first made against any **Insured** during the **Policy Period** or **Extended Reporting Period** (if applicable) and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause XI. of this Policy, for one or more of the following acts first committed on or after the Retroactive Date set forth in Item 8.2 of the Declarations and before the end of the **Policy Period** in the course of the **Insured Organization's** performance of **Professional Services, Media Activities** or **Technology Based Services**:

1. defamation, libel, slander, product disparagement, trade libel, prima facie tort, infliction of emotional distress, outrage, outrageous conduct or other tort related to disparagement or harm to the reputation or character of any person or organization;
2. invasion of or interference with the right to privacy or of publicity;
3. misappropriation of any name or likeness for commercial advantage;
4. false arrest, detention or imprisonment;
5. invasion of or interference with any right to private occupancy, including trespass, wrongful entry or wrongful eviction;
6. plagiarism, piracy or misappropriation of ideas under implied contract;
7. infringement of copyright;
8. infringement of trade dress, domain name, title or slogan, or the dilution or infringement of trademark or service mark;
9. negligence regarding the content of any **Media Communication**, including harm caused through any reliance or failure to rely upon such content;
10. misappropriation of trade secret; or
11. unfair competition, but only if alleged in conjunction with and arising out of any of the acts listed in paragraphs 7. or 8. above.

Under no circumstances shall any one **Claim** trigger coverage under this Insuring Agreement I.M. and Insuring Agreement I.A., (Professional Liability), Insuring Agreement I.D., (General Liability) or I.E., (Products/Completed Operations Liability).

## II. DEFENSE AND SETTLEMENT

- A. The Underwriters shall have the right and duty to defend the **Insured**, subject to the Limit of Liability and all the provisions, terms and conditions of this Policy:
  1. any **Claim** first made against the **Insured** seeking payment under the terms of this insurance, even if any of the allegations of the **Claim** are groundless, false or fraudulent; or
  2. any **Claim** in the form of a civil suit against the **Insured** that seeks injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction) for one or more of the acts listed in Insuring Agreement I.M.
  3. under Insuring Agreement I.K., any **Claim** in the form of a **Regulatory Proceeding**.

The Underwriters shall choose defense counsel in conjunction with the **Named Insured**, but in the event of a dispute, the decision of the Underwriters is final.

- B. With respect to any **Claim** against the **Insured** seeking **Damages** or **Penalties** which are payable under the terms of this Policy, the Underwriters will pay **Claims Expenses** incurred with their prior written consent. It is agreed that the Limit of Liability available to pay **Damages** and **Penalties** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages, Penalties** and **Claims Expenses** shall be applied against the Deductible set forth in Item 5. of the Declarations.
- C. The Underwriters shall have the right to make any investigation they deem necessary, including, without limitation, any investigation with respect to coverage and statements made in the application.
- D. If the **Insured** refuses to consent to any settlement or compromise recommended by the Underwriters and which is acceptable to the claimant and elects to contest the **Claim**, the Underwriters' liability for any **Damages, Penalties** and **Claims Expenses** shall not exceed the amount for which the **Claim** could have been settled, less the remaining Deductible, plus the **Claims Expenses** incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and the Underwriters shall have the right to withdraw from the defense of the **Claim** by tendering control of said defense to the **Insured**. The portion of any proposed settlement or compromise that requires the **Insured** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** (or **Penalties** for **Claims** covered under Insuring Agreement I.K.) shall not be considered in determining the amount for which a **Claim** could have been settled.
- E. Subject to the Limit of Liability of this Policy, the Underwriters shall pay all premiums on bonds to release attachments, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish such bonds, all costs taxed against the **Insured** in any suit, all interest accruing after entry of judgment until Underwriters have paid, tendered or deposited in court part of such judgment as does not exceed the Underwriters' Limit of Liability.
- F. Subject to the Limit of Liability of this Policy, the Underwriters shall reimburse the **Insured** for all reasonable expenses, other than loss of earnings, incurred at the Underwriters' request.
- G. It is further provided that the Underwriters shall not be obligated to pay any **Damages, Penalties, PCI Fines, Expenses and Costs**, medical payments or **Claims Expenses**, or to undertake or continue defense of any **Claim** after the applicable Limit of the Underwriters' Liability has been exhausted by payment of **Damages, Penalties, PCI Fines, Expenses and Costs**, medical payments or **Claims Expenses** or after deposit of the remaining applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Underwriters shall have the right to withdraw from the further defense of the **Claim** by tendering control of said defense to the **Insured**.

### III. INSURED AND INSURED ORGANIZATION

Each of the following is an **Insured** under this Insurance to the extent set forth below:

- A. The **Named Insured** and any **Subsidiaries** of the **Named Insured** (together the "**Insured Organization**").

- B. An **Employee** or volunteer worker of the **Insured Organization** but only while acting within the scope of his or her duties as such.
- C. If the **Named Insured** is a joint venture or partnership, any partner or member with respect to his or her liability as such.
- D. If the **Named Insured** is other than an individual, partnership or joint venture, any executive officer, director, stockholder, **Medical Director**, **Manager**, administrator or employed physician of the organization so designated while acting within the scope of his or her duties as such. However, in relation to Insuring Agreements I.A., coverage for any employed physician is contingent on any such employed physician being scheduled in Item 11. of the Declarations.
- E. Any person who previously qualified as an **Insured** under B. and D. above prior to the termination of the required relationship with the **Insured Organization**, but solely with respect to:
  - 1. in relation to Insuring Agreement I.A., **Professional Services** performed on behalf of the **Insured Organization**;
  - 2. in relation to Insuring Agreement I.B., **Technology Based Services** performed on behalf of the **Insured Organization**;
  - 3. in relation to Insuring Agreement I.C., the failure of **Technology Products** to perform the function or serve the purpose intended or infringement of copyright with respect to software **Technology Products** occurring prior to the termination of the required relationship with the **Insured Organization**;
  - 4. in relation to Insuring Agreements I.D., I.E., I.F. and I.G., an **Accident** arising solely out of the **Insured Organization's Products** or operations occurring prior to the termination of the required relationship with the **Insured Organization**;
  - 5. in relation to Insuring Agreements I.H., **Administration** of the **Insured's Employee Benefits Program**;
  - 6. in relation to Insuring Agreements I.I., I.J, I.K., I.L. and I.M., the performance of his or her duties as such on behalf of the **Insured Organization**.
- F. in relation to Insuring Agreements I.A., I.B., I.C., I.D., I.E., I.F., and I.G., any **Independent Contractor** and/or agent of the **Named Insured**. If the **Independent Contractor** is a physician, coverage for such **Independent Contractor** is contingent on any such **Independent Contractor** being scheduled in Item 11. of the Declarations.
- G. in relation to Insuring Agreement I.D., any landlord, owner, or property manager of the **Designated Premises**; or any tradeshow or convention sponsor or operator; or any lessor of equipment. However, coverage provided to these **Insureds** shall apply solely:
  - 1. to **Claims** first made against the **Insured** during the **Policy Period** or any **Extended Reporting Period** (if applicable);
  - 2. for **Claims** arising out the **Insured Organization's** occupancy of, or failure to maintain the **Designated Premises**, but solely with respect to the products, goods or operations



of the **Insured Organization** and only if liability for such **Claim** is determined to be solely the negligence or responsibility of the **Insured Organization**; and

3. for **Accidents** at, on or upon that portion of the **Designated Premises** which is occupied by the **Insured Organization** and taking place during the term of the **Insured Organization's** lease/occupancy of such **Designated Premises**.

This Policy shall not apply:

1. to the liability of an **Insured**, if an individual physician, midwife, certified registered nurse anesthetist, surgeon, osteopath, podiatrist, orthodontist, chiropractor, psychiatrist, psychologist or dentist, for his or her acts, errors or omissions outside the scope of work conducted for or on behalf of the **Insured Organization**; or
2. to any liability arising out of the conduct of any partnership or joint venture of which the **Insured** is a partner or member and which is not designated in this Policy as a **Named Insured**.

#### IV. TERRITORY

This Insurance applies to **Claims** brought anywhere in the world arising out of negligent acts, errors or omissions, incidents, events, **Loss** or **Accidents** which take place anywhere in the world.

#### V. EXCLUSIONS

- A. **Exclusions applicable to Insuring Agreement I.A., Professional Liability, Insuring Agreement I.B., Technology Based Services Liability, Insuring Agreement I.C., Technology Products Liability and Insuring Agreement I.M., Multimedia and Advertising Liability**

The coverage under this Policy does not apply to **Damages** or **Claims Expenses** incurred with respect:

1. to any **Claim** arising out of **Personal Injury** or **Property Damage**, except with respect to **Personal Injury** arising out of any negligent act, error or omission of any **Insured** or **Personal Injury** or **Property Damage** in the rendering or failing to render **Professional Services** to any **Patient**;
2. to any **Claim** arising out of any **Insured's** activities as a trustee, partner, officer, director or **Employee** of any trust, charitable organization, corporation, company or business other than that of the **Insured Organization**;
3. to any **Claim** arising out of failure to pay any bond, interest on any bond, any debt, financial guarantee or debenture;
4. to any **Claim** arising out of any financial or investment advice given, referrals, warranties, guarantees or predictions of future performance made by any **Insured** as regards specific and identifiable investment items including but not limited to personal property, real property, stocks, bonds or securities;
5. to any **Claim** arising out of the actual or alleged publication or utterance of libel or slander or other defamatory or disparaging material, or a publication or utterance in

violation of an individual's right to privacy, unless specifically covered under Insuring Agreement I.M.;

6. to any **Claim** arising out of actual or alleged plagiarism, misappropriation of likeness, breach of confidence, or misappropriation or infringement of any intellectual property right, including patent, trademark, trade secret, trade dress and copyright, unless specifically covered under Insuring Agreement I.M.;
7. to any **Claim** arising out of any costs or expenses incurred or to be incurred by the **Insured** or others for:
  - (a) the reprinting, recall, removal or disposal of any **Media Material**, including any media or products containing such **Media Material**; or
  - (b) the withdrawal, recall, inspection, repair, replacement, reproduction, removal or disposal of:
    - (i) **Technology Products**, including any products or other property of others that incorporate **Technology Products**;
    - (ii) work product resulting from or incorporating the results of **Professional Services** or **Technology Based Services**; or
    - (iii) any products or other property on which **Professional Services** or **Technology Based Services** are performed;

however, this exclusion shall not apply to third party **Claims** for the resulting loss of use of such **Media Material** or **Technology Products**, or loss of use of the work product resulting from such **Professional Services** or **Technology Based Services**;

8. to any **Claim** arising out of:
  - (a) the actual or alleged obligation to make licensing fee or royalty payments, including but limited to the amount or timeliness of such payments;
  - (b) any right asserted or claim brought by or on behalf of any intellectual property licensing bodies or organizations, including but not limited to, the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers or Broadcast Music, Inc.;
  - (c) any claim brought by or on behalf of any independent contractor, joint venturer or venture partner arising out of or resulting from disputes over ownership of rights in **Media Material** or services provided by such independent contractor, joint venturer or venture partner;
9. to any **Claim** arising out of:
  - (a) inaccurate, inadequate or incomplete description of the price of goods, products or services;
  - (b) cost guarantees, cost representations or contract price estimates of probable costs or cost estimates actually or allegedly being exceeded;

- (c) the failure of goods, products or services to conform with any represented quality or performance contained in **Advertising**; or
  - (d) any actual or alleged gambling, contest, lottery, promotional game or other game of chance;
10. in relation to Insuring Agreement I.A., I.B., and I.C., to any **Claim** arising out of liability assumed in any hold harmless or indemnity agreement other than a hold harmless or indemnity agreement with respect to intellectual property rights or breaches of the confidentiality of information of any third party.

**B. Exclusions applicable to Insuring Agreement I.D., General Liability, Insuring Agreement I.E., Products/Completed Operations Liability and Insuring Agreement I.F., Fire Legal Liability**

The coverage under this Policy does not apply to **Damages** or **Claims Expenses** incurred with respect:

1. to any **Claim** arising out of, or **Accident** involving, the rendering of or failure to render **Professional Services, Media Activities** and/or **Technology Based Services** by any **Insured** or by any person or organization for whose acts or omissions the **Insured Organization** is legally responsible;
2. to any **Claim** arising out of, or **Accident** involving any multimedia and advertising liability of the **Insured** as covered under Insuring Agreement I.M.
3. to any **Claim** arising out of, or **Accident** involving, **Personal Injury** or **Property Damage** resulting from the use of force expected or intended from the standpoint of the **Insured**; provided, however, this exclusion shall not apply to reasonable use of force by the **Insured**;
4. to any **Claim** arising out of, or **Accident** involving, any **Personal Injury** or **Property Damage** to **Patients**.;
5. to any **Claim** brought by or on behalf of any **Patient** or the estate, spouse, parent, sibling, heirs, executors, administrators, assigns or legal representatives of any **Patient**, regardless of whether the **Claim** is a direct **Claim** for **Bodily Injury** to the **Patient** or for other related **Claims** as a consequence of **Bodily Injury**, including but not limited to loss of consortium.;
6. to any **Claim** for liability arising out of, or **Accident** involving, **Personal Injury** or **Property Damage** arising out of ownership, maintenance, operation, use, **Loading** or **Unloading** of:
  - (a) any **Automobile**, aircraft or watercraft owned or operated by, or rented or loaned to, any **Insured**; or
  - (b) any other **Automobile**, aircraft or watercraft operated by any person in the course of their employment or volunteer duties for any **Insured**;
7. to any **Claim** arising out of, or **Accident** involving, **Personal Injury** or **Property Damage** arising out of:

- (a) the ownership, maintenance, operation, use, **Loading or Unloading** of any **Mobile Equipment** while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for such contest or activity; or
  - (b) the operation or use of any snowmobile, moped or motorized bicycle, or trailer designed for use therewith;
8. to any **Claim** for, or **Accident** involving, **Personal Injury** or **Property Damage** arising out of and in the course of the transportation of **Mobile Equipment** by any **Automobile** owned or operated by or rented or loaned to any **Insured**;
9. to any **Claim** arising out of, or **Accident** involving, **Personal Injury** or **Property Damage** for which the **Insured** or their indemnitee may be held liable:
- (a) as a person or organization engaged in the business of manufacturing, distributing, selling, or serving alcoholic beverages and/or state approved recreational drugs; or
  - (b) if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage and/or state approved recreational drugs;
10. to any **Claim** arising out of, or **Accident** involving, **Personal Injury** to:
- (a) any **Employee** or volunteer of the **Insured Organization** arising out of and in the course of his employment or retention by the **Insured Organization**;
  - (b) any applicant for employment of the **Insured Organization**;
  - (c) the spouse, child, parent, brother or sister of the **Employee** as a consequence of (a) above. This exclusion applies:
    - (i) whether the **Insured** may be liable as an employer or in any other capacity; and
    - (ii) to any obligation to share **Damages** with or repay someone else who must pay **Damages** arising out of such liability;
11. to any **Claim** arising out of, or **Accident** involving, **Property Damage** to:
- (a) property owned, rented or temporarily occupied by the **Insured Organization** with permission of the owner, including fixtures permanently attached thereto, any costs or expenses incurred by the **Insured Organization**, or any other person, organization, entity for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
  - (b) premises given away, sold or abandoned by the **Insured Organization**;
  - (c) property loaned to the **Insured Organization**;
  - (d) personal property in the care, custody and control of the **Insured Organization**;

- (e) that particular part of real property on which the **Insured Organization** or any contractors or subcontractors working directly or indirectly on behalf of the **Insured Organization** or temporarily occupied by the **Insured Organization** as to premises rented to the **Insured Organization** or temporarily occupied by the **Insured Organization** with permission of the owner if such **Property Damage** arises out of those operations;
- (f) that particular part of any property that must be restored, repaired or replaced because the **Insured's** work was incorrectly performed on it.

Paragraph (a) of this exclusion does not apply to **Property Damage** to premises rented to the **Insured Organization** or temporarily occupied by the **Insured Organization** with permission of the owner, if such **Property Damage** arises out of fire covered under Insuring Agreement I.F. (Fire Legal Liability) and subject to the sublimits of liability as described in Clause VII.C. (General Liability Tower) of this Policy and stated in Item 4.3.a.i of the Declarations.

Paragraph (b) of this exclusion does not apply if the premises are the **Insured's** work and were never occupied, rented or held for rental by the **Insured Organization**.

Paragraphs (c), (d), (e) and (f) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (f) of this exclusion does not apply to **Property Damage** included in any **Products/Completed Operations Liability Hazard** coverage.;

- 12. to any **Claim** arising out of, or **Accident** involving, loss of use of tangible property which has not been physically injured or destroyed resulting from:
  - (a) a delay in or lack of performance by or on behalf of the **Insured Organization** of any contract or agreement; or
  - (b) the failure of the **Insured Organization's Products** or work performed by or on behalf of the **Insured Organization** to meet the level of performance, quality, fitness or durability warranted or represented by the **Insured Organization**;

but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the **Insured Organization's Products** or work performed by or on behalf of the **Insured Organization** after such products or work have been put to use by any person or organization other than an **Insured**.;

- 13. to any **Claim** arising out of, or **Accident** involving, **Property Damage** to the **Insured Organization's Products**, or for the withdrawal, recall, inspection, repair, replacement, or loss of use of the **Insured Organization's Products** or work completed by or for the **Insured Organization** or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein; to **Property Damage** to work performed by or on behalf of the **Insured Organization** arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

14. to any **Claim** arising out of, or **Accident** involving, **Aircraft Products**, including, but not limited to, consequential loss of use thereof resulting from **Grounding**;
15. to any **Claim** or **Accident** arising out of or in relation to:
  - (a) failure of performance of contract; provided, however, that this exclusion shall not apply to the unauthorized appropriation of ideas based upon alleged breach of an implied contract;
  - (b) infringement of patent, trademark, service mark, and trade name, other than titles or slogans by use thereof on or in connection with goods, products or services sold, offered for sale or advertised; or
  - (c) incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised.

**C. Exclusions applicable to Insuring Agreement I.G., Medical Payments**

The Underwriters will not pay medical payments for **Bodily Injury**:

1. to any **Insured**;
2. to a person hired to do work for or on behalf of any **Insured** or a tenant of the **Insured**;
3. to a person injured on that part of the premises the **Insured Organization** owns or rents that the person normally occupies;
4. to a person, whether or not an **Employee** of any **Insured**, if benefits for the **Bodily Injury** are payable or must be provided under a workers' compensation or disability benefits law or a similar law;
5. to a person injured while taking part in athletics;
6. due to war, whether or not declared, or any act or condition incidental to war. War shall include civil war, insurrection, rebellion or revolution;
7. excluded under Section V.B above;
8. to any prisoner.

**D. Exclusions applicable to Insuring Agreements I.I., Information Security and Privacy Liability, I.J., Privacy Breach Response Services, I.K., Regulatory Defense and Penalties, and I.L., PCI Fines, Expenses and Costs**

The coverage under this Insurance does not apply to any **Claim** or **Loss**:

1. for, arising out of, or resulting from **Bodily Injury** or **Property Damage**; however, this exclusion does not apply to mental anguish or emotional distress which is covered under Insuring Agreement I.I.;
2. for, arising out of, or resulting from any actual or alleged act, error or omission or breach of duty by any director, officer or **Manager** in the discharge of their duty if the **Claim** is brought by the **Insured Organization**, or any principals, directors, officers, **Managers**,

stockholders, members or **Employees** of the **Named Insured** or a **Subsidiary** in his or her capacity as such;

3. for, arising out of, or resulting from any liability or obligation under a **Merchant Services Agreement** except this exclusion does not apply to **PCI Fines, Expenses and Costs** covered under Insuring Agreement I.L., or to **Computer Expert Services** or **Legal Services** covered under Insuring Agreement I.J.;
4. for, arising out of, or resulting from:
  - (a) the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Information** (except as otherwise covered under Insuring Agreement I.I.5.) or other personal information by, on behalf of, or with the consent or cooperation of the **Insured Organization**; or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (e.g. opt-in or opt-out) from the collection, disclosure or use of **Personally Identifiable Information**; provided, that this exclusion shall not apply to the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Information** by a person or entity that is not a **Related Party** and without the knowledge of the **Insured Organization**; or
  - (b) the distribution of unsolicited email, text messages, direct mail, or facsimiles, wiretapping, audio or video recording, or telemarketing, if such distribution, wiretapping or recording is done by or on behalf of the **Insured Organization**;
5. for, arising out of, or resulting from any actual or alleged:
  - (a) infringement of patent or patent rights or misuse or abuse of patent;
  - (b) infringement of copyright arising from, or related to software code or software products other than infringement resulting from a theft or **Unauthorized Access or Use** of software code by a person who is not a **Related Party**;
  - (c) use or misappropriation of any ideas, trade secrets or **Third Party Information** (i) by, or on behalf of, the **Insured Organization**, or (ii) by any other person or entity if such use or misappropriation is done with the knowledge, consent or acquiescence of a member of the **Control Group**;
  - (d) disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person or entity prior to the date the person or entity became an **Employee**, officer, director, **Manager**, principal, partner or **Subsidiary** of the **Named Insured**; or
  - (e) under Insuring Agreement I.I.2., theft of or **Unauthorized Disclosure** of data;
6. for, arising out of, or resulting from the actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services, cost guarantees, cost representations, or contract price estimates, the authenticity of any goods, products or services, or the failure of any goods or services to conform with any represented quality or performance.

**E. Exclusions applicable to Insuring Agreement I.H., Employee Benefits Liability**

The coverage under this Policy does not apply to **Damages** or **Claims Expenses** incurred with respect:

1. to any **Claim** arising out of the rendering of or failure to render **Professional Services, Media Activities** and/or **Technology Based Services** by the **Insured Organization** or by any person or organization for whose acts or omissions the **Insured Organization** is legally responsible;
2. to any **Claim** arising out of, or **Accident** involving any multimedia and advertising liability of the **Insured** as covered under Insuring Agreement I.M
3. to any **Claims** arising out of **Personal Injury** or **Property Damage**;
4. to any **Claim** arising out of the actual or alleged publication or utterance of libel or slander or other defamatory or disparaging material, or a publication or utterance in violation of an individual's right to privacy;
5. to any **Claim** arising out of actual or alleged plagiarism, misappropriation of likeness, breach of confidence, or misappropriation or infringement of any intellectual property right, including patent, trademark, trade secret, trade dress and copyright;
6. to any **Claim** for failure of performance of contract by any **Insured**, including failure or insolvency of any **Employee Benefits Program**;
7. to any **Claim** based upon the:
  - (a) failure of stock to perform as represented by an **Insured**;
  - (b) advice given by an **Insured** to an **Employee** to participate, or not to participate, in stock subscription plans; or
  - (c) investment or non-investment of funds, or the income yield therefrom;
8. to any **Claim** for benefits to the extent such benefits are available, with reasonable effort and cooperation of the **Insured**, from the applicable funds accrued or other collectible insurance;
9. to any **Claim** for taxes, fines, penalties, including those imposed under the Internal Revenue Code or any similar state or local law;
10. to any **Claim** arising out of wrongful termination of employment, discrimination, or other employment related practices;
11. to any **Claim** or circumstance that might lead to a **Claim** arising out of **Administration** of the **Insured's Employee Benefits Program** which first took place, or is alleged to have taken place, prior to Retroactive Date as set for in Item 8.3. of the Declarations.

**F. Exclusions applicable to all Insuring Agreements**

The coverage under this Policy does not apply to any **Claim, Damages, Claims Expenses** or **Loss**:



1. for, arising out of, or resulting from:
  - (a) any **Claim** made by any business enterprise in which any **Insured** has greater than a fifteen percent (15%) ownership interest or made by any parent company or other entity which owns more than fifteen percent (15%) of the **Named Insured**; or
  - (b) the **Insured's** activities as a trustee, partner, member, **Manager**, officer, director or **Employee** of any employee trust, charitable organization, corporation, company or business other than that of the **Named Insured** or **Subsidiary**;
2. for, arising out of, or resulting from any act, error, omission, **Accident**, incident, failure of **Computer Security** or **Security Breach** committed or occurring prior to the inception date of this Policy:
  - (a) if any member of the **Control Group** or any provider stated in Item 11 of the Declarations knew or could have reasonably foreseen that such act, error or omission, **Accident**, incident, failure of **Computer Security**, or **Security Breach** might be expected to be the basis of a **Claim** or **Loss**; or
  - (b) in respect of which any **Insured** has given notice of a circumstance, which might lead to a **Claim** or **Loss**, to the insurer of any other policy or self-insurance in force prior to the Inception Date of this Policy;

This exclusion applies only to coverages which are afforded under this Policy on a Claims Made and Reported Basis or on an Incident or Loss Discovered and Reported Basis;

3. in relation to coverages which are afforded under this Policy on a Claims Made and Reported Basis or an Incident or Loss Discovered and Reported Basis, for, arising out of, or resulting from any act, error or omission, **Accidents**, incidents or events, failure of **Computer Security** or **Security Breach** which first took place, or is alleged to have taken place, prior to the Retroactive Dates as set forth in Item 8 of the Declarations;

In relation to coverages which are afforded under this Policy on an Occurrence basis, for, arising out of, or resulting from any **Accident** or fire which first took place, or is alleged to have taken place, prior to the inception date of this Policy.

4. in relation to an **Accident** or **Claim** arising out of:
  - (a) any act, error, omission, illness or disease of the human body, work, business or operations which took place, performed by or on behalf of the **Insured** prior to the Retroactive Dates set forth in Item 8 of the Declarations; and/or
  - (b) any act, error, omission, illness or disease of the human body, work, business or operations performed by or on behalf of the **Insured** which act, error, omission, illness or disease of the human body, work, business or operations has commenced or is pending prior to the Retroactive Dates set forth in Item 8 of the Declarations.

This exclusion applies only to coverages which are afforded under this Policy on a Claims Made and Reported Basis or on an Incident or Loss Discovered and Reported Basis;

5. for, arising out of, or resulting from discrimination including but not limited to discriminatory employment practices, allegations of actual or alleged violations of civil rights or acts of discrimination based entirely or in part on the race, gender, pregnancy, national origin, religion, age or sexual orientation;

6. for, arising out of, or resulting from any employer-employee relations, policies, practices, acts or omissions, or any actual or alleged refusal to employ any person, or misconduct with respect to **Employees**, whether such **Claim** is brought by an **Employee**, former **Employee**, applicant for employment, or relative or domestic partner of such person; provided, however, that this exclusion shall not apply to an otherwise covered **Claim** under Insuring Agreement I.I.1., I.I.2., or I.I.3. by a current or former **Employee** of the **Insured Organization**; or to the providing of **Privacy Breach Response Services** involving current or former **Employees** of the **Insured Organization**;
7. for, arising out of or resulting from any failure or malfunction of electrical or telecommunications infrastructure or services, unless under the **Insured Organization's** operational control;
8. for, arising out of, or resulting from directly or indirectly:
  - (a) the actual, alleged or threatened discharge, dispersal, release or escape or failure to detect the presence of **Pollutants**, provided that this exclusion shall not apply to: (i) **Bodily Injury** sustained by any **Patient**, visitor or invitee; and (ii) **Personal Injury** or **Property Damage** arising out of heat, smoke or fumes from a **Hostile Fire**;
  - (b) the manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, exposure to or testing for **Pollutants** contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever; or
  - (c) any governmental or regulatory directive or request that the **Insured** or anyone acting under its direction or control to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize said **Pollutants**;
9. for, arising out of, or resulting from the insolvency or bankruptcy of any **Insured** or of any other entity including but not limited to the failure, inability, or unwillingness to pay **Claims**, losses or benefits due to the insolvency, liquidation or bankruptcy of any such individual entity.;
10. for, arising out of, or resulting from:
  - (a) any conduct, physical act, gesture, or spoken or written words of a sexual or physically violent nature by any **Insured**, including but not limited to, sexual intimacy (whether or not consensual), sexual molestation, sexual act, sexual contact, sexual advances, requests for sexual favors, sexual or physical assault or battery, sexual or physical abuse, sexual harassment or exploitation, dissemination or publication of sexually explicit **Patient** materials or other verbal or physical conduct of a sexual nature; or
  - (b) the **Insured's** actual or alleged negligent employment, investigation, supervision, hiring, training or retention of any **Employee, Insured** or person for whom the **Insured** is legally responsible and whose conduct falls within paragraph (a), above.

However, with respect to Insuring Agreement I.A., (Professional Liability) only and subject to the sublimits of liability stated in Item 4.1.a.i and Item 4.1.b.i, of the Declarations this exclusion does not apply to:

- (a) any specific individual **Insured** who allegedly committed such misconduct, unless there is an adjudication, judgment, binding arbitration decision or conviction against

the specific individual **Insured**, or written admission by the **Insured**, establishing such conduct, or a plea of *nolo contendere* or no contest regarding such misconduct. In these circumstances, the Underwriters will not pay **Damages** or **Claims Expenses**;

- (b) any other **Insured**, unless that **Insured**:
- i. knew or should have known about the misconduct allegedly committed by the specific individual **Insured**, but failed to prevent or stop it; or
  - ii. knew or should have known that the specific individual **Insured** who allegedly committed the misconduct had a prior history of sexual or physical misconduct.

Underwriters will defend civil **Claims** alleging such acts until final civil or criminal adjudication.

As used in this exclusion, specific individual **Insured** includes **Employees** and authorized volunteer workers while performing duties related to the conduct of the **Insured's** business.;

11. for, arising out of, or resulting from **Personal Injury** to any **Employee**, temporary employees, applicant or volunteer worker of the **Insured** arising out of and in the course of his employment by the **Insured**, or under any obligation for which the **Insured** or any carrier as its insurer may be liable, under any Workers' Compensation, Unemployment Compensation, Disability Benefits Law or under any similar law.;
12. for, arising out of, or resulting from:
  - (a) any actual or alleged violation of the Securities Act of 1933 as amended, or the Securities Exchange Act of 1934 as amended, or any State Blue Sky or securities law or similar state of Federal statute and any regulation or order issued pursuant to any of the foregoing statutes;
  - (b) the actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961 et seq., and any amendments thereto, or any rules or regulations promulgated thereunder;
  - (c) any actual or alleged violation of the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Worker Adjustment and Retraining Act of 1988, the Certified Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970, any similar law or legislation of any state, province or other jurisdiction, or any amendment to the above law or legislation, or any violation of any order, ruling or regulation issued pursuant to the above laws or legislation; or
  - (d) any actual or alleged acts, errors, or omissions related to any of the **Insured's** pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts, including but not limited to any violation of any provision of the Employee Retirement Income Security Act of 1974 (ERISA) or any similar federal law or legislation, or similar law or legislation of any state, province or other jurisdiction, or any amendment to ERISA or any violation of any regulation, ruling or order issued pursuant to ERISA or such similar laws or legislation.

However, this exclusion does not apply to any otherwise covered **Claim** under Insuring Agreement I.H., I.I.1., I.I.2. and I.I.3., or to providing **Privacy Breach Response Services** covered under Insuring Agreement I.J., that results from theft, loss or **Unauthorized Disclosure of Personally Identifiable Information**, provided that no member of the **Control Group** participated, or is alleged to have participated or colluded, in such theft, loss or **Unauthorized Disclosure**;

13. for, arising out of, or resulting from any criminal, dishonest, fraudulent, or malicious act, error, omission or **Accident**, any intentional **Security Breach**, intentional violation of a **Privacy Policy**, or intentional or knowing violation of the law, if committed by such **Insured**, or by others if the **Insured** colluded or participated in any such conduct or activity; provided this Policy shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Insured**, or written admission by the **Insured**, establishing such conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time the **Named Insured** shall reimburse the Underwriters for all **Claims Expenses** incurred defending the **Claim** and the Underwriters shall have no further liability for **Claims Expenses**;

provided further, that this exclusion shall not apply with respect to a **Claim** or **Loss** against a specific **Insured** if (i) such **Insured** did not personally commit, participate in or know about any act, error, omission, **Accident**, incident or event giving rise to such **Claim** or **Loss**, and (ii) no act, error, omission, **Accident**, incident or event giving rise to such **Claim** or **Loss** was known to any present or former member of the **Control Group** at the time of or prior to its commission or occurrence;

14. for, arising out of, any of or resulting from the following: (1) trading losses, trading liabilities or change in value of accounts; any loss, transfer or theft of monies, securities or tangible property of others in the care, custody or control of the **Insured**; (2) the monetary value of any transactions or electronic fund transfers by or on behalf of the **Insured** which is lost, diminished, or damaged during transfer from, into or between accounts; or (3) the value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;
15. for, arising out of or resulting from costs of complying with physical modifications to any premises or any changes to the **Insured's** usual business operations mandated by the Americans with Disabilities Act of 1990, including any amendments, or similar federal, state or local law;
16. for, arising out of, or resulting from any actual or alleged violation of any federal, state, or local anti-trust, restraint of trade, unfair competition, consumer protection or price fixing law, or any rules or regulations promulgated thereunder; however, to the extent a **Claim** alleges both professional negligence and any of the above excluded enumerated offenses, Underwriters and the **Insured** will use their best efforts to reach a fair allocation between covered and uncovered **Damages**;
17. for, arising out of, or resulting from any actual or alleged false, deceptive or unfair trade practices; provided however this exclusion does not apply to:
  - (a) any **Claim** covered under Insuring Agreements I.I.1., I.I.2., I.I.3. or I.K.; or
  - (b) the providing of **Privacy Breach Response Services** covered under Insuring Agreement I.J.

that results from a theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Information** provided that no member of the **Control Group** participated or is alleged to have participated or colluded in such theft, loss or **Unauthorized Disclosure**;

18. caused directly or indirectly, in whole or in part, by:
- (a) any fungus(es) or spore(s);
  - (b) any substance, vapor or gas produced by or arising out of any fungus(es) or spore(s); or
  - (c) any materials, product, building component, building or structure that contains, harbors, nurtures or acts as a medium for any fungus(es) or spore(s);

regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that injury or **Damages**.

For the purposes of this exclusion, the following Definitions are added:

“Fungus(es)” includes, but is not limited to, any form of mold, mushroom or mildew.

“Spore(es)” mean any reproductive body produced by or arising out of any fungus(es).

This exclusion shall not apply to **Claims** arising from **Professional Services** that would otherwise be covered hereunder;

19. for, arising out of, or resulting from any action or proceeding brought by or on behalf of any federal, state or local governmental, regulatory or administrative entity or agency, or foreign governmental entity, regardless of the name in which such action or proceeding is brought, including, but not limited to, The Federal Trade Commission, The Federal Communications Commission, the Health Insurance Portability and Accountability Act of 1996, the Social Security Act, 42 U.S.C. §1320a, et. seq., or any other state, federal, local or foreign governmental entity, or similar state or federal statute, regulation or executive order promulgated thereunder.

However, this exclusion shall not apply to an otherwise covered **Claim** under Insuring Agreement I.K. or to providing of **Privacy Breach Response Services** under Insuring Agreement I.J., to the extent such services are legally required to comply with a **Breach Notice Law**;

20. in relation to Insuring Agreements I.A., I.B., I.C., I.D., I.E., I.F., I.G. and I.H., for, arising out of, or resulting from any **Insured’s** data processing services, including but not limited to:
- (a) conversion of data from source material into media for processing on the **Insured’s** electronic data processing system;
  - (b) processing of data by the **Insured** on the **Insured’s** electronic data processing system; or
  - (c) design or formulation of an electronic data processing program or system;

21. for, arising out of, or resulting from any **Insured Organization's Products** manufactured, handled, sold or distributed in knowing or willful violation of any Federal or State law, statute, ordinance or regulation;
22. for, arising out of, or relating to, any liability under any contract or agreement, whether written or oral, except:
  - (a) to an otherwise covered **Claim** under Insuring Agreement I.B. (Technology Based Services Liability) and I.C. (Technology Products Liability);
  - (b) with respect to the coverage provided pursuant to Insuring Agreement I.I.1., to any obligation of the **Insured Organization** to maintain the confidentiality or security of **Personally Identifiable Information** or of **Third Party Information**;
  - (c) with respect to Insuring Agreement I.M., (Multimedia and Advertising Liability):
    - (i) liability **Assumed under Contract**; or
    - (ii) misappropriation of ideas under an implied contract.
  - (d) to the extent the **Insured** would have been liable in the absence of such contract or agreement;
23. for, arising out of or resulting from the manufacturing, handling, distribution, advertising, labeling, sale, application, ingestion, consumption, testing, exposure to or any use of any product or substance known as, made of or containing any one or more of the following:
  - (a) Diethylstilbestrol, or DES, or which has the same chemical formulary, or which is a stilbene derivative, or any other product or substance having substantially similar formulation, structure, or function by whatever name manufactured or marketed as DES;
  - (b) Ephedra, Ma huang, Ephedra sinica, Chinese Ephedra, ephedrine, pseudoephedrine, norpseudoephedrine, or any other product or substance having substantially similar formulation, structure or function, by whatever name manufactured, grown or marketed;
  - (c) Fenfluramine, Phentermine or Dexfenfluramine;
  - (d) Phenylpropanolamine, Phenylpropanolamine Hydrochloride, PPA or any product or drug containing any of these substances;
  - (e) any product containing silicone or similar which is in any form implanted or injected in the body; or
  - (f) tobacco or any tobacco products (or ingredients of, or used in the manufacture or production of, such products);
24. for, arising out of, or resulting from the willful non-compliance of any **Insured** with any Food and Drug Administration (FDA) rules, regulations, and statutes found at Food and Drugs, 21 C.F.R. Chapter 1 § 1.1 to § 1299, as amended and revised, or treating a **Patient** with any drugs, medical devices, biologics or radiation-emitting products that have been disapproved or not yet approved by the FDA;

25. for, arising out of, or resulting from any **Insured** gaining any profit, remuneration or advantage to which such **Insured** was not legally entitled;
26. against any **Subsidiary** designated in the Declarations or its past, present, or future **Employees**, directors, officers, trustees, review board or committee members, or volunteers acting in their capacity as such, which are based upon, arise out of, directly or indirectly result from, are in consequence of, or in any way involve any fact, circumstance, situation, transaction, event, **Accident**, or negligent acts, errors or omissions or series of facts, circumstances, situations, transactions, events, **Accidents** or negligent acts, errors or omissions happening before the date such entity became a **Subsidiary**;
27. relating to, or arising out of, asbestos, silica or lead;
28. associated with implementation of any compliance program or any policies, procedures or practices relating to participation as a provider of medical services to a managed care organization or under a healthcare benefit program, whether initiated voluntarily or pursuant to direction by, order of, or in settlement with a government body, hospital, healthcare facility or managed care organization;
29. for, arising out of, or resulting from any actual or alleged: (1) failure to obtain, effect, or maintain any form, policy, plan or program of insurance, stop loss or provider excess coverage, reinsurance, self-insurance, suretyship, or bond; (2) commingling, mishandling of or liability to pay, collect or safeguard funds; or (3) failure to collect or pay premiums, commissions, brokerage charges, fees or taxes;
30. due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing;
31. for, arising out of, or resulting from any loss, damage, or cost or expense of whatsoever nature directly or indirectly caused by, resulting from happening through, arising out of or in connection with any act of terrorism, regardless of any other cause contributing concurrently or in any other sequence to the loss, damage, cost or expense.

For the purpose of this exclusion, terrorism means an act or threat of violence or an act harmful to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear. In any action, suit or other proceedings where the Underwriters allege that by reason of this exclusion, a loss, damage, cost or expense is not covered by this Policy, the burden of proving that such loss, damage, cost or expense is covered shall be upon the **Insured**.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect;

32. to any **Claim** brought against any **Insured** by another **Insured** hereunder, provided however this exclusion shall not apply to:
  - (a) **Bodily Injury** sustained by any **Insured** as a recipient of **Professional Services** and/or **Technology Based Services** rendered, or failing to be rendered, by any other **Insured**;

- (b) an otherwise covered **Claim** under Insuring Agreement I.I.1., I.I.2. or I.I.3., made by a current or former **Employee** of the **Insured Organization**.
- 33. for, arising out of, or resulting from the distribution of unsolicited email, direct mail or facsimiles, or telemarketing;
- 34. for, arising out of, or resulting from the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person, or the environment, or that affects the value, marketability, condition or size of any property, provided this exclusion shall not apply to any **Patient** receiving **Professional Services**.

## VI. DEFINITIONS

Wherever used in this Policy, the following Definitions shall apply:

- A. **Accident** means an event or happening, including continuous or repeated exposure to substantially the same general harmful conditions, which involves one or more persons or entities.
- B. **Administration** means:
  - 1. giving counsel to **Employees** with respect to the **Insured's Employee Benefits Program**;
  - 2. interpreting the **Employee Benefits Program**;
  - 3. the handling of records in connection with the **Employee Benefits Program**; and
  - 4. effecting enrollment, termination or cancellation of **Employees** under the **Employee Benefits Program**, provided all such acts are authorized by the **Insured**.

**Administration** does not mean:

- 1. the exercise of or failure to exercise any authority or control respecting:
    - i. the management of any **Employee Benefits Program**; or
    - ii. the investment or disposition of any **Employee Benefits Program**;
  - 2. the rendering of any advice with respect to the investment of any assets of any **Employee Benefits Program**;
  - 3. handling payroll deductions; and
  - 4. handling overtime requirements or payments, or payroll issues concerning exempt or non-exempt **Employees**.
- C. **Advertising** means material which promotes the product, service or business of the **Insured Organization** or others.



- D. **Aircraft Products** means any aircraft whether or not heavier than air (including spacecraft and missiles) and any ground support, guidance, control or communications equipment used in connection therewith, and also includes parts, supplies, or equipment installed in or on or used in connection with aircraft, including tools, training aids, instructions, manuals, blue prints and other data, engineering and other advice, services and labor used in the operation, maintenance or manufacture of such products.
- E. **Assumed Under Contract** means liability assumed by the **Insured Organization** under a written hold harmless or indemnity agreement regarding the content of **Media Material** used in a **Media Communication**, but only as respects acts for which insurance is afforded under Insuring Agreement I.M.
- F. **Automobile** means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include **Mobile Equipment**, as hereinafter defined.
- G. **Bodily Injury** means physical injury (including death at any time resulting therefrom), mental injury, mental illness, mental anguish, humiliation, emotional distress, shock, sickness, disease or disability.
- H. **Breach Notice Law** means any federal, state, local or foreign statute or regulation that requires notice to persons whose **Personally Identifiable Information** was accessed or reasonably may have been accessed by an unauthorized person.
- I. **Breach Resolution and Mitigation Services** means a credit monitoring, identity monitoring or other solution selected from the products listed in the **Information Packet** provided with this Policy and offered to **Notified Individuals**. The product offered to **Notified Individuals** will be selected by the Underwriters in consultation with the **Insured Organization** and in accordance with the guidance provided in the Breach Resolution and Mitigation section of the **Information Packet** provided with this Policy.

The product offer will be included in the communication provided pursuant to Insuring Agreement I.J.3.

- J. **Call Center Services** means the provision of a call center to answer calls during standard business hours for a period of ninety (90) days following notification (or longer if required by applicable law or regulation) of an incident pursuant to Insuring Agreement I.J.3 (Notification Services). Such notification shall include a toll free telephone number that connects to the call center during standard business hours. Call center employees will answer questions about the incident from **Notified Individuals** and will provide information required by HITECH media notice or by other applicable law or regulation. **Call Center Services** will include up to 10,000 calls per day and will be provided in accordance with the terms and conditions set forth in the **Information Packet** provided with this Policy. **Call Center Services** will be provided by a service provider selected by the Underwriters in consultation with the **Insured Organization** from the list of service providers in the **Information Packet** provided with this Policy.
- K. **Claim** means:
  - 1. a written demand received by any **Insured** for money or services, including the service of a suit or institution of regulatory or arbitration proceedings;

2. with respect to coverage provided under Insuring Agreement I.K. only, institution of a **Regulatory Proceeding** against any **Insured**;
3. a written request or agreement to toll or waive a statute of limitations relating to a potential **Claim** described in paragraph 1. above; and
4. with respect to coverage provided under Insuring Agreement I.I.1. only, a demand received by any **Insured** to fulfill the **Insured Organization's** contractual obligation to provide notice of an incident (or reasonably suspected incident) described in Insuring Agreement I.I.1. pursuant to a **Breach Notice Law**;

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, or omissions, **Accidents** or from any continuing acts, errors, omissions, **Accidents** or from multiple **Security Breaches** arising from a failure of **Computer Security**, shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of claimants or **Insureds** involved in the **Claim**. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

L. **Claims Expenses** means:

1. reasonable and customary fees charged by an attorney(s) designated and agreed by the Underwriters in consultation with the **Insured**, but subject always to the Underwriters' final decision;
2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, or circumstance which might lead to a **Claim**, if incurred by the Underwriters, or by the **Insured** with the written consent of the Underwriters; and
3. the premium cost for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any **Claim** against an **Insured**; provided the Underwriters shall have no obligation to appeal or to obtain bonds.

**Claims Expenses** does not include any salary, overhead or other charges by the **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance which might lead to a **Claim** notified under this insurance, or costs to comply with any regulatory orders, settlements or judgments.

M. **Computer Expert Services** means costs for:

1. a computer security expert to determine the existence and cause of an actual or suspected electronic data breach which may require the **Insured Organization** to comply with a **Breach Notice Law** and to determine the extent to which such information was accessed by an unauthorized person or persons; and
2. a PCI Forensic Investigator that is approved by the PCI Security Standards Council and is retained by the **Insured Organization** in order to comply with the terms of a **Merchant Services Agreement** to investigate the existence and extent of an actual or suspected compromise of credit card data; and in the Underwriters' discretion, where a computer security expert described in 1. above has not been retained, for a computer security expert to provide advice and oversight in connection with the investigation conducted by the PCI Forensic Investigator; and

3. a computer security expert, up to USD 25,000 (which amount is part of and not in addition to the sublimit of coverage stated in Item 4.6.b of the Declarations), to demonstrate the **Insured's** ability to prevent a future electronic data breach as required by a **Merchant Services Agreement**.

**Computer Expert Services** will be provided in accordance with the terms and conditions set forth in the **Information Packet** provided with this Policy and will be provided by a service provider selected by the **Insured Organization** in consultation with the Underwriters from the list of service providers in the **Information Packet**.

- N. **Computer Security** means software, computer or network hardware devices, as well as the **Insured Organization's** written information security policies and procedures, the function or purpose of which is to prevent **Unauthorized Access or Use**, a denial-of-service attack against **Computer Systems**, infection of **Computer Systems** by malicious code or transmission of malicious code from **Computer Systems**. **Computer Security** includes anti-virus and intrusion detection software, firewalls and electronic systems that provide access control to **Computer Systems** through the use of passwords, biometric or similar identification of authorized users.
- O. **Computer Systems** means computers, any software residing on such computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:
1. operated by and either owned by or leased to the **Insured Organization**; or
  2. systems operated by a third party service provider and used for the purpose of providing hosted computer application services, including cloud services, to the **Insured Organization** or for processing, maintaining, hosting or storing the **Insured Organization's** electronic data, pursuant to written contract with the **Insured Organization** for such services.
- P. **Control Group** means the individuals holding the following positions in the **Insured Organization**: President; members of the Board of Directors; executive officers, including the Chief Executive Officer, Chief Medical Officer, Chief Operating Officer, and Chief Financial Officer; General Counsel, staff attorneys employed by the **Insured Organization**; Chief Information Officer; Chief Security Officer; Chief Privacy Officer; **Manager**; and any individual in a substantially similar position as those referenced above, or with substantially similar responsibilities as those referenced above, irrespective of the exact title of such individual and any individual who previously held any of the above referenced positions.
- Q. **Damages** means a civil monetary judgment, award or settlement, but does not include:
1. future profits, restitution, disgorgement of unjust enrichment or profits by an **Insured**, or the costs of complying with orders granting injunctive or equitable relief;
  2. return or offset of fees, charges, or commissions charged by or owed to an **Insured** for goods or services already provided or contracted to be provided;
  3. any damages which are a multiple of compensatory damages, fines, taxes or loss of tax benefits, sanctions or penalties, or the return of or reimbursement for fees, costs or expenses charged by any **Insured**;

4. punitive or exemplary damages, unless insurable by law in any applicable venue that most favors coverage for such punitive or exemplary damages;
  5. costs incurred by the **Insured** to correct, re-perform or complete any **Professional Services, Technology Based Services or Media Activities**;
  6. discounts, coupons, prizes, awards or other incentives offered to the **Insured's** customers or clients;
  7. liquidated damages to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement;
  8. fines, costs or other amounts an **Insured** is responsible to pay under a **Merchant Services Agreement**;
  9. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**; or
  10. judgments or awards deemed uninsurable by law.
- R. **Designated Premises** means all premises leased or rented to the **Insured Organization**, or premises temporarily occupied by the **Insured Organization** with permission of the owner.
- S. **Employee** means a person on the **Insured's** regular payroll, with federal and, if applicable, State taxes withheld, whose work is directed or controlled by the **Insured**, including part-time and seasonal **Employees** and leased workers. **Employee** does not include a temporary worker.
- T. **Employee Benefits Program** means the **Insured's** program providing some or all of the following benefits to its **Employees**:
1. group life insurance; group accident or health insurance, dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an **Employee** may subscribe to such benefits and such benefits are made generally available to those **Employees** who satisfy the plan's eligibility requirements;
  2. profit sharing plans, **Employee** savings plans; **Employee** stock ownership plans; pension plans and stock subscription plans; provided that no one other than an **Employee** may subscribe to such benefits and such benefits are made generally available to all **Employees** who are eligible under the plan for such benefits;
  3. unemployment insurance; social security benefits; workers' compensation and disability benefits; and
  4. vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family and civil leave; tuition assistance plans; transportation and health club subsidies.
- U. **Extended Reporting Period** means the periods of time stated in Item 7. of the Declarations after the end of the **Policy Period** for reporting **Claims**, as stated in Clause IX.

- V. **Grounding** means the withdrawal of one or more aircraft from flight operations or the imposition of speed, passenger or load restrictions on such aircraft because of the existence of or alleged existence of a defect, fault or conditions in any **Aircraft Product**.
- W. **Hostile Fire** means a fire which becomes uncontrollable or breaks out from where it was intended to be.
- X. **Independent Contractor** means any natural person **Independent Contractor** who performs labor or service for the **Named Insured** pursuant to a written contract or agreement, where such labor or service is under the exclusive direction of the **Named Insured**. The status of an individual as an **Independent Contractor** shall be determined as of the date of an alleged act, error or omission by any such **Independent Contractor** or as of the date of the **Accident**. This coverage shall apply in excess of any other valid and collectible insurance available to any such **Independent Contractor**.
- Y. **Information Packet** means the Information Packet provided with this Policy. The **Information Packet** is incorporated into and forms part of this Policy and may be updated by the Underwriters from time to time.
- Z. **Insured Organization's Products** means goods or products manufactured, sold, handled or distributed by the **Insured Organization** or by others trading under its name, including **Technology Products** and any container thereof (other than a vehicle) but shall not include a vending machine or any property, other than such container rented to or located for use of others but not sold.
- AA. **Legal Services** means fees charged by an attorney:
1. to determine the applicability of and actions necessary for the **Insured Organization** to comply with **Breach Notice Laws** due to an actual or reasonably suspected theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Information**;
  2. to provide necessary legal advice to the **Insured Organization** in responding to actual or suspected theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Information**; and
  3. to advise the **Insured Organization** in responding to credit card system operating regulation requirements for any actual or suspected compromise of credit card data that is required to be reported to the **Insured Organization's** merchant bank under the terms of a **Merchant Services Agreement**, but **Legal Services** does not include fees incurred in any actual or threatened legal proceeding, arbitration or mediation, or any advice in responding to credit card system operating regulations in connection with an assessment of **PCI Fines, Expenses and Costs**.
- Legal Services** will be provided in accordance with the terms and conditions set forth in the **Information Packet** and will be provided by an attorney selected by the **Insured Organization** in consultation with the Underwriters from the list of attorneys in the **Information Packet**.
- BB. **Loading or Unloading** means the handling of property:
1. after it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or **Automobile**;
  2. while it is in or on an aircraft, watercraft or **Automobile**; or

3. while it is being moved from an aircraft, watercraft or **Automobile** to the place where it is finally delivered;

but **Loading or Unloading** does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or **Automobile**.

- CC. **Loss** means, in relation to Insuring Agreements I.I., I.J., I.K, I.L. and I.M., **Damages, Claims Expenses, Penalties, PCI Fines, Expenses and Costs** and **Privacy Breach Response Services**.
- DD. **Management Control** means:
1. owning, directly or indirectly, more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of an entity's directors (in the case of a corporation), members of the board of managers (in the case of a limited liability company), management committee members (in the case of a joint venture or partnership) or persons serving in a functionally equivalent role for such an entity operating or organized outside of the United States; or
  2. having the right, pursuant to a written contract or the bylaws, charter, operating agreement or similar documents of an entity to elect, appoint or designate a majority of: the board of directors of a corporation; the management committee of a joint venture or partnership; the management board of a limited liability company; or persons serving in a functionally equivalent role for such an entity operating or organized outside of the United States.
- EE. **Manager** means a manager of a limited liability company.
- FF. **Media Activities** means **Media Communications** and/or the gathering, collection or recording of **Media Material** for inclusion in any **Media Communication** in the ordinary course of the **Insured Organization's** business.
- GG. **Media Communication** means the display, broadcast, dissemination, distribution or release of **Media Material** to the public by the **Insured Organization**.
- HH. **Media Material** means words, sounds, numbers, images, graphics or other information in any form, but does not mean computer software or the actual goods, products or services described, illustrated or displayed in a **Media Communication**.
- II. **Medical Director** means an employed or independent contractor physician whose responsibilities are:
1. oversight of the **Insured's** operations to ensure that appropriate care is provided;
  2. monitoring and implementation of resident care policies;
  3. oversight and supervision of physician services;
  4. overseeing the overall clinical care of residents to ensure that care is in line with all guidelines;
  5. ensuring the support of essential medical consultants;

6. oversight and supervision of clinical services of nurse practitioners or physician assistants in the performance of their role.

However, direct patient care provided by a **Medical Director** is excluded under this Policy unless otherwise scheduled in Item 11. of the Declarations.

JJ. **Merchant Services Agreement** means any agreement between an **Insured** and a financial institution, credit/debit card company, credit/debit card processor or independent service operator enabling an **Insured** to accept credit card, debit card, prepaid card, or other payment cards for payments or donations.

KK. **Mobile Equipment** means a land vehicle (including any attached machinery or apparatus) whether or not self-propelled:

1. not subject to motor vehicle registration;
2. maintained for use exclusively on premises owned by or rented to the **Insured Organization**, including the ways immediately adjoining;
3. designed for use principally off public roads; or
4. designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle:
  - (a) power cranes, shovels, loaders, diggers and drills;
  - (b) concrete mixers (other than the mix-in-transit type), graders, scrapers, rollers and on the road construction or repair equipment;
  - (c) air-compressors, pumps and generators including spraying, welding and building cleaning equipment; or
  - (d) geophysical exploration and well servicing equipment.

LL. **Named Insured** means the entity or person identified in Item 1. of the Declarations.

MM. **Notification Services** means:

1. notification by first class mail or e-mail to United States, Canadian or Mexican residents; and
2. notification by first class mail or e-mail to individuals residing outside the United States or Canada, but only to the extent reasonably practicable.

E-mail notification will be provided in lieu of first class mail to the extent reasonable, practicable and where permitted under the applicable **Breach Notice Law**. **Notification Services** will be provided by a service provider selected by the Underwriters in consultation with the **Insured Organization** from the list of service providers in the **Information Packet** provided with this Policy and will be provided in accordance with the terms and conditions set forth in the **Information Packet**.

NN. **Notified Individual** means an individual person to whom notice is given or attempted to be given under Insuring Agreement I.J.3. pursuant to a **Breach Notice Law**.

OO. **Patient** means any person or human body receiving **Professional Services**;

PP. **PCI Fines, Expenses and Costs** means the Payment Card Industry direct monetary fines, penalties, reimbursements, fraud recoveries or assessments owed by the **Insured Organization** under the terms of a **Merchant Services Agreement**, but only where such fines, penalties, reimbursements, fraud recoveries or assessments result both from the **Insured Organization's** actual or alleged noncompliance with published PCI Data Security Standards and from a data breach caused by an incident (or reasonably suspected incident) described in Insuring Agreement I.I.1. or I.I.2.; provided, **PCI Fines, Expenses and Costs** shall not include, any charge backs, interchange fees, discount fees, or prospective service fees.

QQ. **Penalties** means:

1. any civil fine or money penalty payable to a governmental entity that was imposed in a **Regulatory Proceeding** by the Federal Trade Commission, Federal Communications Commission, or any other federal, state, local or foreign governmental entity, in such entity's regulatory or official capacity; the insurability of **Penalties** shall be in accordance with the law in the applicable venue that most favors coverage for such **Penalties**; and
2. amounts which the **Insured** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment or settlement of a **Regulatory Proceeding** (including such amounts required to be paid into a "Consumer Redress Fund"); but and shall not include payments to charitable organizations or disposition of such funds other than for payment of consumer claims for losses caused by an event covered by Insuring Agreements I.I.1., I.I.2. or I.I.3.;

but shall not mean (a) costs to remediate or improve **Computer Systems**, (b) costs to establish, implement, maintain, improve or remediate security or privacy practices, procedures, programs or policies, (c) audit, assessment, compliance or reporting costs, or (d) costs to protect the confidentiality, integrity and/or security of **Personally Identifiable Information** from theft, loss or disclosure, even if it is in response to a regulatory proceeding or investigation.

RR. **Personal Injury** means:

1. **Bodily Injury**;
2. false arrest, false imprisonment, wrongful eviction, detention or malicious prosecution;
3. libel, slander, defamation of character or invasion of right of privacy, unless arising out of any advertising activities; or
4. wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor.

SS. **Personally Identifiable Information** means:

1. information concerning the individual that constitutes "nonpublic personal information" as defined in the Gramm-Leach Bliley Act of 1999, as amended, and regulations issued pursuant to the Act;



2. medical or health care information concerning the individual, including “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act;
3. information concerning the individual that is defined as private personal information under statutes enacted to protect such information in foreign countries, for **Claims** subject to the law of such jurisdiction;
4. information concerning the individual that is defined as private personal information under a **Breach Notice Law**; or
5. education records as defined by the Family Educational Rights and Privacy Act (FERPA), which are directly related to an individual’s attendance as a student;
6. the individual’s drivers license or state identification number; social security number; unpublished telephone number; and credit, debit or other financial account numbers in combination with associated security codes, access codes, passwords or pins; if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual’s financial account or medical record information but does not include publicly available information that is lawfully made available to the general public from government records.

**Personally Identifiable Information** does not include publicly available information that is lawfully made available to the general public from government records.

- TT. **Policy Period** means the period of time between the Inception Date and the Effective date of termination, expiration or cancellation of this Insurance shown in Item 2. of the Declarations and specifically excludes any **Extended Reporting Period**.
- UU. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to asbestos and/or lead (or products containing asbestos and/or lead whether or not the asbestos and/or lead is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever), smoke, vapor, soot fumes, acids, alkalis, toxic chemicals and waste (waste includes materials to be recycled, reconditioned or reclaimed).
- VV. **Privacy Law** means a federal, state or foreign statute or regulation requiring the **Insured Organization** to protect the confidentiality and/or security of **Personally Identifiable Information**.
- WW. **Privacy Policy** means the **Insured Organization’s** public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to **Personally Identifiable Information**.
- XX. **Products/Completed Operations Liability Hazard** means **Personal Injury** and/or **Property Damage** which arise out of the **Insured Organization’s Products**, or operations, or reliance upon a representation or warranty made at any time with respect thereto, but only if the **Personal Injury** or **Property Damage** occurs away from the premises owned by or rented to the **Insured**, and takes place:
1. after physical possession of such products has been relinquished to other; or
  2. after such operations have been completed or abandoned.

“Operations” include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (a) when all operations to be performed by or on behalf of the **Insured** under the contract have been completed;
- (b) when all operations to be performed by or on behalf of the **Insured** at the site of the operations have been completed;
- (c) when the portion of the work out of which the **Personal Injury** or **Property Damage** arises has been put to its intended use by any person or organisation other than another contractor or sub-contractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise completed, shall be deemed completed.

**Products/Completed Operations Liability Hazard** does not include **Personal Injury** and/or **Property Damage** arising out of:

1. the transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by any **Insured**, and that condition was created by the **Loading or Unloading** of that vehicle by any **Insured**; or
2. the existence of tools, uninstalled equipment or abandoned or unused materials.

YY. **Professional Services** means those professional services specifically identified in Item 12. of the Declarations. **Professional Services** does not include **Technology Based Services, Media Activities**, any services involving the creation, development, sale, distribution, installation, licensing or manufacturing of **Technology Products**, or work or activities performed by or on behalf of the **Insured Organization** or for the **Insured Organization** as an accountant, architect, surveyor, lawyer, insurance or real estate agent or broker, or civil or structural engineer.

ZZ. **Property Damage** means:

1. physical injury to or destruction of tangible property, including consequential loss of use thereof; or
2. loss of use of tangible property which has not been physically injured or destroyed.

provided that for purposes of coverage provided under Insuring Agreements I.I., I.J, I.K, and I.L only, electronic data shall not be considered tangible property.

AAA. **Public Relations and Crisis Management Expenses** shall mean the following costs approved in advance by the Underwriters in their discretion, and which are directly related to mitigating harm to the **Insured Organization's** reputation or potential **Loss** covered by the Policy resulting from an incident described in Insuring Agreement I.I.1. or I.I.2. or from a **Public Relations Event**:

1. costs incurred by a public relations or crisis management consultant;
2. costs for media purchasing or for printing or mailing materials intended to inform the general public about the incident, such costs to be limited to \$10,000;
3. for incidents or events in which notification services are not otherwise provided pursuant to Insuring Agreement I.I. or I.J., costs to provide notifications and notices via e-mail or first class mail to customers or patients where such notifications are not required by law (“voluntary notifications”), including to non-affected customers or patients of the **Insured Organization**;
4. costs to provide government mandated public notices related to breach events (including such notifications required under HITECH);
5. costs to provide services to restore healthcare records of **Notified Individuals** residing in the United States whose **Personally Identifiable Information** was compromised as a result of theft, loss or **Unauthorized Disclosure**; and
6. other costs approved in advance by the Underwriters.

**Public Relations and Crisis Management Expenses** must be incurred no later than twelve (12) months following the reporting of such **Claim** or breach event to the Underwriters and, with respect to clauses 1. and 2. above, within ninety (90) days following the first publication of such **Claim** or incident. If voluntary notifications are provided, e-mail notification will be provided in lieu of first class mail to the extent practicable.

BBB. **Public Relations Event** means the publication or imminent publication in a newspaper (or other general circulation print publication) or on radio or television of a covered **Claim** under this Policy.

CCC. **Regulatory Proceeding** means a request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar proceeding brought by or on behalf of the Federal Trade Commission, Federal Communications Commission, or any federal, state, local or foreign governmental entity in such entity’s regulatory or official capacity in connection with such proceeding.

DDD. **Related Party** means the **Insured Organization** and any past, present or future **Employees**, volunteer workers, directors, officers, **Managers**, partners or natural person **Independent Contractors** of the **Insured Organization**.

EEE. **Security Breach** means:

1. **Unauthorized Access or Use of Computer Systems**, including **Unauthorized Access or Use** resulting from the theft of a password from a **Computer System** or from any **Insured**;
2. a denial-of-service attack against **Computer Systems** or computer systems that are not owned, operated or controlled by an **Insured**; or
3. infection of **Computer Systems** by malicious code or transmission of malicious code from **Computer Systems**,

whether any of the foregoing is a specifically targeted attack or a generally distributed attack.

A series of continuing **Security Breaches**, related or repeated **Security Breaches**, or multiple **Security Breaches** resulting from a continuing failure of **Computer Security** shall be considered a single **Security Breach** and be deemed to have occurred at the time of the first such **Security Breach**.

FFF. **Subsidiary** means any corporation, limited liability company, joint venture or partnership listed in the endorsement attached to this Policy, while the **Named Insured** has **Management Control** over such entity, if the **Named Insured**:

1. had **Management Control** over such entity on the Inception Date of this Policy or such entity was an insured under a policy issued by the Underwriters of which this Policy is a renewal;
2. acquires **Management Control** after the Inception Date of this Policy provided the revenues of the entity do not exceed ten percent (10%) of the **Named Insured's** annual revenues for the four quarterly periods directly preceding inception of the **Policy Period**; or
3. acquires **Management Control** after the Inception Date of this Policy provided that if the revenues of the entity exceed ten percent (10%) of the **Named Insured's** annual revenues for the four quarterly periods directly preceding inception of the **Policy Period**, the provisions of Clause XVII., Mergers and Acquisitions, must be fulfilled;

provided that this Policy only provides coverage for acts, errors, omissions, incidents or events that take place while the **Named Insured** has **Management Control** over such entity.

GGG. **Technology Based Services** means computer and electronic technology services, including data processing, Internet services, data and application hosting, computer systems analysis, technology consulting and training, custom software programming for a specific client of the **Insured Organization**, computer and software systems installation and integration, computer and software support, and network management services performed by the **Insured**, or by others acting under the **Insured Organization's** trade name, for others for a fee, but shall not mean **Technology Products**.

HHH. **Technology Products** means a computer or telecommunications hardware or software product, or related electronic product, that is created, manufactured or developed by the **Insured Organization** for others, or distributed, licensed, leased or sold by the **Insured Organization** to others, for compensation, including software updates, service packs and other maintenance releases provided for such products.

III. **Third Party Information** means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not insured under this Policy which is not available to the general public and is provided to the **Insured** subject to a mutually executed written confidentiality agreement or which the **Insured Organization** is legally required to maintain in confidence; however, **Third Party Information** shall not include **Personally Identifiable Information**.

- JJJ. **Unauthorized Access or Use** means the gaining of access to or use of **Computer Systems** by an unauthorized person or persons or the use of **Computer Systems** in an unauthorized manner.
- KKK. **Unauthorized Disclosure** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by the **Insured Organization** and is without knowledge of, consent, or acquiescence of any member of the **Control Group**.

## VII. LIMIT OF LIABILITY

### A. Professional Liability Tower

1. The Limit of Liability stated in Item 4.1.a. of the Declarations as “Each **Claim**” is the Underwriters’ Limit of Liability payable under Insuring Agreement I.A., (Professional Liability).
2. The sublimit of liability stated in Item 4.1.a.i of the Declarations as “Each **Claim**” is the Underwriters’ sublimit of liability payable for Sexual/Physical Misconduct coverage under Insuring Agreement I.A., (Professional Liability).
3. The Limit of Liability stated in Item 4.1.b of the Declarations is the aggregate Limit of Liability payable under Insuring Agreement I.A., (Professional Liability).
4. The sublimit of liability stated in Item 4.1.b.i of the Declarations is the aggregate sublimit of liability payable for Sexual/Physical Misconduct coverage under Insuring Agreement I.A., (Professional Liability).

### B. Technology Based Services Liability, Technology Products Liability and Multimedia and Advertising Liability Tower

1. The Limit of Liability stated in Item 4.2.a. of the Declarations as “Each **Claim**” is the Underwriters’ Limit of Liability payable under Insuring Agreement I.B., (Technology Based Services Liability), Insuring Agreement I.C., (Technology Products Liability) and Insuring Agreement I.M., (Multimedia and Advertising Liability) combined.
2. The Limit of Liability stated in Item 4.2.b. of the Declarations is the aggregate Limit of Liability payable under Insuring Agreement I.B., (Technology Based Services Liability), Insuring Agreement I.C., (Technology Products Liability) and Insuring Agreement I.M., (Multimedia and Advertising Liability) combined.

### C. General Liability Tower

1. The Limit of Liability stated in Item 4.3.a. of the Declarations as “Each **Accident**” is the Underwriters’ Limit of Liability payable under Insuring Agreement I.D., (General Liability), Insuring Agreement I.E., (Products/Completed Operations Liability), Insuring Agreement I.F., (Fire Legal Liability), Insuring Agreement I.G., (Medical Payments) and Insuring Agreement I.H., (Employee Benefits Liability).
2. The sublimit of liability stated in Item 4.3.a.i. of the Declarations as “Each **Claim**” is the Underwriters’ sublimit of liability payable under Insuring Agreement I.F., (Fire Legal Liability).
3. The sublimit of liability stated in Item 4.3.a.ii. of the Declarations as “Each **Accident**” is the Underwriters’ sublimit of liability payable under Insuring Agreement I.G., (Medical Payments).

4. The Limit of Liability stated in Item 4.3.b. of the Declarations is the aggregate Limit of Liability payable under Insuring Agreement I.D., (General Liability), Insuring Agreement I.E., (Products/Completed Operations Liability), Insuring Agreement I.F., (Fire Legal Liability), Insuring Agreement I.G., (Medical Payments) and Insuring Agreement I.H., (Employee Benefits Liability).
5. The sublimit of liability stated in Item 4.3.b.i. of the Declarations is the aggregate sublimit of liability payable under Insuring Agreement I.G., (Medical Payments).

**D. Information Security and Privacy Liability, Regulatory Defense and Penalties, and PCI Fines, Expenses and Costs Tower**

1. The aggregate Limit of Liability stated in Item 4.4.a. of the Declarations is the Underwriters' combined total Limit of Liability payable under Insuring Agreements I.I.,(Information Security and Privacy Liability), I.K.,(Regulatory Defense and Penalties) and I.L., (PCI Fines, Expenses and Costs).
2. The sublimit of liability stated in Item 4.4.a.i. of the Declarations is the aggregate sublimit of liability payable under Insuring Agreement I.K., (Regulatory Defense and Penalties).
3. The sublimit of liability stated in Item 4.4.a.ii. of the Declarations is the aggregate sublimit of liability payable under Insuring Agreement I.L., (PCI Fines, Expenses and Costs).

**E. Privacy Breach Response Services Tower**

The amount stated in Item 4.6.a. of the Declarations is the maximum total number of **Notified Individuals** to whom notification will be provided or attempted for all incidents or series of related incidents giving rise to an obligation to provide **Notification Services, Call Center Services or Breach Resolution and Mitigation Services.**

The aggregate limit of coverage stated in Item 4.6.b. of the Declarations is the aggregate limit of coverage for all **Computer Expert Services, Legal Services and Public Relations and Crisis Management Services** combined.

**F. Policy Aggregate Limit of Liability**

The Limit of Liability stated in Item 4.5. of the Declarations is the Policy Aggregate Limit of the Underwriters' liability for all **Damages, Claims Expenses, medical payments Penalties and PCI Fines, Expenses and Costs** payable under this Policy.

- G. Neither the inclusion of more than one **Insured** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.

- H. The Limits of Liability stated in paragraphs A to E above shall apply separately to each Tower. The Limits of Liability stated in paragraphs A to D above are part of, and not in addition to, the overall Policy Aggregate Limit of Liability stated in Item 4.5. of the Declarations. Under no circumstances shall any one **Claim** trigger multiple towers.

- I. The Limit of Liability for the **Extended Reporting Period** shall be part of, and not in addition to the aggregate Limit of Liability for each Tower.
- J. The Underwriters shall not be obligated to provide **Privacy Breach Response Services**, after the number of **Notified Individuals** under Insuring Agreement I.J.3. reaches an aggregate of the number of **Notified Individuals** stated in Item 4.6.a of the Declarations. If the total number of individuals to be notified under the Policy exceeds the number of **Notified Individuals** stated in Item 4.6.a of the Declarations, the **Insured** shall be responsible for providing notification and credit monitoring services to such additional individuals in accordance with Clause VII.K. below.
- K. If the total number of notifications made pursuant to Insuring Agreement I.J.3. aggregates to more than the number of notifications stated in Item 4.6.a. of the Declarations, the **Insured Organization** will be responsible for paying for **Privacy Breach Response Services** with respect to any excess notifications, and such costs will not be covered by the Policy. If an incident involves notifications made pursuant to Insuring Agreement I.J.3. both within the notification limit stated in Item 4.6.a. of the Declarations and in excess of such limit, all excess notifications will be provided by the same service provider that provides **Notification Services** covered under the Policy, and the costs will be allocated between the Underwriters and the **Insured Organization** pro rata based on the number of covered and non-covered notifications.
- L. Unless otherwise specified in this Policy, **Privacy Breach Response Services** will be provided by the service providers listed in the **Information Packet** provided with this Policy. In the event a service provider is unable to or does not provide the services set forth, the Underwriters will procure similar services from other sources; provided, the maximum the Underwriters will pay for the costs of procuring and providing all **Privacy Breach Response Services** under Insuring Agreement I.J., including substitute products and services shall be no more than USD 2,000,000 in the aggregate for the **Policy Period**, which amount shall be in addition to the Policy Aggregate Limit of Liability shown in Item 4.5. of the Declarations. In the event there is a change of law, regulation or enforcement that prevents the Underwriters or its service providers from providing all or part of the **Privacy Breach Response Services**, the Underwriters will make reasonable efforts to substitute other services but, if this is not possible, the Underwriters shall not be obligated to provide such services.
- M. To the extent that costs to provide **Privacy Breach Response Services** are covered pursuant to a **Claim** described in Clause VI.K.4., such costs shall be covered solely under Insuring Agreement I.I. and not under Insuring Agreement I.J., or any other Insuring Agreement in this Policy.

#### VIII. DEDUCTIBLE

##### A. Professional Liability Tower

The Deductible amount set forth in Item 5.1. of the Declarations applies separately to each **Claim**. The Deductible shall be satisfied by monetary payments by the **Named Insured of Damages and Claims Expenses**.

##### B. Technology Based Services Liability, Technology Products Liability and Multimedia and Advertising Liability Tower

The Deductible amount set forth in Item 5.2. of the Declarations applies separately to each **Claim**. The Deductible shall be satisfied by monetary payments by the **Named Insured of Damages and Claims Expenses**.

C. **General Liability Tower**

The Deductible amounts set forth in Item 5.3. of the Declarations apply separately to each **Claim** or **Accident**, as applicable. The Deductible shall be satisfied by monetary payments by the **Named Insured** of **Damages, Claims Expenses** and medical payments.

D. **Information Security and Privacy Liability, Regulatory Defense and Penalties, and PCI Fines, Expenses and Costs Tower**

The Deductible amount set forth in Item 5.4. of the Declarations applies separately to each **Claim**. The Deductible shall be satisfied by monetary payments by the **Named Insured** of **Damages, Claims Expenses, Penalties** or **PCI Fines, Expenses and Costs**.

E. **Privacy Breach Response Services Tower**

**Notification Services, Call Center Services, and Breach Resolution and Mitigation Services** will only be provided for each incident, event or related incidents or events, requiring notification to at least the number of individuals set forth in Item 5.5.a of the Declarations. For incidents involving notification to fewer individuals there shall be no coverage for any such services under Insuring Agreement I.J.

For all **Computer Expert Services, Legal Services** and **Public Relations and Crisis Management Services**, the Deductible amounts set forth in Item 5.5.b. of the Declarations apply separately to each incident, event or related incidents or events, giving rise to an obligation to provide such services; and the Each Incident Deductible shall be satisfied by monetary payments by the **Named Insured** for such services.

F. In the event that **Damages, Claims Expenses**, medical payments, **Penalties** or **PCI Fines, Expenses and Costs** arising out of a **Claim** are subject to more than one Deductible, the applicable Deductible amounts shall apply to such **Damages, Claims Expenses**, medical payments, **Penalties** or **PCI Fines, Expenses and Costs**, provided that the sum of such Deductible amounts shall not exceed the largest applicable Deductible amount.

G. Satisfaction of the applicable Deductible is a condition precedent to the payment by the Underwriters of any amounts or providing of any services hereunder, and the Underwriters shall be liable only for the amounts in excess of such Deductible subject to the Underwriters' total Limit of Liability not exceeding the aggregate limits for each tower or limits of coverage for the **Beazley Breach Response Services** tower stated in the Declarations. The **Named Insured** shall make direct payments within the Deductible to appropriate other parties designated by the Underwriters.

**IX. EXTENDED REPORTING PERIOD**

This Clause applies to coverages afforded under this Policy on a Claims Made and Reported Basis and on an Incident or loss Discovered and Reported Basis.

A. In the event of cancellation or non-renewal of this insurance by the **Named Insured** designated in Item 1. of the Declarations, or by the Underwriters, the **Named Insured** shall have the right, upon payment in full and not proportionally or otherwise in part of the percentage shown in Item 7. of the Declarations of the full Premium set forth in item 6 of



the Declarations. In these circumstances, the Underwriters will issue an endorsement providing an **Extended Reporting Period** for the period of time set forth in Item 7. for **Claims** first made against any **Insured** during the **Policy Period** and reported in writing to the Underwriters during the **Extended Reporting Period**, and arising out of any act, error or omission, **Accident**, failure of **Computer Security**, **Security Breach**, incidents or events committed on or after the Retroactive Date and before the end of the **Policy Period** subject to the conditions set forth herein. In order for the **Named Insured** to invoke the **Extended Reporting Period** option, the payment of the additional premium set forth herein must be paid to the Underwriters within thirty (30) days of the non-renewal or cancellation.

- B. The Limit of Liability for the **Extended Reporting Period** shall be part of, and not in addition to, the Underwriters' Policy Aggregate Limit of Liability for the **Policy Period** set forth in Item 4.5. of the Declarations. The **Extended Reporting Period** does not apply to Insuring Agreement I.J.
- C. The quotation by the Underwriters of a different premium or Deductible or Limit of Liability or changes in Policy language for the purpose of renewal shall not constitute a refusal to renew by the Underwriters.
- D. The right to the **Extended Reporting Period** shall not be available to the **Named Insured** where cancellation or non-renewal by the Underwriters is due to non-payment of premium or failure of an **Insured** to pay such amounts in excess of the applicable Limit of Liability or within the applicable Deductible.
- E. All notices and premium payments with respect to the **Extended Reporting Period** shall be directed to the Underwriters through the entity named in Item 9.2. of the Declarations.
- F. At the commencement of the **Extended Reporting Period**, the entire premium shall be deemed earned, and in the event the **Named Insured** terminates the **Extended Reporting Period** for any reason prior to its natural expiration, the Underwriters will not be liable to return any premium paid for the **Extended Reporting Period**.

**X. OTHER INSURANCE**

This Insurance shall apply in excess of any other valid and collectible insurance or self-insurance available to any **Insured**, unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

The insurance provided for **Property Damage** to the structures or portions thereof rented to or temporarily occupied by the **Insured Organization**, including fixtures permanently attached thereto, where coverage is provided under Insuring Agreement I.F., shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the **Insured**.

**XI. NOTICE OF CLAIM, OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM**

**Occurrence Coverage:**

As soon as the **Insured** first becomes aware of an **Accident** or fire which has taken place during the **Policy Period**, it shall, as soon as practicable, notify the Underwriters through persons named in Item 10. of the Declarations

**Claims Made and Reported Coverage and Incident or loss Discovered and Reported Coverage:**

- A. If any **Claim** is made against the **Insured**, the **Insured** shall as soon as practicable notify the Underwriters during the **Policy Period** or 30 days after the Expiration of the **Policy Period**, through persons named in Item 10. of the Declarations and forward every demand, notice, summons or other process received by the **Insured** or its representative. The **Insured's** duty to provide notice in accordance with this provision is a condition precedent to coverage.
- B. With respect to Insuring Agreement I.J., for a legal obligation to comply with a **Breach Notice Law** because of an incident (or reasonably suspected incident) described in Insuring Agreement I.I.1. or I.I.2., such incident or reasonably suspected incident must be reported as soon as practicable during the **Policy Period** after discovery by the **Insured**; provided, however, that unless the **Insured** cancels the Policy, or the Underwriters cancel for non-payment of premium, incidents discovered by the **Insured** within sixty (60) days prior to expiration of the Policy shall be reported as soon as practicable, but in no event later than thirty (30) days after the end the **Policy Period**; provided further, that if this Policy is renewed by the Underwriters and **Privacy Breach Response Services** are provided because of such incident or suspected incident that was discovered by the Insured within sixty (60) days prior to the expiration of the Policy, and first reported during the thirty (30) day post **Policy Period** reporting period, then any subsequent **Claim** arising out of such incident or suspected incident is deemed to have been made during the **Policy Period**.

Notwithstanding the foregoing, if the **Named Insured** reasonably believes that the **Privacy Breach Response Services** provided as a result of such incident or suspected incident are not likely to meet or exceed the Deductible, then such incident or suspected incident may be reported at the **Named Insured's** option, but unless such incident or suspected incident is reported in accordance with the first paragraph of this Clause XI.B., there shall be no coverage for **Privacy Breach Response Services** in connection with such incident or suspected incident.

- C. If during the **Policy Period** the **Insured** first becomes aware of a negligent act, error or omission, **Accident** or **Security Breach** that could lead to a **Claim**, it must give written notice to the Underwriters through persons named in Item 10. of the Declarations during the **Policy Period** . Such notice must include:
1. the specific negligent act, error, or omission, **Accident** or **Security Breach** that could reasonably be the basis for a **Claim**;
  2. the injury or damage which may result or has resulted from the negligent act, error, or omission **Accident** or **Security Breach**; and
  3. the circumstances by which the **Insured** first became aware of the negligent act, error or omission **Accident** or **Security Breach**.

Any subsequent **Claim** made against the **Insured** arising out of such circumstance which is the subject of the written notice shall be deemed to have been made at the time written notice complying with the above requirements was first given to the Underwriters.

With respect to Insuring Agreements I.I and I.J., any incident or reasonably suspected incident reported to the Underwriters during the **Policy Period** and in conformance with Clause XI.B shall also constitute notice of a circumstance under this Clause XI.C

- D. A **Claim** or, a circumstance that might lead to a **Claim**, shall be considered to be reported to the Underwriters when notice is received by the Underwriters through the persons named in Item 10. of the Declarations.
- E. All **Claims** arising out of the same, continuing or related negligent act, error or omission or **Accident** or arising out of the same continuing or related **Security Breach** shall be considered a single **Claim** and deemed to have been made at the time the first of the related **Claims** is reported to the Underwriters.
- F. All **Claims** arising out of the same, continuing or related negligent act, error or omission in the **Administration** of the **Insured's Employee Benefits Program** shall be considered a single **Claim** and deemed to have been made at the time the first of the related **Claims** is reported to Underwriters.
- G. In the event of non-renewal of this Insurance by the Underwriters, the **Insured** shall have thirty (30) days from the Expiration Date of the **Policy Period** to notify the Underwriters of **Claims** made against the **Insured** during the **Policy Period** which arise out of any negligent act, error or omission **Accident** or **Security Breach** occurring prior to the termination date of the **Policy Period** and otherwise covered by this Insurance.

**All Coverages:**

If any **Insured** shall make any **Claim** under this Policy knowing such **Claim** to be false or fraudulent, as regards amount or otherwise, this Policy shall become null and void and all coverage hereunder shall be forfeited.

**XII. ASSISTANCE AND COOPERATION OF THE INSURED**

- A. The Underwriters shall have the right to make any investigation they deem necessary, and the **Insured** shall cooperate with the Underwriters in all investigations, including regarding the application and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as requested by the Underwriters. The **Insured** agrees not to take any action which in any way increases the Underwriters' exposure under this Policy.
- B. Upon the Underwriters' request, the **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of negligent acts, errors or omissions, incidents, events or **Accidents** with respect to which insurance is afforded under this Policy. The **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- C. The **Insured** shall not, except at its own cost, admit liability, make any payment, assume any obligation, incur any expense, enter into any settlement, stipulate to any judgment or award or otherwise dispose of any **Claim** without the consent of the Underwriters.

Compliance with a **Breach Notice Law** will not be considered as an admission of liability for the purposes of this Clause XII.

- D. Expenses incurred by the **Insured** in assisting and cooperating with the Underwriters do not constitute **Claims Expenses** under this Policy.

### XIII. ACTION AGAINST THE UNDERWRITERS

No action shall lie against the Underwriters unless, as a condition precedent thereto, there has been full compliance with all terms of this insurance, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment or award against the **Insured** after actual trial, **Regulatory Proceeding** or arbitration or by written agreement of the **Insured**, the claimant and the Underwriters. No person or organization shall have any right under this insurance to join the Underwriters as a party to an action or other proceeding against the **Insured** to determine the **Insured's** liability, nor shall the Underwriters be impleaded by the **Insured** or its legal representative.

### XIV. BANKRUPTCY

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Underwriters of their obligations hereunder.

### XV. SUBROGATION

In the event of any payment under this insurance, the Underwriters shall be subrogated to all the **Insured's** rights of recovery against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing before or after the payment of **Damages** by the Underwriters to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages, Claims Expenses** or **Loss** paid by the Underwriters, and lastly to the Deductible. Any additional amounts recovered shall be paid to the **Named Insured**.

### XVI. CHANGES

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this insurance or stop the Underwriters from asserting any right under the terms of this insurance; nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance, signed by the Underwriters.

### XVII. MERGERS AND ACQUISITIONS

- A. If during the **Policy Period**, the **Named Insured** merges with or acquires an entity and
1. the revenues of the merged or acquired entity do not exceed ten percent (10%) of the **Named Insured's** annual revenues as set forth in its most recent application for insurance;

2. the business operations of the merged or acquired entity are of a similar nature to those of the **Named Insured** as set forth in its most recent application for insurance; and
3. the merged or acquired entity is located in the same state as the **Named Insured** or any subsidiary,

then this Policy will automatically cover the merged or acquired entity, subject to the policy terms, conditions and limitations, from the date such merger or acquisition becomes final but only for negligent acts, errors or omissions, incidents, **Accidents** or events that take place subsequent to the merger or acquisition.

In the event the total amount of revenues of all merged and acquired entities during the **Policy Period** exceed ten percent (10%) of the **Named Insured's** annual revenues as set forth in its most recent application for insurance, the above provision shall no longer apply and any further mergers or acquisitions will be subject to paragraph B., below.

- B. In the event during the **Policy Period** the **Named Insured** merges or acquires an entity that does not fall within the criteria detailed in paragraph A. above, or where paragraph A. above no longer applies by virtue of the provision contained in the last sentence of paragraph A. above, then the **Named Insured** shall be required to give written notice to the Underwriters prior to the completion of a merger or acquisition of the **Named Insured**, and the Underwriters expressly reserve the right to request additional premium and/or to apply amended terms and conditions if this insurance is to remain in force subsequent to any merger or acquisition.

#### XVIII. ASSIGNMENT

The interest hereunder of any **Insured** is not assignable. If the **Insured** shall die or be adjudged incompetent, such insurance shall cover the **Insured's** legal representative as the **Insured**, as would be permitted by this Policy.

#### XIX. CANCELLATION

- A. The **Named Insured** may cancel this Policy by surrender thereof to the Underwriters, or by mailing to the Underwriters written notice stating when thereafter the cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
- B. The Underwriters may cancel this Policy by e-mailing, mailing or delivering to the **Named Insured** written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if the Underwriters cancel this Policy because the **Insured** has failed to pay a premium when due, this Policy may be cancelled by the Underwriters by mailing or delivering a written notice of cancellation to the **Named Insured** stating when not less than ten (10) days thereafter such cancellation shall be effective. The notice of cancellation shall state the reason for cancellation. The effective date of cancellation shall be no earlier than ten (10) days prior to the date of the notice and shall become the end of the **Policy Period**.
- C. If this Policy is cancelled pursuant to A. hereinabove, the Underwriters shall retain the customary short rate portion of the premium hereon. If this Policy is cancelled pursuant to B. hereinabove prior to any **Claim** being reported or **Loss** incurred under this Policy the

Underwriters shall retain the pro rata portion of the premium hereon. Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of cancellation.

- D. The premium shall be fully earned if any **Claim** or **Loss**, or circumstance that could reasonably be the basis for a **Claim** or **Loss**, is reported to the Underwriters on or before the date of cancellation.
- E. If the Underwriters decide not to renew this Policy, the Underwriters shall mail or deliver written notice to the **Named Insured** at least sixty (60) days before the end of the **Policy Period**. The notice of nonrenewal shall state the reason for nonrenewal.

**XX. SINGULAR FORM OF A WORD**

Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

**XXI. ENTIRE CONTRACT**

By acceptance of this Policy, the **Insured** agrees that the statements in the Declarations and application are his or her agreements and representations, that this insurance is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the **Insured** and the Underwriters relating to this insurance.

**XXII. NUCLEAR INCIDENT EXCLUSION**

The insurance provided by this Policy does not apply:

- A. To injury sickness, disease, death or destruction
  - 1. with respect to which an **Insured** under this Policy of insurance is also an **Insured** under a nuclear energy liability insurance issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada or would be an **Insured** under any such insurance but for its termination upon exhaustion of its limits of liability; or
  - 2. resulting from the hazardous properties of nuclear material and with respect to which (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (ii) the **Insured** is, or had this insurance not been issued would be, entitled to indemnity from the United States of America, or any agency thereof under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to **Bodily Injury**, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- C. To injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if

1. the nuclear material (i) is at any nuclear facility owned by, or operated by or on behalf of, an **Insured** or (ii) has been discharged or dispersed there from;
  2. the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **Insured**; or
  3. the injury, sickness, disease, death or destruction arises out of the furnishing by an **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to injury to or destruction of property at such nuclear facility.
- D. As used in this Clause: "hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof, "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (i) containing by-product material and (ii) resulting from the operation by any person or organization of any nuclear facility under paragraph (1) or (2) thereof; "nuclear facility" means
1. any nuclear reactor;
  2. any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel, or (iii) handling, processing or packaging waste;
  3. any equipment or device used for the processing, fabricating or alloying of special nuclear material if any time the total amount of such material in the custody of the **Insured** at the premises were such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 of any combination thereof, or more than 250 grams of uranium 235; or
  4. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste;

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

Provided, however, that this endorsement does not apply to the **Insured's** rendering or failure to render **Professional Services**.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this Clause is subject to the terms, exclusions, conditions and limitations of the insurance to which it is attached.

### **XXIII. SEVERAL LIABILITY**

The subscribing Underwriters' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.

#### XXIV. LICENSURE

- A. It is a condition of the coverage afforded under the Policy that the facilities of the **Insured Organization** and any **Insured** requiring a license to practice shall be licensed in accordance with all relevant federal, state and local requirements. The **Named Insured** warrants that as of the Inception Date of this Policy it has secured all relevant licenses.
- B. If, during the **Policy Period**, any **Insured's** licensure status is altered by withdrawal, revocation, denial, suspension or failure to renew, the **Insured Organization** shall give written notice of such change to the Underwriters within thirty days of the change becoming effective. Following receipt of such notice, Underwriters may elect, at their sole option, to revise any Insuring Agreements, definitions, exclusions, endorsements or other conditions of this Policy with respect to the **Insured**, with effect from such date of such withdrawal, revocation, denial, suspension or failure to renew. Such action does not waive the Underwriters' option to invoke the provisions of Clause XIX. of this Policy. Furthermore, the Underwriters' will have no obligation to respond to any **Claim** arising out of **Professional Services** or an **Accident** which took place subsequent to the date of withdrawal, revocation, denial, suspension or failure to renew.

#### XXV. SERVICE OF SUIT CLAUSE (U.S.A)

- A. It is agreed that in the event of the Underwriters' failure to pay any amount claimed to be due under this Insurance, the Underwriters will, at the **Insured's** request, submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this clause constitutes or should be understood to constitute a waiver of the Underwriters' rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or seek a transfer of a case to another court as permitted by the laws of the United States or any state in the United States. It is further agreed that service of processing such suit may be made upon the Underwriters' representative, designated in Item 14. of the Declarations, and that in any suit instituted against any one of them upon this contract, the Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.
- B. The Underwriters' representative designated in Item 14. of the Declarations is authorized and directed to accept service of process on the Underwriters' behalf in any such suit and/or upon the **Insured's** request to give a written undertaking to the **Insured** that they will enter a general appearance upon the Underwriters' behalf in the event such a suit shall be instituted.
- C. Pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the Underwriters hereby designate the Superintendent, Commissioner, or Director of Insurance or other officer specified for that purpose in the statute, or his successor in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on the **Insured's** behalf or any beneficiary hereunder arising out of this Policy, and hereby designate the Underwriters' representative listed in Item 14. of the Declarations as the person to whom said officer is authorized to mail such process or a true copy thereof.



**XXVI. CHOICE OF LAW**

Any disputes involving this Policy shall be resolved applying the law designated in Item 15. of the Declarations.