



INFORMATION SECURITY & PRIVACY INSURANCE WITH ELECTRONIC MEDIA LIABILITY COVERAGE

NOTICE: Coverage under 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** or the **Optional Extension Period** (if applicable) and reported to the Insurer during the **Policy Period** or as otherwise provided in Clause X. of this Policy. Amounts incurred as **Claims Expenses** under this Policy shall reduce and may exhaust the limit of liability and are subject to retentions.

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

This Policy only affords coverage under those insuring agreements below that are indicated as purchased in Item 3. of the Declarations.

The Insurer agrees with the **Named Insured**, set forth in Item 1. of the Declarations made a part hereof, in consideration of the payment of the premium and reliance upon the statements in the **Application** to this Insurance Policy (hereinafter referred to as the "Policy" or "Insurance") and subject to all the provisions, terms and conditions of this Policy:

I. INSURING AGREEMENTS

A. Information Security & Privacy Liability

To pay on behalf of the **Insured**:

Damages and **Claims Expenses**, in excess of the **Retention**, 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 **Optional Extension Period** (if applicable) and reported in writing to the Insurer during the **Policy Period** or as otherwise provided in Clause X. of this Policy, for:

1. theft, loss, or **Unauthorized Disclosure** of **Personally Identifiable Non-Public Information** or **Third Party Corporate 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 Non-Public Information** or **Third Party Corporate 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** 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 a **Data Asset** stored on **Computer Systems**;
 - (b) the failure to prevent transmission of **Malicious Code** from **Computer Systems** to **Third Party Computer Systems**; or
 - (c) the participation by the **Insured Organization's Computer System** in a **Denial of Service Attack** directed against a **Third Party Computer System**;

3. the **Insured Organization's** failure to timely disclose an incident described in I.A.1. or I.A.2. above 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** 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 Non-Public Information**;
 - (b) requires the **Insured Organization** to provide access to **Personally Identifiable Non-Public Information** or to correct incomplete or inaccurate **Personally Identifiable Non-Public Information** after a request is made by a person; or
 - (c) mandates procedures and requirements to prevent the loss of **Personally Identifiable Non-Public 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** 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 an identity theft prevention program required by governmental statute or regulation or take necessary actions to prevent identity theft, including phishing; provided the acts, errors or omissions that constitute such failure must first take place on or after the **Retroactive Date** and before the end of the **Policy Period**.

B. Privacy Notification Costs

To pay the **Named Insured** for:

Privacy Notification Costs, in excess of the **Retention** and incurred by the **Insured Organization** with the Insurer's prior written consent, resulting from the **Insured Organization's** legal obligation to comply with a **Breach Notice Law** because of an incident (or reasonably suspected incident) described in Insuring Agreement I.A.1. or I.A.2. that first takes place on or after the **Retroactive Date** and before the end of the **Policy Period**, is discovered by the **Insured** during the **Policy Period**, and is reported to the Insurer during the **Policy Period** or as otherwise provided in Clause X. of this Policy.

Privacy Notification Costs means the following reasonable and necessary costs incurred by the **Insured Organization** within one (1) year of the reporting of the incident or suspected incident to the Insurer:

1. to hire a computer security expert to determine the existence and cause of any electronic data breach resulting in an actual or reasonably suspected theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Non-Public Information** 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 for fees charged by an attorney to determine the applicability of and actions necessary by the **Insured Organization** to comply with **Breach Notice Law** due to an actual or reasonably suspected theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Non-Public Information**; provided that amounts covered by this paragraph shall not

exceed the amount set forth in Item 4.B. of the Declarations in the aggregate for the **Policy Period**;

2. to provide notification
 - (a) to individuals who are required to be notified by the **Insured Organization** under the applicable **Breach Notice Law**; and
 - (b) in the Insurer's discretion, where notification is provided pursuant to Clause I.B.2.(a) because of an obligation under at least one applicable **Breach Notice Law**, to other individuals affected by the same incident whose unsecured **Personally Identifiable Non-Public Information** has been or is reasonably believed to have been disclosed, accessed, acquired, or used as a result of such incident 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;
3. up to one hundred thousand United States dollars (USD 100,000) for the costs of a public relations consultancy for the purpose of averting or mitigating material damage to the **Insured Organization's** reputation, subject to twenty percent (20%) coinsurance; and.
4. in connection with a credit file monitoring program, to be approved by the Insurer, consisting of:
 - (a) the offering of one (1) year of credit monitoring services to those individuals whose **Personally Identifiable Non-Public Information** was compromised or reasonably believed to be compromised as a result of theft, loss or **Unauthorized Disclosure** of information giving rise to a notification requirement pursuant to a **Breach Notice Law**; and
 - (b) mailing and other reasonable third party administrative costs associated with such a program;

provided, all such costs payable under this subsection 4. must be for the purpose of mitigating potential **Damages** resulting from such incident, and are subject to twenty percent (20%) coinsurance.

Privacy Notification Costs will only be paid in excess of the applicable **Retention** and shall not include any internal salary or overhead expenses of the **Insured Organization**.

C. **Regulatory Defense and Penalties**

To pay on behalf of the **Insured**:

Claims Expenses and **Penalties** in excess of the **Retention**, 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 **Optional Extension Period** (if applicable) and reported in writing to the Insurer during the **Policy Period** or as otherwise provided in Clause X. of this Policy, resulting from a violation of a **Privacy Law** and caused by an incident described in Insuring Agreement I.A.1., I.A.2. or I.A.3. that first takes place on or after the **Retroactive Date** and before the end of the **Policy Period**.

D. **Website Media Content Liability**

To pay on behalf of the **Insured**:

Damages and Claims Expenses, in excess of the **Retention**, which the **Insured** shall become legally obligated to pay resulting from any **Claim** first made against any **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported in writing to the Insurer during the **Policy Period** or as otherwise provided in Clause X. of this Policy, for one or more of the following acts first committed on or after the **Retroactive Date** and before the end of the **Policy Period** in the course of **Covered Media Activities**:

1. defamation, libel, slander, trade libel, 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. a violation of the rights of privacy of an individual, including false light and public disclosure of private facts;
3. invasion or interference with an individual's right of publicity, including commercial appropriation of name, persona, voice or likeness;
4. plagiarism, piracy, misappropriation of ideas under implied contract;
5. infringement of copyright;
6. infringement of domain name, trademark, trade name, trade dress, logo, title, metatag, or slogan, service mark, or service name; or
7. improper deep-linking or framing within electronic content.

II. **DEFENSE AND SETTLEMENT OF CLAIMS**

A. The Insurer shall have the right and duty to defend, subject to all the provisions, terms and conditions of this Policy:

1. 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; or
2. under Insuring Agreement I.C., any **Claim** in the form of a **Regulatory Proceeding**.

Defense counsel shall be mutually agreed upon between the **Named Insured** and the Insurer, but in the absence of such agreement, the Insurer's decision shall be final.

B. With respect to any **Claim** against the **Insured** seeking **Damages** or **Penalties** which are payable under the terms of this Policy, the Insurer will pay **Claims Expenses** incurred with their prior written consent. The Limit of Liability available to pay **Damages, Penalties, or Privacy Notification Costs** shall be reduced and may be completely exhausted by payment of **Claims Expenses. Damages, Penalties, and Claims Expenses** shall be applied against the **Retention** payable by the **Insured**.

C. If the **Insured** shall refuse to consent to any settlement or compromise recommended by the Insurer and acceptable to the claimant and elects to contest the **Claim**, the Insurer's liability for any **Damages, Penalties and Claims Expenses** shall not exceed:

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

or the applicable Limit of Liability, whichever is less, and the Insurer shall have the right to withdraw from the further defense thereof 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.C.) shall not be considered in determining the amount for which a **Claim** could have been settled.

- D. The Insurer agree that the **Insured** may settle any **Claim** where the **Damages** and **Claims Expenses** do not exceed fifty percent (50%) of the **Retention**, provided that the entire **Claim** is resolved and the **Insured** obtains a full release on behalf of all the **Insureds** from all claimants.

III. THE INSURED AND THE INSURED ORGANIZATION

As used throughout this Policy, whether expressed in singular or plural, "**Insured**" shall mean:

- A. The **Named Insured** and any **Subsidiaries** of the **Named Insured** (together the "**Insured Organization**");
- B. A director, officer or **Manager** of the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- C. An employee (including a part time or temporary employee) of the **Insured Organization**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Insured Organization's** business;
- D. 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 **Insured Organization**;
- E. Any person who previously qualified as an **Insured** under III.B., III.C. or III.D. above prior to the termination of the required relationship with the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- F. 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; and
- G. The lawful spouse, including any natural person qualifying as a domestic partner under the provisions of any applicable federal, state, or local law in the United States, of any **Insured**, but solely by reason of any act, error or omission of an **Insured** other than such spouse or domestic partner.

IV. TERRITORY

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

V. EXCLUSIONS

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

- A. For, arising out of or resulting from **Bodily Injury** or **Property Damage**;
- B. 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 Agreements I.A.1., I.A.2., or I.A.3. by a current or former employee of the **Insured Organization**; or to the payment of **Privacy Notification Costs** involving current or former employees of the **Insured Organization**;
- C. 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 **Named Insured**, a **Subsidiary**, or any principals, directors, officers, **Managers**, stockholders, members or employees of the **Named Insured** or a **Subsidiary** in his or her capacity as such;
- D. 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, however, that this exclusion will not apply:
 - 1. only with respect to the coverage provided by Insuring Agreement I.A.1., to any obligation of the **Insured Organization** to maintain the confidentiality or security of **Personally Identifiable Non-Public Information** or of **Third Party Corporate Information**;
 - 2. only with respect to Insuring Agreement I.D.4., for misappropriation of ideas under implied contract; or
 - 3. to the extent the **Insured** would have been liable in the absence of such contract or agreement;
- E. For, arising out of or resulting from any actual or alleged antitrust violation, restraint of trade, unfair competition, or false or deceptive or misleading advertising or violation of the Sherman Antitrust Act, the Clayton Act, or the Robinson-Patman Act, as amended;
- F. For, arising out of or resulting from any actual or alleged false, deceptive or unfair trade practices; however this exclusion does not apply to:
 - 1. any **Claim** covered under Insuring Agreements I.A.1., I.A.2., I.A.3. or I.C.; or
 - 2. any **Claim** that results from a theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Non-Public 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**;
- G. For, arising out of or resulting from:
 - 1. the actual or alleged unlawful collection or acquisition of **Personally Identifiable Non-Public 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 Non-Public Information**; provided, that this exclusion shall not apply to the actual or alleged unlawful collection or acquisition of **Personally Identifiable Non-Public Information** by a third party committed without the knowledge of the **Insured Organization**; or

2. the distribution of unsolicited email, direct mail, or facsimiles, wire tapping, eavesdropping, audio or video recording, or telemarketing, if such distribution, wire tapping or recording is done by or on behalf of the **Insured Organization**;
- H. For, arising out of or resulting from any act, error, omission, incident, failure of **Computer Security**, or **Security Breach** committed or occurring prior to the inception date of this Policy:
1. if any member of the **Control Group** on or before the **Continuity Date** knew or could have reasonably foreseen that such act, error, omission, incident, failure of **Computer Security**, or **Security Breach** might be expected to be the basis of a **Claim** or **Loss**; or
 2. 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 in force prior to the inception date of this Policy;
- I. For, arising out of or resulting from any related or continuing acts, errors, omissions, incidents or events where the first such act, error, omission, incident or event was committed or occurred prior to the **Retroactive Date**;
- J. For, arising out of or resulting from any of the following:
1. any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal law or legislation, or law or legislation of any state, province or other jurisdiction similar to the foregoing, whether such law is statutory, regulatory or common law;
 2. any actual or alleged violation of any securities law, regulation or legislation, including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, any state or provincial blue sky or securities law, any other federal securities law or legislation, or any other similar law or legislation of any state, province or other jurisdiction, or any amendment to the above laws, or any violation of any order, ruling or regulation issued pursuant to the above laws;
 3. 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
 4. any actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;

However, this exclusion does not apply to any otherwise covered **Claim** under Insuring Agreements I.A.1, I.A.2, or I.A.3, or to paying **Privacy Notification Costs** covered under Insuring Agreement Insuring Agreement I.B., that results from a theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Non-Public 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**;

K. For, arising out of or resulting from any actual or alleged acts, errors, or omissions related to any of the **Insured Organization's** pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts, including 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 Agreements I.A.1, I.A.2, or I.A.3, or to paying **Privacy Notification Costs** covered under Insuring Agreement Insuring Agreement I.B., that results from a theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public 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**;

L. Arising out of or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, 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 Insurer for all **Claims Expenses** incurred defending the **Claim** and the Insurer shall have no further liability for **Claims Expenses**;

provided further, that whenever coverage under this Insurance would be excluded, suspended or lost because of this exclusion relating to acts or violations by any **Insured**, and with respect to which any other **Insured** did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge thereof, then the Insurer 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 above; however this exception to this exclusion is inapplicable to any **Claim** or circumstance that could reasonably be the basis of a **Claim** against the **Insured Organization** arising from acts, errors or omissions known to any present or former member of the **Control Group**;

M. For, arising out of or resulting from any actual or alleged:

1. infringement of patent or patent rights or misuse or abuse of patent;
2. 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**;
3. use or misappropriation of any ideas, trade secrets or **Third Party Corporate 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**;
4. 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, **Manager**, principal or partner of the **Insured Organization**; or
5. under Insuring Agreement I.A.2., theft of or **Unauthorized Disclosure** of a **Data Asset**;

- N. For, in connection with or resulting from a **Claim** brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any other state, federal, local or foreign governmental entity, in such entity's regulatory or official capacity; provided, this exclusion shall not apply to an otherwise covered **Claim** under Insuring Agreement I.C., or to paying **Privacy Notification Costs** covered under Insuring Agreement I.B. to the extent such **Privacy Notification Costs** are incurred to provide services that are legally required to comply with a **Breach Notice Law**;
- O. For, arising out of or resulting from a **Claim** by or on behalf of one or more **Insureds** under this Insurance against any other **Insured** or **Insureds** under this Insurance; provided, this exclusion shall not apply to an otherwise covered **Claim** under Insuring Agreements I.A.1., I.A.2., or I.A.3. made by a current or former employee of the **Insured Organization**;
- P. For, arising out of or resulting from:
1. 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
 2. any **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 **Insured Organization**;
- Q. For, arising out of or resulting from any of 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 Organization**; (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;
- R. With respect to Insuring Agreements I.A., I.B. and I.C., any **Claim** or **Loss** for arising out of or resulting from the distribution, exhibition, performance, publication, display or broadcasting of content or material in:
1. broadcasts, by or on behalf of, or with the permission or direction of any **Insured**, including but not limited to, television, motion picture, cable, satellite television and radio broadcasts;
 2. publications, by or on behalf of, or with the permission or direction of any **Insured**, including, but not limited to, newspaper, newsletter, magazine, book and other literary form, monograph, brochure, directory, screen play, film script, playwright and video publications, and including content displayed on an Internet site; or
 3. advertising by or on behalf of any **Insured**;
- provided however this exclusion does not apply to the publication, distribution or display of the **Insured Organization's Privacy Policy**;
- S. With respect to Insuring Agreement I.D., any **Claim** or **Loss**:
1. for, arising out of or resulting from the actual or alleged obligation to make licensing fee or royalty payments, including but limited to the amount or timeliness of such payments;
 2. for, arising out of or resulting from any costs or expenses incurred or to be incurred by the **Insured** or others for the reprinting, reposting, recall, removal or disposal of any **Media Material** or any other information, content or media, including any media or products containing such **Media Material**, information, content or media;

3. 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.;
 4. 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;
 5. for, arising out of or resulting from any actual or alleged gambling, contest, lottery, promotional game or other game of chance; or
 6. in connection with a **Claim** made 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;
- T. Arising out of or resulting from, directly or indirectly occasioned by, happening through or in consequence of: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- U. Either in whole or in part, directly or indirectly, arising out of or resulting from or in consequence of, or in any way involving:
1. asbestos, or any materials containing asbestos in whatever form or quantity;
 2. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; and any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins;
- The Insurer will have no duty or obligation to defend any **Insured** with respect to any **Claim** or governmental or regulatory order, requirement, directive, mandate or decree which either in whole or in part, directly or indirectly, arises out of or results from or in consequence of, or in any way involves the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind;
3. 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 use of any property; or

4. the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants; or any governmental, judicial or regulatory directive or request that the **Insured** or anyone acting under the direction or control of the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including gas, acids, alkalis, chemicals, heat, smoke, vapor, soot, fumes or waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

VI. DEFINITIONS

- A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insured** to the Insurer in connection with the underwriting of this Policy, or prior policies of which this Policy is a renewal thereof. All such applications, attachments, information and materials are deemed attached to and incorporated into and made part of this Policy.
- B. **Bodily Injury** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- C. **Breach Notice Law** means any United States federal, state or territory statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or reasonably may have been accessed by an unauthorized person.

Breach Notice Law also means a foreign statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or reasonably may have been accessed by an unauthorized person; however, the credit monitoring program provided by Insuring Agreement I.B.3 shall not apply to persons notified pursuant to any such foreign statute or regulation.

- D. **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.C. only, institution of a **Regulatory Proceeding** against any **Insured**; and
 3. a written request or agreement to toll or waive a statute of limitations relating to a potential **Claim** described in paragraph 1. above.

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, or omissions, or from any continuing acts, errors, omissions, 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**.

- E. **Claims Expenses** means:
 1. reasonable and necessary fees charged by an attorney designated pursuant to Clause II., Defense and Settlement of Claims, paragraph A.;
 2. all other legal costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit, or proceeding arising in connection therewith, or circumstance which might lead to a **Claim**, if incurred by the Insurer, or by the **Insured** with the prior written consent of the Insurer; 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 Insurer shall have no obligation to appeal or to obtain bonds.

Claims Expenses do 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 that might lead to a **Claim** notified under this Policy, or costs to comply with any regulatory orders, settlements or judgments.

- F. **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.
- G. **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 **Insured Organization**; or
 2. systems operated by a third party service provider and used for the purpose of providing hosted computer application 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.
- H. **Continuity Date** means (i) the date stated in Item 7.B. of the Declarations with respect to the **Named Insured** and any **Subsidiaries** acquired before the date stated in Item 7.B. of the Declarations; or (ii) with respect to any **Subsidiaries** acquired after the date stated in Item 7.B. of the Declarations, the date the **Named Insured** acquired such **Subsidiary**.
- I. **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 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.
- J. **Covered Media Activities** means the display of **Media Material** on the **Insured Organization's** web site.
- K. **Damages** means a monetary judgment, award or settlement; provided that 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 complying 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. any damages which are a multiple of compensatory damages, fines, taxes or loss of tax benefits, sanctions or penalties;
 4. punitive or exemplary damages, unless insurable by law in any applicable venue that

most favors coverage for such punitive or exemplary damages;

5. discounts, coupons, prizes, awards or other incentives offered to the **Insured's** customers or clients;
 6. 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;
 7. fines, costs or other amounts an **Insured** is responsible to pay under a **Merchant Services Agreement**; or
 8. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**.
- L. **Data Asset** means any software or electronic data that exists in **Computer Systems** and that is subject to regular back up procedures, including computer programs, applications, account information, customer information, private or personal information, marketing information, financial information and any other information maintained by the **Insured Organization** in its ordinary course of business.
- M. **Denial of Service Attack** means an attack intended by the perpetrator to overwhelm the capacity of a **Computer System** by sending an excessive volume of electronic data to such **Computer System** in order to prevent authorized access to such **Computer System**.
- N. **Loss** means **Damages, Claims Expenses, Privacy Notification Costs** and **Penalties**.
- O. **Malicious Code** means any virus, Trojan horse, worm or any other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.
- P. **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.
- Q. **Manager** means a manager of a limited liability company.
- R. **Media Material** means any information in electronic form, including words, sounds, numbers, images, or graphics and shall include advertising, video, streaming content, web-casting, online forum, bulletin board and chat room content, but does not mean computer software or the actual goods, products or services described, illustrated or displayed in such **Media Material**.
- S. **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.

T. **Named Insured** means the individual, partnership, entity, or corporation designated as such in Item 1. of the Declarations.

U. **Optional Extension Period** means the period of time after the end of the **Policy Period** for reporting **Claims** as provided in Clause IX., Optional Extension Period, of this Policy.

V. **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 A.1., A.2. or A.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 Non-Public Information** from theft, loss or disclosure, even if it is in response to a regulatory proceeding or investigation.

W. **Personally Identifiable Non-Public 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. 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.

X. **Policy Aggregate Limit of Liability** means the aggregate Limit of Liability set forth in Item 4.A. of the Declarations.

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. **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 Non-Public Information**.
- AA. **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 Non-Public Information**.
- BB. **Property Damage** means physical injury to or destruction of any tangible property, including the loss of use thereof.
- CC. **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.
- DD. **Retention** means the applicable retention for each Insuring Agreement as specified in Item 5. of the Declarations.
- EE. **Related Party** means the **Insured Organization** and any past, present or future employees, directors, officers, **Managers**, partners or natural person independent contractors of the **Insured Organization**.
- FF. **Retroactive Date** means the date specified in Item 7.A. of the Declarations.
- GG. **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 **Third Party Computer Systems**; 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**.

- HH. **Subsidiary** means any corporation, limited liability company, joint venture or partnership 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 Insurer 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 XVI., 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.

- II. **Third Party Computer Systems** means any computer systems that: (1) are not owned, operated or controlled by an **Insured**; and (2) does not include computer systems of a third party on which an **Insured** performs services. Computer systems include associated input and output devices, data storage devices, networking equipment, and back up facilities.
- JJ. **Third Party Corporate 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 Corporate Information** shall not include **Personally Identifiable Non-Public Information**.
- KK. **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.
- LL. **Unauthorized Disclosure** means the disclosure of 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. The **Policy Aggregate Limit of Liability** stated in Item 4.A. of the Declarations is the Insurer's combined total limit of liability for all **Loss** payable under this Policy.

The sublimit of liability stated in Item 4.B. of the Declarations is aggregate limit of liability payable under this Policy for all **Privacy Notification Costs** covered under Insuring Agreement I.B.

The sublimit of liability stated in Item 4.C. of the Declarations is the aggregate sublimit of liability payable under this Policy for all **Claims Expenses** and **Penalties** covered under Insuring Agreement I.C.

The sublimit of liability stated in Item 4.D. of the Declarations is the aggregate sublimit of liability payable under this Policy for all **Claims Expenses** and **Damages** covered under Insuring Agreement I.D.

The above sublimits of liability are part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in Item 4.A. of the Declarations.

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.

- B. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the **Policy Aggregate Limit of Liability**.
- C. The Insurer shall not be obligated to pay any **Loss**, or to undertake or continue defense of any suit or proceeding, after the **Policy Aggregate Limit of Liability** or any other applicable limit of

liability set forth in the Declarations has been exhausted by payment of **Loss**, or after deposit of the **Policy Aggregate Limit of Liability** or any other applicable limit of liability in a court of competent jurisdiction. Upon such payment, the Insurer shall have the right to withdraw from the further defense of any **Claim** under this Policy by tendering control of said defense to the **Insured**.

VIII. RETENTION

- A. The **Retention** amount set forth in Item 5.A. of the Declarations applies separately to each incident, event, or related incidents or events, giving rise to a **Claim**. The **Retention** shall be satisfied by monetary payments by the **Named Insured of Damages, Claims Expenses, or Penalties**.
- B. The **Retention** amount set forth in Item 5.B. of the Declarations applies separately to each incident, event, or related incidents or events, giving rise to an obligation to pay **Privacy Notification Costs**. The **Retention** shall be satisfied by monetary payments by the **Named Insured of Privacy Notification Costs**.
- C. The **Retention** amount set forth in Item 5.C. of the Declarations applies separately with respect to each **Claim** for one or more of the acts listed in Insuring Agreement I.D. in the course of the **Insured Organization's** performance of any **Covered Media Activities**, including **Claims Expenses**.
- D. Satisfaction of the applicable **Retention** is a condition precedent to the payment by the Insurer of any amounts hereunder, and the Insurer shall be liable only for the amounts in excess of such **Retention** subject to the Insurer's total liability not exceeding the **Policy Aggregate Limit of Liability** or any applicable Limit of Liability. The **Named Insured** shall make direct payments within the **Retention** to appropriate other parties designated by the Insurer.

IX. OPTIONAL EXTENSION PERIOD

- A. In the event of the termination of this Insurance for any reason except the non-payment of premium, the **Named Insured** designated in Item 1. of the Declarations shall have the right, upon payment in full and not proportionally or otherwise in part of the percentage shown in Item 8.A. of the Declarations of the full Premium set forth below, to have issued an endorsement providing an **Optional Extension Period** for the period of time set forth in Item 8.B. of the Declarations for **Claims** first made against any **Insured** and reported to the Insurer during the **Optional Extension Period**, and arising out of any act, error or omission 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 **Optional Extension Period** option, the payment of the additional premium for the **Optional Extension Period** must be paid to the Insurer within thirty (30) days of the termination of this Insurance. If notice of election of the **Optional Extension Period** and full premium payment is not given to the Insurer within such thirty (30) day period, there shall be no right to purchase the **Optional Extension Period**.
- B. The Limit of Liability for the **Optional Extension Period** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and the exercise of the **Optional Extension Period** shall not in any way increase the **Policy Aggregate Limit of Liability** or any sublimit of liability. The **Optional Extension Period** does not apply to Insuring Agreement I.B.
- C. The right to the **Optional Extension Period** shall not be available to the **Named Insured** where the Policy premium has not been paid in full, or where cancellation or non-renewal by the Insurer 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 amount of the applicable **Retention**.

- D. All notices and premium payments with respect to the **Optional Extension Period** option shall be directed to the Insurer through the entity named in Item 9.B. of the Declarations.
- E. At the commencement of the **Optional Extension Period** the entire premium shall be deemed earned, and in the event the **Named Insured** terminates the **Optional Extension Period** for any reason prior to its natural expiration, the Insurer will not be liable to return any premium paid for the **Optional Extension Period**.

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

- A. If any **Claim** is made against the **Insured**, the **Insured** shall forward as soon as practicable to the Insurer through persons named in Item 9.A. of the Declarations written notice of such **Claim** in the form of a telecopy, email, or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative. In no event shall such notice to the Insurer be later than the end of the **Policy Period**, the end of the **Optional Extension Period** (if applicable), or thirty (30) days after the expiration date of the **Policy Period** in the case of **Claims** first made against the **Insured** during the last thirty (30) days of the **Policy Period**.
- B. With respect to Insuring Agreement I.B. for a legal obligation to comply with a **Breach Notice Law** because of an incident (or reasonably suspected incident) described in Insuring Agreement I.A.1. or I.A.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 Insurer 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 sixty (60) days after the end the **Policy Period**; provided further, that if this Policy is renewed by the Insurer and covered **Privacy Notification Costs** are incurred 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 sixty (60) 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**.
- C. If during the **Policy Period**, the **Insured** first becomes aware of any circumstance that could reasonably be the basis for a **Claim** it may give written notice to the Insurer in the form of a telecopy, email or express or certified mail through persons named in Item 9.A. of the Declarations as soon as practicable during the **Policy Period**. Such notice must include:
 - 1. the specific details of the act, error, omission, 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 circumstance; and
 - 3. the facts by which the **Insured** first became aware of the act, error, or omission or **Security Breach**.

Any subsequent **Claim** made against the **Insured** arising 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 Insurer.

- D. A **Claim** or legal obligation under paragraph A. or B. above shall be considered to be reported to the Insurer when written notice is first received by the Insurer in the form of a telecopy, email or express or certified mail or email through persons named in Item 9.A. of the Declarations of the **Claim** or legal obligation, or of an act, error, or omission, which could reasonably be expected to give rise to a **Claim** if provided in compliance with paragraph C. above.

XI. **ASSISTANCE AND COOPERATION**

- A. The Insurer shall have the right to make any investigation they deem necessary, and the **Insured** shall cooperate with the Insurer 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 Insurer. The **Insured** agrees not to take any action which in any way increases the Insurer's exposure under this Policy.
- B. Upon the Insurer's 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, incidents or events 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.
- C. 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 Insurer, except as specifically provided in Clause II., Defense and Settlement of Claims, paragraph D.

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

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

XII. **SUBROGATION**

If any payment is made under this Policy and there is available to the Insurer any of the **Insured's** rights of recovery against any other party, then the Insurer shall maintain all such rights of recovery. The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing after an incident or event giving rise to a **Claim** or **Loss** to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **Loss** paid by the Insurer, and lastly to the **Retention**. Any additional amounts recovered shall be paid to the **Named Insured**.

XIII. **OTHER INSURANCE**

The insurance under this Policy shall apply in excess of any other valid and collectible insurance available to any **Insured**, including any self insured retention or deductible portion thereof unless such other insurance is written only as specific excess insurance over the **Policy Aggregate Limit of Liability** or any other applicable Limit of Liability of this Policy.

XIV. **ACTION AGAINST THE INSURER**

No action shall lie against the Insurer unless and until, as a condition precedent thereto, the **Insured** shall have fully complied with all provisions, terms and conditions of this Insurance, and the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment or award against the **Insured** after trial, regulatory proceeding, arbitration or by written agreement of the **Insured**, the claimant, and the Insurer. No person or organization shall have the right under this Policy to join the Insurer as a party to an action or other proceeding against the **Insured** to determine the **Insured's** liability, nor shall the Insurer be impleaded by the **Insured** or the **Insured's** legal representative.

The **Insured's** bankruptcy or insolvency or of the **Insured's** estate shall not relieve the Insurer of their obligations hereunder.

XV. **ENTIRE AGREEMENT**

By acceptance of the Policy, all **Insureds** agree that this Policy embodies all agreements between the Insurer and the **Insured** relating to this Policy. 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 stop the Insurer 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 Policy signed by the Insurer.

XVI. **MERGERS AND ACQUISITIONS**

A. **Newly Acquired Subsidiaries**

During the **Policy Period**, if the **Named Insured** or any **Subsidiary** acquires another entity whose annual revenues are more than ten percent (10%) of the **Named Insured's** total annual revenues for the four quarterly periods directly preceding inception of the **Policy Period**, such acquired entity shall not be a **Subsidiary**, and no **Insured** shall have coverage under this Policy for any **Claim** or **Loss** that arises out of any act, error, omission, incident or event whether committed before or after such acquisition:

1. by or on behalf of the acquired entity or any person employed by the acquired entity;
2. involving or relating to the assets, liabilities, **Covered Media Activities** or policies or procedures of the acquired entity or to data, information, computers, or networks, security systems, of or under the care, custody or control of the acquired entity, a Business Associate of the acquired entity, or a third party on behalf of the acquired entity; or
3. by any person or independent contractor holding, processing or transferring information or operating **Computer Systems** on behalf of the acquired entity;

unless the **Named Insured** gives the Insurer written notice prior to the acquisition, obtains the Insurer's written consent to extend coverage to such additional entities, assets, exposures, or **Computer Systems**, and agrees to pay any additional premium required by the Insurer.

If during the **Policy Period** the **Named Insured** or any **Subsidiary** acquires a privately held entity whose annual revenues are more than ten percent (10%) of the **Named Insured's** total annual revenues for the four quarterly periods directly preceding inception of the **Policy Period**, then, subject to the **Policy Period** and all other terms and conditions of this Policy, coverage under this Policy shall be afforded for a period of sixty (60) days, but only for any **Claim** that arises out of any act, error or omission first committed or incident or event first occurring after the entity becomes so owned. Coverage beyond such sixty (60) day period shall only be available if the **Named Insured** gives the Insurer written notice of the acquisition, obtains the written consent of the Insurer to extend coverage beyond such sixty (60) day period to the entity and agrees to pay any additional premium required by the Insurer.

B. **Mergers or Consolidations**

If during the **Policy Period** the **Named Insured** consolidates or merges with or is acquired by another entity, or sells substantially all of its assets to any other entity, then this Policy shall remain in full force and effect, but only with respect to a **Security Breach**, or other act or incidents that occur prior to the date of the consolidation, merger or acquisition. There shall be no coverage provided by this Policy for any other **Claim** or **Loss** unless the **Named Insured** provides written notice to the Insurer prior to such consolidation, merger or acquisition, the **Named Insured** has agreed to any additional premium and terms of coverage required by the Insurer and the Insurer have issued an endorsement extending coverage under this Policy.

- C. All notices and premium payments made under this Clause XVI. shall be directed to the Insurer through the entity named in Item 9.B. of the Declarations.

XVII. **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 under this Policy.

XVIII. **CANCELLATION**

- A. This Policy may be cancelled by the **Named Insured**, by surrender thereof to the Insurer or by mailing or delivering to the Insurer through the entity named in Item 9.B. of the Declarations, written notice stating when the cancellation shall be effective.
- B. This Policy may be cancelled by the Insurer 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 Insurer cancel this Insurance because the **Insured** has failed to pay a premium when due, this Policy may be cancelled by the Insurer by mailing 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. Mailing of notice shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery (where permitted by law) of such written notice either by the **Named Insured** or by the Insurer shall be equivalent of mailing.
- C. If the **Named Insured** cancels this Policy, the earned premium shall be computed on the customary short rate basis.
- D. If the Insurer cancel this Policy prior to any **Claim** being reported or Loss incurred under this Policy, earned premium shall be computed pro rata.
- E. The premium shall be deemed fully earned if any **Claim** under this Policy is reported to the Insurer or **Loss** incurred under this Policy on or before the date of cancellation.
- F. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

XIX. **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.

XX. **HEADINGS**

The titles of paragraphs, sections, provisions or endorsements of or to this Policy are intended solely for convenience and reference, and are not deemed in any way to limit or expand the provisions to which they relate and are not part of the Policy.

XXI. **WARRANTY BY THE INSURED**

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 Insurer, and that this Policy is issued in reliance upon the truth thereof.

XXII. **NAMED INSURED AS AGENT**

The **Named Insured** shall be considered the agent of all **Insureds**, and shall act on behalf of all **Insureds** with respect to the giving of or receipt of all notices pertaining to this Policy, the acceptance of any endorsements to this Policy, and the **Named Insured** shall be responsible for the payment of all premiums and **Retentions**.

XXIII. VALUATION AND CURRENCY

All premiums, limits, retentions, **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.

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.