

**ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY, ARCHITECTS, ENGINEERS AND CONTRACTORS POLLUTION LIABILITY, TECHNOLOGY BASED SERVICES, TECHNOLOGY PRODUCTS, COMPUTER NETWORK SECURITY, AND MULTIMEDIA AND ADVERTISING AND PRIVACY LIABILITY**

NOTICE: Coverage under Insuring Clause I.A. of this Policy is provided on a Claims Made and Reported Basis and applies only to **Claims** first made against the **Insured** during the **Policy Period** and reported in writing to the Underwriters pursuant to the terms of this Insurance Policy. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**.

Insuring Clause I.B. of this Policy provides first party coverage on an incident discovered and reported basis and applies only to incidents first discovered by the **Insured** and reported to the Underwriters during the **Policy Period**.

Please review the coverage afforded under this Insurance Policy carefully and discuss the coverage hereunder with your insurance agent or broker.

In consideration of the payment of the premium and reliance upon the statements in the **Application** and subject to the Limit of Liability, deductible, exclusions, conditions and other terms of this Insurance (hereinafter referred to as the "Policy" or "Insurance", the Underwriters agree with the **Named Insured**:

**I. INSURING CLAUSES**

A. To 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** first made against the **Insured** during the **Policy Period** or **Optional Extension 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 one or more of the following acts or events committed or taking place on or after the Retroactive Date and before the end of the **Policy Period**:

**1. Architects and Engineers Professional Liability**

any unintentional act, error or omission in the performance of **Professional Services** by the **Insured** or by any person, including an independent contractor, for whom the **Named Insured** is legally responsible; or

**2. Architects, Engineers and Contractors Pollution Liability**

a **Pollution Condition** arising out of the performance of **Professional Services** or **Contracting Services** by the **Insured** or by any person, including an independent contractor, for whose **Pollution Condition** the **Named Insured** is legally responsible.

Insuring Clauses A.3., A.4., A.5., A.6. and B. only apply if Item 8. of the Declarations indicates that these Coverages have been purchased.

**3. Technology Based Services**

any negligent act, error or omission, or any unintentional breach of contract, in rendering or failing to render **Technology Based Services** by the **Insured** or by any person, including an independent contractor, for whose negligent act, error or omission or unintentional breach of contract the **Named Insured** is legally responsible;

**4. Technology Products**

any negligent act, error or omission, or any unintentional breach of contract, by the **Insured** that results in the failure of **Technology Products** to perform the function or serve the purpose intended;

**5. Computer Network Security and Privacy Liability**

a. the failure to prevent **Unauthorized Access to Computer Systems** that results in:

- (1) the destruction, deletion or corruption of electronic data on **Computer Systems**;
- (2) denial of service attacks against Internet sites or computers;
- (3) the failure to prevent transmission of malicious code from **Computer Systems** to third party computers and systems;  
or
- (4) the inability of a third party, who is authorized to do so, to gain access to **Computer Systems** or your **Technology Based Services**;

b. theft, loss or **Unauthorized Disclosure of Personally Identifiable Information or Third Party Information** that is in the care, custody or control of the **Named Insured**, or an independent contractor that is holding or processing such information on behalf of the **Named Insured**;

c. the **Named Insured's** failure to timely disclose an incident described in I.A.5.A. or I.A.5.B. in violation of any **Breach Notice Law**;

d. failure by the **Insured** to comply with that part of a **Privacy Policy** that specifically:

- (1) prevents or prohibits improper or intrusive collection of **Personally Identifiable Information** from a person;

- (2) requires notice to a person of the **Named Insured's** collection or use of, or the nature of the collection or use of his or her **Personally Identifiable Information**;
- (3) provides a person with the ability to assent to or withhold assent for (e.g. opt-in or opt-out) the **Named Insured's** collection or use his or her **Personally Identifiable Information**;
- (4) prohibits or restricts the **Named Insured's** disclosure, sharing or selling of a person's **Personally Identifiable Information**;
- (5) requires the **Named Insured** 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
- (6) mandates procedures and requirements to prevent the loss of **Personally Identifiable Information**;

provided the **Named Insured** must, at the time of such acts, errors or omissions have in force a **Privacy Policy** that directly addresses those subsections above that are relevant to such **Claim**.

## 6. Multimedia and Advertising

liability imposed by law or **Assumed Under Contract** arising out of:

- a. 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;
- b. invasion of or interference with the right to privacy or of publicity;
- c. misappropriation of any name or likeness for commercial advantage;
- d. false arrest, detention or imprisonment or malicious prosecution;
- e. invasion of or interference with any right to private occupancy, including trespass, wrongful entry, eviction or eavesdropping;
- f. plagiarism, piracy or misappropriation of ideas under implied contract;
- g. infringement of copyright;

- h. infringement of trade dress, domain name, title or slogan, or the dilution or infringement of trademark or service mark;
- i. negligence regarding the content of any **Media Communication**, including harm caused through any reliance or failure to rely upon such content; or
- j. misappropriation of trade secret

in the course of the **Named Insured's** performance of **Professional Services, Media Activities or Technology Based Services**;

**B. Privacy Breach Response Services**

To provide **Privacy Breach Response Services** to the **Named Insured** in excess of the **Deductible** because of an incident (or reasonably suspected incident) described in Insuring Clause A.5.A. and A.5.B. that first takes place on or after the Retroactive Date 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. Costs for a computer security expert to determine the existence and cause of an actual or suspected electronic data breach which may require the **Named Insured** 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. fees charged by an attorney to determine the applicability of and action necessary by the **Named Insured** to comply with a **Breach Notice Law** due to an actual or reasonably suspected theft or misuse of **Personally Identifiable Information**.
3. **Notification Services** to provide notification to:
  - (a) individuals who are required to be notified by the **Named Insured** 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 or misuse 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 Resolution and Mitigation Services**, provided all such costs payable under this subsection 6. must be for the purpose of

mitigating potential **Damages** resulting from the theft or misuse of **Personally Identifiable Information**.

**Privacy Breach Response Services** will be subject to the terms and conditions of this Policy and the conditions applicable thereto are set forth more fully in the Information Packet (which may be updated by the Underwriters from time to time) provided with this Policy, and 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 **Named Insured**.

## II. SUPPLEMENTARY PAYMENTS

All payments made under this Clause are not subject to the Each Claim Deductible.

### 1. Pre-Claims Assistance

If the **Insured** reports a **Circumstance** during the **Policy Period**, in accordance with Clause XI.B., until such time a **Claim** is made, any costs or expenses the Underwriters incur as a result of investigating or monitoring such **Circumstance**, will be paid for by the Underwriters. The decision to incur any costs or expenses to monitor or investigate such **Circumstance** shall be at the sole discretion of the Underwriters.

### 2. Defendants Reimbursement

Upon the Underwriters request, the **Insured** shall attend mediation meetings, arbitration proceedings, hearings, depositions and trials relative to the defense of a **Claim**. After the first three (3) days' attendance required for each **Claim**, the Underwriters shall reimburse the **Insured**, upon written request, for actual loss of earnings and reasonable expenses due to such attendance up to \$500 for each day in the aggregate for all **Insureds** subject to a maximum amount of \$15,000 for each **Claim**.

### 3. Disciplinary / Regulatory / Administrative Actions Reimbursement

The Underwriters will reimburse the **Insured**, upon written request, for legal fees and expenses up to \$30,000 in the aggregate for the **Policy Period**, incurred by the **Insured** with the prior written consent of the Underwriters, in responding to a disciplinary, regulatory or administrative action brought directly against the **Insured** during the **Policy Period** by a government agency provided that the disciplinary, regulatory or administrative action:

- a. arises out of **Professional Services**; and
- b. is reported pursuant to Section XI.A of this Policy.

### 4. Reputation Management Reimbursement

The Underwriters will reimburse the **Named Insured** fifty percent (50%) of the first \$30,000 in Reputational Management Expenses incurred by the **Named Insured** for reputational management consulting services which are incurred in connection with a **Claim**, circumstance or incident covered under this Policy that the **Named Insured** reasonably believes will have a material adverse effect upon the **Named Insured's** reputation.

Reputational Management Expenses means reasonable fees, costs, and expenses incurred by the Named Insured for reputational management consulting services provided by a public relations firm to the **Named Insured**.

### III. DEFINITIONS

Wherever used in this Policy in bold face type, the following definitions shall apply.

- A. **“Advertising”** means material which promotes the product, service or business of the **Named Insured** or others.
- B. **“Application”** means all signed applications, including all attachments and other materials submitted therewith or incorporated therein, and any other such documents submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other policy issued by the Underwriters, of which this Policy is a renewal, replacement or which it succeeds in time.
- C. **“Assumed Under Contract”** means liability assumed by the **Named Insured** 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 Clause A.6.
- D. **“Bodily Injury”** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- E. **“Breach Notice Law”** means any state, federal or foreign statute or regulation that requires notice to persons whose **Personally Identifiable Information** was accessed or may reasonably have been accessed by an unauthorized person.
- F. **“Breach Resolution and Mitigation Services”** means a credit monitoring, identity monitoring or other solution selected from the products listed in the Information Packet and offered to **Notified Individuals**. The product offered to **Notified Individuals** will be selected by the Underwriters in consultation with the **Insured** and in accordance with the guidance provided in the Breach Resolution and Mitigation section of the Information Packet.

- G. “**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 for which notice is provided pursuant to Insuring Clause I.B.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 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. **Call Center Services** will be provided by a service provider selected by the Underwriters in consultation with the **Named Insured** from the list of service providers in the Information Packet.

- H. “**Circumstance**” means any fact, event or situation that could reasonably be the basis for a **Claim**.

- I. “**Claim**” means a demand received by any **Insured** for money or services including the service of suit or institution of arbitration proceedings. “**Claim**” shall also mean a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, omissions or **Pollution Conditions** or from any continuing acts, errors, omissions or **Pollution Conditions** shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of Claimants or **Insureds** involved in the **Claim**. For all purposes, all such **Claims** shall be deemed to have been made at the time of the first such **Claim**, regardless of whether or not coverage was afforded by Underwriters when the first such **Claim** was made.

- J. “**Claims Expenses**” means:
1. reasonable and necessary fees charged by an attorney designated or consented to by the Underwriters;
  2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, if incurred by the Underwriters, or by the **Insured** with the prior written consent of the Underwriters; and
  3. premiums for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required for a **Claim** against any **Insured** for a covered act, error or omission, provided, however, that the Underwriters shall have no obligation to appeal or to obtain such bonds.



**Claims Expenses** do not include any salary, overhead or other charges of or by the **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** notified under this Insurance, or costs to remediate an act, error or omission without the prior written consent of the Underwriters.

- K. **“Cleanup Costs”** means reasonable and necessary costs, charges and expenses incurred with the prior written consent of the Underwriters in the investigation, removal or neutralization of a **Pollution Condition**, provided that such costs, charges and expenses are caused by a **Pollution Condition** arising out of the rendering of or failure to render **Professional Services** or the performance of or failure to perform **Contracting Services** by or on behalf of the **Named Insured**.
- L. **“Computer Systems”** means 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 **Named Insured**; or
  2. operated by a third party service provider and used for the purpose of providing hosted computer application services to the **Named Insured** or for processing, maintaining, hosting or storing the **Named Insured’s** electronic data, pursuant to written contract with the **Named Insured** for such services.
- M. **“Contracting Services”** means the performance of construction, drilling or remediation activities by or on behalf of the **Named Insured**.
- N. **“Damages”** means a monetary judgment, award or settlement of compensatory damages, including any pre-judgment and/or post-judgment interest thereon.

The term **Damages** shall not include or mean:

1. future profits, restitution, disgorgement of unjust enrichment or profits by an **Insured**, or the costs of an **Insured** to comply with orders granting injunctive or equitable relief;
2. return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
3. costs incurred by the **Insured** to correct, re-perform or complete any **Media Activities** or **Technology Based Services**;
4. any damages which are a multiple of compensatory damages;
5. fines, taxes or loss of tax benefits, sanctions or penalties assessed against the **Insured**;



6. punitive or exemplary damages, unless insurable by law under the law under which this Policy is construed;
  7. discounts, coupons, prizes, awards or other incentives offered to the **Insured's** customers or clients;
  8. 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;
  9. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**; or
  10. matters deemed uninsurable under the law pursuant to which this Policy shall be construed.
- O. **"Insured"** shall mean:
1. the **Named Insured**;
  2. a director or officer of the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
  3. an employee or **Temporary Employee** of the **Named Insured**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Named Insured's** business;
  4. a principal if the **Named Insured** is a sole proprietorship, or a partner if the **Named Insured** is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
  5. any person who previously qualified as an **Insured** under 2, 3 or 4 above prior to the termination of the required relationship with the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
  6. the estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Insurance;
  7. the lawful spouse or Domestic Partners of any of the person set forth in 2., 3., 4., 5., or 6. above, but only for **Claims** arising out of an act, error or omission actually or allegedly committed by such **Insured** and only to the extent that such Insured would otherwise be provided coverage under this Insurance. The Company has no obligation to make any payment for **Damages** or **Claims**

**Expenses** in connection with any **Claim** made against a spouse or Domestic Partner of an **Insured** for any actual or alleged acts, errors or omissions committed by such spouse or Domestic Partner;

For the purposes of this provision, the terms "Domestic Partner" shall mean any natural person qualifying as a domestic partner under the provisions of any applicable Federal, State, or local law; or the provisions of any formal program established by the **Named Insured**;

8. the **Named Insured** with regard to its participation in a joint venture, but solely for the **Named Insured's** liability that arises out of an unintentional act, error or omission in the performance of **Professional Services** by the **Named Insured** or for a **Pollution Condition** that arises out of the performance of **Professional Services** or **Contracting Services** by the **Named Insured**; and
  9. solely with respect to Insuring Clause I.A.2., the client for whom the **Named Insured** renders or rendered **Professional Services** or performs or performed **Contracting Services**, provided that a written contract or agreement is in effect between the **Named Insured** and the client requiring the client to be an additional insured under the **Named Insured's** architects, engineers and contractors pollution liability policy. However, such clients are covered under Insuring Clause I.A.2. of this Policy solely with respect to **Damages** and **Claims Expenses** arising from **Professional Services** rendered or **Contracting Services** performed by or on behalf of the **Named Insured** and are not covered for any **Damages** and **Claims Expenses** arising from the client's own acts, errors or omissions. Clients of the **Named Insured** are covered under Insuring Clause I.A.2. of this Policy, subject to Clause VIII., or the Limits of Liability required by the written contract or agreement, whichever is less.
- P. "**Media Communication**" means the display, broadcast, dissemination, distribution or release of **Media Material** to the public by the **Named Insured**.
- Q. "**Media Material**" means information in the form of words, sounds, numbers, images, or graphics in electronic, print or broadcast form, including **Advertising**, but does not mean computer software.
- R. "**Media Activities**" means **Media Communication** and/or the gathering, collection or recording of **Media Material** for inclusion in any **Media Communication** in the ordinary course of the **Named Insured's** business.
- S. "**Mediation**" means a non-binding process by which a qualified professional mediator mutually agreed upon by the parties intercedes between the parties with the intention to reconcile them to resolve a

**Claim.** The term **Mediation** shall not include or mean other dispute resolution by litigation or arbitration.

- T. **“Named Insured”** means only those persons, partnerships, corporations or entities specified in Item 1. of the Declarations.

The term **Named Insured** shall include any corporate entity while more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured** if such entity becomes so owned after the inception date of the Policy, subject to the terms and conditions of Clause XVII.A.

- U. **Notification Services** means notification by first class mail or e-mail. 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 **Named Insured** from the list of service providers in the Information Packet and will be provided in accordance with the terms and conditions set forth in the Information Packet.

- V. **Notified Individual** means an individual person to whom notice is given or attempted to be given under Insuring Clause I.B.3. pursuant to a **Breach Notice Law**.

- W. **“Optional Extension Period”** means the period of time after the end of the **Policy Period** for reporting **Claims** as provided in Clause XII. of this Policy.

- X. **“Personally Identifiable Information”** means:

1. information concerning the individual that constitutes “non-public personal information” as defined in the Gramm-Leach Bliley Act of 1999, as amended, and regulations issued pursuant to the Act;
2. medical or health care information concerning the individual, including “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act;
3. information concerning the individual that is defined as private personal information under a **Breach Notice Law**; or
4. the individual’s social security number, driver’s license or state identification number, unpublished telephone number, and credit, debit or other financial account numbers and 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.

- Y. **“Policy Period”** means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this Insurance and specifically excludes any **Optional Extension Period** or any prior policy period or renewal period.
- Z. **“Pollution Condition”** means the actual or alleged discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in **Bodily Injury, Property Damage** or **Cleanup Costs**.
- AA. **“Privacy Policy”** means the **Named Insured’s** public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to, **Personally Identifiable Information**.
- BB. **“Professional Services”** means those services performed for others by or on behalf of the **Named Insured** in the capacity as an architect; engineer; land surveyor; landscape architect; interior designer; construction manager; project manager; forensic consultant; environmental consultant; sustainability consultant; or design, construction or project consultant or planner.
- CC. **“Property Damage”** means:
1. physical injury to or destruction of any tangible property, including the loss of use thereof; or
  2. loss of use of tangible property that has not been physically injured or destroyed.
- DD. **“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 **Named Insured**, 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 **Named Insured’s** trade name, for others for a fee, but shall not mean **Technology Products**.
- EE. **“Technology Products”** means a computer or telecommunications hardware or software product, or related electronic product that is created, manufactured or developed by the **Named Insured** for others, or distributed, licensed, leased or sold by the **Named Insured** to others, for

compensation, including software updates, service packs and other maintenance releases provided for such products.

- FF. **“Temporary Employee”** means a person furnished or leased to the **Named Insured** to meet short term or project specific workloads and for whom the **Named Insured** has the right to direct and control the means of performance.
  
- GG. **“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 **Named Insured** is legally required to maintain in confidence; however, **Third Party Information** shall not include **Personally Identifiable Information**.
  
- HH. **“Unauthorized Access”** means:
  - 1. the gaining of access to or use of **Computer Systems** by an unauthorized person or persons; or
  - 2. the use of **Computer Systems** in an unauthorized manner.
  
- II. **“Unauthorized Disclosure”** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by the **Named Insured** and is without knowledge of, consent, or acquiescence of any director, officer, principal, partner, or any member of the risk management or legal department of the **Named Insured**.

#### IV. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions of this Policy, any **Claim** against the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.
  
- B. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions, and other terms and conditions of this Policy, 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 Clause I.A.6.
  
- C. When the Underwriters defend a **Claim**, it will pay **Claims Expenses** incurred with its prior written consent. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Each **Claim** Deductible.

- D. The Underwriters shall have the right to make any investigation it deems necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and with respect to coverage.

However, notwithstanding the above, the **Insured's** rights under this Policy shall not be prejudiced by any refusal to disclose the identity of any confidential source of information, or to produce any documentation or information obtained in the course of **Media Activities** in respect of which the **Insured** has asserted a claim of reporter's privilege or any other privilege regarding the protection of news-gathering activities.

- E. If the **Insured** shall refuse to consent to any settlement or compromise recommended by the Underwriters and acceptable to the Claimant and elects to contest the **Claim**, the Underwriters liability for any **Damages** and **Claims Expenses** shall not exceed:

1. the amount for which the **Claim** could have been settled, less the remaining Each **Claim** Deductible, plus the **Claims Expenses** incurred up to the time of such refusal, and
2. fifty percent (50%) of any **Claims Expenses** incurred after the date such settlement or compromise was recommended to the **Insured** with the remaining fifty percent (50%) of such **Claims Expenses** to be borne by the **Insured** at their own risk and uninsured;

or the applicable Limit of Liability, whichever is less. 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** shall not be considered in determining the amount for which a **Claim** could have been settled.

- F. It is further provided that the Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **Damages** and/or **Claims Expenses** or after deposit of the 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 thereof by tendering control of said defense to the **Insured**.

- G. To the extent that Underwriters pay any Damages, Claims Expenses or other sums that are not covered under this Policy, Underwriters are entitled to reimbursement from the named Insured and any Insured (or other party) on whose behalf such Damages, Claims Expenses, or sums are paid.

V. TERRITORY

This Policy applies to **Claims** made and acts, errors or omissions or **Pollution Conditions** committed or arising, or **Privacy Breach Response Services** occurring anywhere in the world.

VI. EXCLUSIONS APPLICABLE TO ALL COVERAGES UNDER THIS INSURANCE

The coverage under this Insurance does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim**, or to any **Privacy Breach Response Services**:

A. **Criminal, Dishonest, Intentional, Fraudulent, Malicious, Willful or Knowing Acts**

arising out of or resulting from any criminal, dishonest, intentional, fraudulent, malicious, willful or knowing act, error or omission committed by any **Insured**; however, 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 admission by the **Insured**, establishing such criminal, dishonest, intentional, fraudulent, malicious willful or knowing 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**.

B. **Prior Knowledge, Prior Notice and Prior Acts**

1. arising out of or resulting from any actual or alleged act, error, omission, incident, or **Pollution Condition** committed or arising prior to the inception date of this Insurance:
  - a. if on or before the Knowledge Date set forth in Item 7 of the Declarations any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** knew or could have reasonably foreseen that such act, error or omission or **Pollution Condition** might be expected to be the basis of a **Claim**; or
  - b. in respect of which any **Insured** has given notice of a **Circumstance** to the insurer of any other policy in force prior to the inception date of this Policy.
2. arising out of or resulting from related or continuing acts, errors or omissions or **Pollution Conditions** where the first such act, error



or omission or **Pollution Condition** was committed or arose prior to the Retroactive Date set forth in Item 6. of the Declarations.

C. **Insured versus Insured**

For, arising out of, or resulting from a **Claim** by or on behalf of any **Insured**; provided, that this exclusion shall not apply to:

1. a **Claim** by or on behalf of any client of the **Named Insured** who is an **Insured** by virtue of Clause III.O.9; or
2. an otherwise covered Claim under Insuring Clause I.A.5.A., I.A.5.B. or I.A.5.C. made by an employee of the **Named Insured**.

D. **Ownership Interest and Outside Positions**

1. arising out of or resulting from any **Insured's** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **Named Insured**; or
2. made by any entity, arising out of **Professional Services, Contracting Services, Media Activities or Technology Based Services** performed for such entity, or **Technology Products** provided to such entity which:
  - a. is operated, managed or controlled by an **Insured** or in which any **Insured** has an ownership interest which cumulatively exceeds twenty-five percent (25%), or in which any **Insured** is an officer or director; or
  - b. operates, controls or manages the **Named Insured**, or has an ownership interest of more than fifteen percent (15%) in the **Named Insured**.

E. **Discrimination, Humiliation, Harassment and Misconduct**

for or arising out of or resulting from any actual or alleged discrimination, humiliation, harassment or misconduct because of age, color, race, sex, creed, national origin, marital status, sexual preference or orientation, religion, disability or pregnancy; provided, that this exclusion shall not apply to any **Claim** based upon the Americans with Disabilities Act of 1990 (ADA), as amended, or the Fair Housing Act (FHA), or any state or local versions of those acts, and arising out of the **Insured's** rendering or failure to render **Professional Services**.

F. **Contractual Assumption of Liability**

arising out of or resulting from liability assumed by the **Insured** under any contract or agreement either oral or written, including any hold harmless or indemnity agreements, except:

1. to the extent the **Insured** would have been liable in the absence of such contract or agreement; or
2. to the extent the **Insured** has contractually assumed an obligation to reimburse any person or entity for the reasonable costs of defense of an **Insured's** client pursuant to any hold harmless or indemnity agreement as long as such obligation is limited to the proportionate share of the **Insured's** liability for rendering **Professional Services**, and only upon a final adjudication in a legal proceeding of proportionate fault against the Insured. This exception shall not apply to any immediate duty to defend assumed by the **Insured**, and Underwriters shall have no obligation to defend the client or to pay any costs incurred by client on an ongoing or interim basis. Underwriters will, however, have the right, to be exercised in their sole discretion, to appoint counsel to defend both the **Insured** and the client should applicable ethical rules permit such representation. If the client elects to not accept a joint defense from Underwriters, then this exception shall not apply.

G. **Express Warranties, Representations, Guarantees and Promises**

arising out of or resulting from:

1. breach of any express warranty or representation except for an agreement to perform within a reasonable standard of care or skill consistent with applicable industry standards; or
2. a demand for satisfaction of or breach of guarantee or any promises including, without limitation, cost savings, cost of construction, maximum construction price, financing, profits, or return on investment.

H. **Faulty Workmanship**

under Insuring Clause I.A.1 arising out of the cost to repair or replace any faulty workmanship performed in whole or in part by any **Insured** on any construction, erection, fabrication, installation, assembly, manufacture or remediation, including any materials, parts, labor or equipment furnished in connection with such repair or replacement.

I. **Employers Liability and Workers Compensation**

for or arising out of or resulting from:

1. **Bodily Injury** to any employee of the **Named Insured** arising out of and in the course of employment by the **Named Insured**;
2. the **Named Insured's** employment obligations, decisions, practices or policies as an employer; or
3. any obligation which the **Insured** or any carrier as insurer may be liable under any workers compensation, unemployment compensation or disability benefits law or similar law.

J. **Property Liability**

arising out of or resulting from the **Insured's** ownership, rental, lease, maintenance, operation, use, repair, voluntary or involuntary sale, transfer, exchange, gift, abandonment or condemnation of any real or personal property including without limitation, automobiles, aircraft, watercraft and other kinds of conveyances.

K. **Products Liability**

arising out of or resulting from the design or manufacture of any goods or products for multiple sales or mass distribution which are sold or supplied by the **Insured** or by others under license from the **Insured**; provided, that this exclusion shall not apply to any **Claim** which is covered pursuant to Insuring Clause I.A.4 of this Policy.

L. **Transportation, Shipment or Delivery of Waste, Products or Materials**

under Insuring Clause I.A.2 arising out of or resulting from any waste or any products or materials transported, shipped or delivered via watercraft, aircraft, motor vehicle, mobile equipment or rolling stock to a location beyond the boundaries of a site at which **Professional Services** are being rendered or **Contracting Services** are being performed.

M. **Property Damage to Named Insured's Work and Products**

under Insuring Clause I.A.2 for any **Property Damage**:

1. to work performed by or on behalf of the **Named Insured** resulting from the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith; or
2. to any goods or products which are sold or supplied by the **Insured** or by others under license from the **Insured** resulting from such goods or products or any portion thereof.

**VII. EXCLUSIONS APPLICABLE TO INSURING CLAUSES I.A.3., I.A.4., I.A.5., I.A.6. and I.B.**

The coverage under Insuring Clauses I.A.3., I.A.4., I.A.5., I.A.6. and I.B. of this Policy does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim** or to any **Privacy Breach Response Services**:

**A. Contractual Liability**

For, arising out of or resulting from any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written; provided, that this exclusion will not apply to:

1. an otherwise covered **Claim** under Insuring Clauses I.A.3 and I.A.4.;
2. only with respect to coverage provided under Insuring Clause I.A.5.B., to any obligation of the **Named Insured** to maintain the confidentiality or security of **Personally Identifiable Information** or of **Third Party Information**;
3. with respect to Insuring Clause I.A.6.:
  - a. liability **Assumed Under Contract**; or
  - b. misappropriation of ideas under an implied contract;
4. to computer expert services or legal services covered under Insuring Clause B.1. and B.2.; or
5. to the extent the Insured would have been liable in the absence of such contract or agreement.

**B. Business Risks**

for or arising out of or resulting from:

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

C. **Licensing Fees and Royalty Payments**

arising out of or resulting from any actual or alleged obligation to make licensing fee or royalty payments, including but not limited to the amount or timeliness of such payments.

D. **Reprinting, Recall, Removal, Disposal, Withdrawal, Inspection, Repair, Replacement, Reproduction Costs and Expenses**

for or arising out of or resulting from any costs or expenses incurred or to be incurred by the **Insured** or others for:

1. the reprinting, recall, removal or disposal of any **Media Material**, including any media or products containing such **Media Material**; or
2. the withdrawal, recall, inspection, repair, replacement, reproduction, removal or disposal of:
  - a. **Technology Products**, including any products or other property of others that incorporate **Technology Products**;
  - b. work product resulting from or incorporating the results of **Technology Based Services**; or
  - c. any products or other property on which **Technology Based Services** are performed;

provided, that this exclusion shall not apply to **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 **Technology Based Services**.

E. **Electrical and Telecommunications Failure and Malfunction and Force Majeure**

arising out of, resulting from or alleging:

1. any failure or malfunction of electrical or telecommunications infrastructure or services, unless under the **Named Insured's** operational control; or
2. fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, act of God or other physical or force majeure event.

F. **Antitrust**

for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, violation of the Sherman Antitrust Act, the Clayton Act, the Robinson-Patman Act, as amended, or any similar law or

legislation of any state, province or other jurisdiction, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive or misleading advertising.

**G. Federal Trade Commission and Federal Communications Commission**

brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any similar governmental entity, in such entity's regulatory or official capacity.

**H. Intellectual Property**

for, arising out of or resulting from any actual or alleged:

1. infringement of copyright or misappropriation of trade secret arising out of or related to **Technology Products**; or
  2. disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person prior to the date he or she became an employee, officer, director, principal or partner of the **Named Insured**.
- I. Only with respect to Insuring Clauses I.A.5. and I.B., for, arising out of or resulting from:
1. the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Information** or other personal information by, on behalf of, or with the consent or cooperation of the **Named Insured**; 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**.

**VIII. LIMIT OF LIABILITY**

- A. The Limit of Liability stated in Item 3.(a) of the Declarations for each **Claim** is the aggregate limit of the Underwriters liability for all **Damages** and **Claims Expenses** arising out of each **Claim**.
- B. The sublimit stated in Item 3.(b) of the Declarations is the aggregate sublimit of liability payable under Insuring Clause I.B. of this Policy and is part of, and not in addition to, the Policy Aggregate Limit of Liability stated in Item 3.(c).
- C. The Aggregate for the **Policy Period** stated in Item 3.(c) of the Declarations is the Underwriters combined total Limit of Liability for all **Damages, Claims Expenses** and **Privacy Breach Response Services** arising out of all **Claims** which are covered under the terms and conditions of this Policy, and 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.

- D. The Underwriters' maximum aggregate Limit of Liability with respect to all **Claims** brought by or on behalf of or in the name or right of or involving the same claimant on a single project or related projects shall not exceed the Each **Claim** Limit of Liability stated in Item 3.(a) of the Declarations.
- E. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Policy Period**.
- F. The Underwriters shall not be obligated to provide **Privacy Breach Response Services** after the sublimit stated Item 3.(b) of the Declarations has been exhausted by payment of **Privacy Breach Response Services**.
- G. Unless otherwise specific in this Policy, **Privacy Breach Response Services** will be provided by the services providers listed in the Information Packet. In the event a service provider is unable or does not provide the services set forth, the Underwriters will procure similar services from other sources.

#### **IX. DEDUCTIBLE**

- A. The Each **Claim** Deductible stated in Item 4.(a) of the Declarations applies separately to each **Claim**. The Each **Claim** Deductible shall be satisfied by uninsured monetary payments by the **Named Insured of Damages and Claims Expenses** resulting from **Claims** first made during the **Policy Period** and the **Optional Extension Period** (if applicable) and reported to the Underwriters pursuant to the terms of this Policy. .
- B. For all **Privacy Breach Response Services** the Deductible amount stated in Item 4.(b) of the Declarations applies separately to each incident, event or related incidents or events, giving rise to an obligation to provide **Privacy Breach Response Services** and shall be satisfied by monetary payments by the **Named Insured** for such services.
- C. If the **Insured** and the Underwriters agree to use **Mediation** and the **Claim** is fully and finally resolved through the use of **Mediation**, the Insured's Deductible obligation shall be reduced by fifty percent (50%) of the Each **Claim** Deductible, up to \$25,000 for such **Claim**.
- D. If the **Insured** and the Underwriters agree to fully and finally resolve a **Claim** within six (6) months of when the **Claim** is first made against the **Insured**, the **Insured's** Deductible obligation shall be reduced by fifty percent (50%) of the Each **Claim** Deductible, up to \$25,000 for such **Claim**. The total credit applied to the **Insured's** Each **Claim** Deductible under Clause IX.C. and IX.D. for any **Claim** shall not exceed fifty percent (50%) or \$25,000.



- E. Satisfaction of the applicable Deductible is a condition precedent to the payment by the Underwriters of any amounts or providing any services hereunder, and the Underwriters shall be liable only for the amounts in excess of such Deductible subject to the Underwriters' total liability not exceeding the Limits of Liability stated in Item 3. of the Declarations. The **Named Insured** shall make direct payments within the Each **Claim** Deductible to appropriate other parties designated by the Underwriters.

Any payments by the **Named Insured** in satisfaction of its deductible obligations under any other valid and collectible insurance shall not satisfy the Each **Claim** Deductible under this Policy.

#### X. INNOCENT INSURED

- A. Whenever coverage under this Insurance would be excluded, suspended or lost because of Exclusion VI.A relating to criminal, dishonest, intentional, fraudulent, malicious, willful or knowing acts, errors or omissions by any **Insured**, and with respect to which any other **Insured** did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof, then the Underwriters agree that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Insureds** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in Exclusion VI.A.

This provision is inapplicable to any **Claim** or **Circumstance** against the **Named Insured** arising from acts, errors or omissions known to any present or former principal, partner, director or officer of the **Named Insured**.

- B. With respect to this provision, the Underwriters obligation to pay in such event shall only be in excess of the full extent of any recoverable assets of any **Insured** to whom Exclusion VI.A. applies and shall be subject to the terms, conditions and limitations of this Policy.

#### XI. NOTICE OF CLAIM OR CIRCUMSTANCE

- A. If any **Claim** is made against an **Insured**, the **Insured** shall forward as soon as practicable to the Underwriters through the persons named in Item 10.(a) of the Declarations written notice of such **Claim** in the form of a facsimile, email or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative, but in no event later than sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period**, if purchased.
- B. If after the Knowledge Date set forth in Item 7 of the Declarations any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** first becomes aware of any **Circumstance** and gives written notice to the

Insurer in the form of a facsimile, email or express or certified mail through persons named in Item 10.(a) of the Declarations as soon as practicable during the **Policy Period** of:

1. the specific details of the act, error or omission or **Pollution Condition** in the provision of **Professional Services, Contracting Services, Media Activities or Technology Based Services** or relating to **Technology Products** that gave rise to the **Circumstance**;
2. the injury or damage which may result or has resulted from the **Circumstance**; and
3. the facts by which such director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** first became aware of the act, error or omission or **Pollution Condition**

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

- C. A **Claim** shall be considered to be reported to the Underwriters when written notice is first received by the Underwriters in the form of a facsimile, email or express or certified mail through persons named in Item 10.(a) of the Declarations of the **Claim** or of a **Circumstance** if provided in compliance with Clause B. above.
- D. With respect to Insuring Clause I.B., for a legal obligation to comply with a **Breach Notice Law** because of an incident (or reasonably suspected incident) described in Insuring Clauses I.A.5.B., such incident or reasonably suspected incident must be reported as soon as practicable during the **Policy Period** after discovery by the **Insured**.

## XII. OPTIONAL EXTENSION PERIOD

- A. If this Policy is cancelled or non-renewed by the Underwriters or by the **Named Insured**, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 9.(a) of the Declarations of the total premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the period of time set forth in Item 9.(b) of the Declarations after the end of the **Policy Period**, but only with respect to any act, error or omission or **Pollution Condition** committed or arising on or after the Retroactive Date and before the effective date of cancellation or non-renewal.
- B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Policy must have been paid. The right

to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to the Underwriters within sixty (60) days after the effective date of cancellation or non-renewal. If such notice and premium payment is not so given to the Underwriters, there shall be no right to purchase the **Optional Extension Period**.

- C. In the event of the purchase of the **Optional Extension Period**, the entire premium for the **Optional Extension Period** shall be deemed earned at its commencement.
- D. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Policy Period**.
- E. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Clause XIII.

**XIII. REPRESENTATIONS**

By acceptance of this Policy, all **Insureds** agree that the statements contained in the **Application** are their agreements and representations, that they shall be deemed material to the risk assumed by the Underwriters, and that this Policy is issued in reliance upon the truth thereof.

**XIV. OTHER INSURANCE**

This Insurance shall apply in excess of:

- A. any other valid and collectible insurance available to any **Insured**, including, but not limited to, any project specific professional liability and/or contractors pollution liability insurance; and
- B. any self insured retention or deductible portion thereof

unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

**XV. ASSIGNMENT**

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

**XVI. CANCELLATION AND NONRENEWAL**

- 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 such 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 mailing or delivering to the **Named Insured** at the address shown in the Declarations 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** at the address shown in the Declarations 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 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 by the Underwriters shall be equivalent to mailing
- 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, 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. If the Underwriters decide not to renew this Policy, the Underwriters shall mail or deliver written notice to the **Named Insured** at the address shown in the Declarations at least sixty (60) days before the end of the **Policy Period**. The notice of nonrenewal shall state the reason for nonrenewal.

## XVII. MERGERS AND ACQUISITIONS

- A. If during the **Policy Period**, the **Named Insured** acquires another entity for whom more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured**, then no **Insured** shall have coverage under this Policy for any **Claim** that arises out of any act, error or omission or **Pollution Condition**, whether committed or arising either before or after such acquisition:
  - 1. by the acquired entity or any person employed by the acquired entity; or
  - 2. involving or relating to the assets, liabilities, or **Computer Systems** of the acquired entity.

The foregoing provision shall not apply if the **Named Insured** gives the Underwriters written notice within sixty (60) days after the effective date of the acquisition, obtains the written consent of the Underwriters to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by the Underwriters.

- B. If during the **Policy Period** the **Named Insured** consolidates or merges with another entity such that the **Named Insured** is not the surviving entity, is acquired by another entity, or sells substantially all of its assets to any other entity, then coverage under this Policy shall not apply to acts, errors, omissions or other breach or **Pollution Conditions** committed or arising subsequent to such consolidation, merger or acquisition. The **Named Insured** shall provide written notice of such consolidation, merger or acquisition to the Underwriters as soon as practicable, together with such information as the Underwriters may require.
  
- C. All notices and premium payments made under this section shall be directed to the Underwriters through the entity named in Item 9.(b) of the Declarations.

#### **XVIII. ASSISTANCE AND COOPERATION OF THE INSURED**

The **Insured** shall cooperate with the Underwriters in all investigations, including investigations regarding the **Application** for and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriters. The **Insured** agrees not to take any action which in any way increases the Underwriters exposure under the Policy.

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 acts, errors or omissions or **Pollution Conditions** with respect to which insurance is afforded under this Policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without the written consent of the Underwriters.

Except as provided for in Clause II.B., expenses incurred by the **Insured** in assisting and cooperating with the Underwriters, as described above, do not constitute **Claims Expenses** and are not reimbursable under the Policy.

#### **XIX. ACTION AGAINST THE UNDERWRITERS**

No action shall lie against the Underwriters unless, as a condition precedent thereto, the **Insured** shall have fully complied with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and the Underwriters. Nothing contained herein shall give any person or organization any right to join the Underwriters as a party to any **Claim** against the **Insured** to determine their liability, nor shall the Underwriters be impleaded by the **Insureds** or their legal representative in any **Claim**.

## XX. SUBROGATION

In the event of any payment under this Insurance, the Underwriters shall be subrogated to all the **Insureds'** rights of recovery therefore 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 to prejudice such rights. The Underwriters agrees to waive its rights of recovery against any client of the **Named Insured** for a **Claim** which is covered pursuant to Insuring Clause I.A.1. and/or I.A.2 of this Policy to the extent the **Named Insured** had, prior to such **Claim**, a written agreement to waive such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages, Claims Expenses** and **Privacy Breach Response Services** paid by the Underwriters, and third to the Each **Claim** Deductible or Each Incident Deductible (as applicable). Any additional amounts recovered shall be paid to the **Named Insured**.

## XXI. ENTIRE AGREEMENT

By acceptance of this Policy, all **Insureds** agree that this Policy embodies all agreements existing between them and the Underwriters relating to this Insurance. 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 Policy or estop the Underwriters from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by written endorsement issued to form a part of this Policy, signed by the Underwriters.

## XXII. VALUATION AND CURRENCY

All premiums, limits, deductibles, **Damages** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Damages** under this Policy is stated in a currency other than United States dollars or if **Claims Expenses** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Damages** is due or the date such **Claims Expenses** are paid.

## XXIII. BANKRUPTCY

Bankruptcy or insolvency of the **Insured** shall not relieve the Underwriters of their obligations nor deprive the Underwriters of its rights or defenses under this Policy.

**XXIV. AUTHORIZATION**

By acceptance of this Policy, the **Insureds** agree that the **Named Insured** will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

**XXV. HEADINGS**

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