

# National Casualty Company

A Stock Insurance Company, herein called the **Company**

## ENTERPRISE CYBER INSURANCE POLICY

**THIS POLICY IS A CLAIMS FIRST MADE AND REPORTED POLICY. EXCEPT AS IS OTHERWISE PROVIDED, COVERAGE IS LIMITED TO CLAIMS FIRST MADE WHILE THE POLICY IS IN FORCE AND WHICH ARE REPORTED TO THE COMPANY AS REQUIRED IN THE POLICY NOTICE PROVISIONS. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY PAYMENT OF DEFENSE COSTS, BREACH MANAGEMENT EXPENSES, CYBER EXTORTION EXPENSES, DATA RESTORATION EXPENSES, EXTRA EXPENSES AND COMPUTER SYSTEM INTERRUPTION LOSS. DEFENSE COSTS ARE SUBJECT TO THE APPLICABLE RETENTION. IF THE LIMIT OF LIABILITY IS EXHAUSTED THE COMPANY SHALL HAVE NO FURTHER LIABILITY UNDER THIS POLICY, INCLUDING LIABILITY FOR DEFENSE COSTS. PLEASE READ AND REVIEW THE POLICY CAREFULLY.**

In consideration of the payment of the premium and in reliance upon the statements in the **Application**, which is made a part hereof and subject to the Declarations, terms and conditions of this Policy, the **Company** and the **Insured** agree as follows:

### Section I—INSURING AGREEMENTS

#### A. **Security Incident, Privacy Violation and Media Wrongful Act Liability**

The **Company** will pay on behalf of the **Insured** any **Damages** and **Defense Costs**, in excess of the applicable **Retention**, the **Insured** becomes legally obligated to pay as a result of a **Claim** first made against the **Insured** during the **Policy Period** or **Discovery Period** (if applicable), and reported pursuant to Section V., for a **Security Incident, Privacy Violation** or a **Media Wrongful Act**.

#### B. **Breach Management Expenses**

The **Company** will pay **Breach Management Expenses**, in excess of the applicable **Retention**, the **Insured Entity** incurred as a direct result of a **Security Incident** first discovered by the **Insured** during the **Policy Period**, and reported pursuant to Section V.B.2.

#### C. **Cyber Extortion Expenses**

The **Company** will pay **Cyber Extortion Expenses**, in excess of the applicable **Retention**, the **Insured Entity** incurred as a direct result of a **Cyber Extortion Threat** first made against the **Insured** during the **Policy Period**, and reported pursuant to Section V.B.3.

#### D. **Data Loss**

The **Company** will pay **Data Restoration Expenses**, in excess of the applicable **Retention**, the **Insured Entity** incurred as a direct result of a **Data Loss** that first occurs during the **Policy Period**, and reported pursuant to Section V.B.4.

#### E. **Computer System Interruption Loss**

The **Company** will pay **Computer System Interruption Loss**, in excess of the **Waiting Period**, the **Insured Entity** incurred as a result of the **Computer Interruption** first occurring during the **Policy Period** directly resulting from a **Computer Attack** or **System Failure**, and reported pursuant to Section V.B.5.

## Section II—DEFINITIONS

- A. **Affected Individual** means any natural person whose **Personal Information** is accessed or acquired by an unauthorized person as the result of a **Security Incident**.
- B. **Application** means each and every signed application, any attachments to such applications, any other materials submitted therewith or incorporated therein, any security assessment or questionnaire, and any other documents submitted in connection with the underwriting of this Policy or the underwriting of any other liability policy issued by the **Company**, or any of its affiliates, of which this Policy is a renewal, replacement or successor in time.
- C. **Bodily Injury** means physical injury, sickness, disease or death of any person, including mental anguish or emotional distress.
- D. **Breach Management Expenses** means the following expenses, to the extent reasonable and necessary, incurred, for up to one year, to retain a third party to respond to a **Security Incident**:
1. **Forensics**;
  2. **Credit and Identity Theft Monitoring Services** retained with the prior written consent of the **Company** at its discretion; provided, however, that such services shall not be covered if notification is not required under applicable **Breach Notification Laws**;
  3. public relations firm, crisis management firm, or a law firm to advise the **Insured** on maintaining or restoring the **Insured's** reputation and retained with the prior written consent of the **Company** at its discretion;
  4. subject to the prior written consent of the **Company** at its discretion, notification of **Affected Individuals**, including e-mailing, printing and mailing of materials, as applicable; provided, however, that in all events such expenses shall not be covered unless notification to an **Affected Individual** is required under at least one applicable **Breach Notification Law**;
  5. subject to the prior written consent of the **Company** at its discretion, notification to local, state or federal regulatory bodies as required by any **Breach Notification Law**, including printing and mailing of materials;
  6. subject to the prior written consent of the **Company** at its discretion, third party expenses to set up and maintain call center services to respond to questions **Affected Individuals** may have about a **Security Incident**; and
  7. retained with the prior written consent of the **Company** at its discretion, outside legal counsel fees for assistance in determining the applicability of, and actions necessary to comply with, any **Breach Notification Law**.
- Provided, however, that **Breach Management Expenses** does not mean, and there shall be no coverage for, compensation, fees, benefits, overhead or the charges or expenses of any **Insured**, or any expenses to remediate or mitigate any **Computer System** vulnerability or security controls.
- E. **Breach Notification Law** means any applicable government statute or regulation specifically requiring notice to individuals whose **Personal Information** (however defined by such statute or regulation) was accessed or acquired by an unauthorized person.
- F. **Claim** means any:
1. written demand for monetary, non-monetary or injunctive relief;
  2. civil proceeding for monetary, non-monetary or injunctive relief, which is commenced by a service of a complaint or similar proceeding;
  3. a written request to waive or toll a statute of limitations relating to a potential **Claim** related to F.1. or F.2., above;

4. arbitration or other alternative dispute resolution proceeding which is commenced by the receipt of a petition, demand or similar pleading; or
5. a **Regulatory Proceeding**.

G. **Computer Attack** means any:

1. intentional and malicious unauthorized access to and misuse of a **Computer System**, which is intended to cause a **Computer Interruption**; or
2. a **Denial of Service Attack**.

Any **Computer Attack** that has as a common nexus with another **Computer Attack**, any fact, circumstance, situation, event, transaction, vulnerability, cause, or series of causally connected facts, circumstances, situations, events, transactions, vulnerabilities, or causes, shall be considered a single **Computer Attack** and deemed to have first occurred at the time of the first such **Computer Attack**.

H. **Computer Interruption** means the actual and measurable interruption or suspension of the **Computer System**. Any **Computer Interruption** that has as a common nexus with another **Computer Interruption**, any fact, circumstance, situation, event, transaction, vulnerability, cause, or series of causally connected facts, circumstances, situations, events, transactions, vulnerabilities, or causes, shall be considered a single **Computer Interruption** and deemed to have first occurred at the time of the first such **Computer Interruption**.

I. **Computer System** means any computer, and any input, output, processing, storage or communication device, or any related network operating system or application software, that is connected to, or used in connection with such computer, which stores or processes **Personal Information** or **Confidential Information**, and is:

1. rented by or owned by, and under the direct operational control of the **Insured Entity**;
2. operated by a **Service Provider**; or
3. owned and operated by an employee of an **Insured Entity** who has agreed in writing to a reasonable personal device use or bring your own device (BYOD) policy.

Provided, however, that with respect to Insuring Agreement I.E., **Computer System** shall only mean any computer described in Section I.1. of this definition, and Sections I.2. and I.3. of this definition shall not apply.

J. **Computer System Interruption Loss** means the following loss or expenses incurred after the expiration of the **Waiting Period** and during the **Period of Recovery**:

1. **Income Loss**; and
2. **Extra Expenses**.

K. **Confidential Information** means any third party entity's information that is specifically identified as confidential, and which the **Insured Entity** is prohibited from disclosing under a non-disclosure agreement or similar written contract.

L. **Consumer Redress Fund** means a sum of money which the **Insured** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to the adverse judgment or settlement of a **Regulatory Proceeding**. \$100,000 USD is the aggregate limit of the **Company's** liability for a **Consumer Redress Fund** covered under this Policy, which amount shall be part of, and not in addition to, the **Limit of Liability** and any applicable sub-limit(s) of liability.

M. **Credit and Identity Theft Monitoring Services** means reasonable and necessary expenses, incurred with the prior written consent of the **Company** at its discretion, for a third party to offer **Affected Individuals** credit monitoring, identity theft monitoring or identity theft restoration services

for up to one year per **Affected Individual**, including customers, employees and clients of the **Insured Entity**, as applicable.

- N. **Cyber Extortion Expenses** means reasonable and necessary expenses incurred with the prior written consent of the **Company** at its discretion:
1. for outside legal counsel or a third party extortion consultant to investigate and resolve a **Cyber Extortion Threat**; and
  2. money paid to a person making a **Cyber Extortion Threat** to terminate such **Cyber Extortion Threat** and prevent a **Security Incident** that would otherwise result in covered **Loss** under this Policy.
- O. **Cyber Extortion Threat** means any threat or connected series of threats made by a person to commit an intentional attack against a **Computer System** in order to cause a **Security Incident** unless the **Insured Entity** provides such person money, securities or other property. Any **Cyber Extortion Threat** that has as a common nexus with another **Cyber Extortion Threat**, any fact, circumstance, situation, event, transaction, vulnerability, cause, or series of causally connected facts, circumstances, situations, events, transactions, vulnerabilities, or causes, shall be considered a single **Cyber Extortion Threat** and deemed to have been first made at the time the first such **Cyber Extortion Threat** was made.
- P. **Cyberterrorism** means the premeditated disruption, or the threat thereof, of computers and/or networks, with the intent to cause harm or further social, ideological, religious, political or similar objectives, or to intimidate any person in furtherance of such objectives. **Cyberterrorism** shall mean an attack against a Critical Infrastructure Sector as defined in Presidential Policy Directive 21 (PPD-21), and shall not include an attack against the computers and/or networks of a single entity.
- Q. **Damages** means amounts, other than **Defense Costs** or **Breach Management Expenses**, which the **Insured** is legally obligated to pay as a result of any **Claim** insured by this Policy, including settlements, judgments, and costs, awarded pursuant to judgments and appeals, **Fines and Penalties**, **Consumer Redress Funds** and settlements. **Damages** shall include punitive or exemplary damages, unless uninsurable under the applicable law most favoring coverage for such damages. **Damages** does not include:
1. any fines or penalties, except for **Fines and Penalties**;
  2. taxes or non-monetary relief;
  3. the multiplied portion of multiplied damages;
  4. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
  5. any fees, compensation or charges earned by or paid to any **Insured Entity**;
  6. any matter or amount deemed uninsurable under the law pursuant to which this Policy shall be construed;
  7. any fines, penalties or assessments by a payment card brand, acquiring bank or any other entity, arising out of or related to a **Security Incident** or **Privacy Violation**; or
  8. any pre- or post-judgment interest.
- R. **Data Asset** means data residing on the **Computer System**.
- S. **Data Loss** means the alteration, corruption, or malicious encryption or deletion by a malicious third person of a **Data Asset** as the direct result of unauthorized access to the **Computer System**.
- T. **Data Restoration Expenses** means necessary and reasonable expenses incurred by the **Insured Entity** with the prior written consent of the **Company** at its discretion to retain a third party

consultant to restore a **Data Asset** from back up, provided, however, that if such **Data Asset** cannot reasonably be restored, recollected or recreated then **Data Restoration Expenses** means the reasonable and necessary expenses incurred by the **Insured Entity** for such third party consultant to reach that determination.

**Data Restoration Expenses** shall not mean, and there shall be no coverage under Insuring Agreement I.D. for any:

1. liability to or legal actions against any third party;
  2. legal costs or attorney fees of any type;
  3. expenses to restore, recollect or recreate a **Data Asset** to a level or quality beyond that which existed prior to the alteration, corruption, malicious encryption or deletion of such **Data Asset**;
  4. expenses to research or develop any **Data Asset**, including but not limited to trade secrets, intellectual property or other proprietary information;
  5. loss arising out of any physical damage to or destruction of the **Computer System** or any other hardware, physical storage media or other tangible property; and
  6. the economic or monetary value of the **Data Asset** or actual or anticipated profits, royalties, or lost market share related to a **Data Asset**, including but not limited to any value based on trade secrets, intellectual property or other proprietary information or any amount pertaining to the value of the **Data Asset**.
- U. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Company** (including premiums for any appeal bond, attachment bond or similar bond, but without obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against the **Insured**, but shall not include salaries, wages, overhead or benefit expenses associated with **Insured Persons** or employees or contractors of the **Insured Entity**.
- V. **Denial of Service Attack** means an intentional and malicious attack that renders a **Computer System** inaccessible to authorized users by sending an excessive volume of electronic data or processing requests to such **Computer System**.
- W. **Executive Officer** means any person who has been, now is or shall be a duly elected or appointed director, officer, general counsel, risk manager, president, chief executive officer, chief operating officer; chief security officer, chief financial officer, chief privacy officer, staff attorneys, and in the case of a limited liability **Company**, any manager or member of the management board (or equivalent position), of the **Insured Entity**, and any individual in a substantially similar position or with substantially similar responsibilities as those referenced above.
- X. **Extra Expenses** means the necessary and reasonable expenses incurred by the **Insured Entity** during the **Period of Recovery** to:
1. minimize or avoid **Income Loss** (except expenses referenced below in Section II.X.2.); and
  2. retain a third party forensic assessor to investigate and determine the source, cause or scope of a **Computer Attack**; provided, however, the amount stated in Item 4.C. of the Declarations Page is the aggregate limit of the **Company's** liability for all such expenses covered under Insuring Agreement I.E. for this Policy.
- Provided that such expenses: (a) are over and above the total reasonable and necessary expenses that the **Insured Entity** would have incurred had no material interruption occurred; and (b) do not exceed the amount by which the **Income Loss** covered under this policy is thereby reduced.
- Y. **Fines and Penalties** means civil fines or penalties assessed against an **Insured Entity** in a **Regulatory Proceeding**.

Z. **Forensics** means reasonable and necessary expenses the **Insured Entity** incurs to retain a third party forensic assessor to investigate and determine the source, cause or scope of a **Security Incident**.

AA. **Income Loss** means:

1. net profit that the **Insured Entity** is prevented from earning, or net loss that the **Insured Entity** is unable to avoid (as applicable), as a direct result of the **Computer Interruption**; and
2. normal fixed operating expenses incurred by the **Insured Entity** (including payroll), but only to the extent that such operating expenses must necessarily continue during the **Period of Recovery**, and only to the extent that such expenses would have been incurred by the **Insured Entity** had no material interruption or suspension occurred.

**Income Loss** shall be calculated on an hourly basis. **Income Loss** shall be reduced to the extent the **Insured Entity** is able with the exercise of due diligence and dispatch, in whole or in part, to terminate, reduce or limit the **Computer Interruption**, or conduct business operations or transactions related to such **Computer System** by other means.

BB. **Insured** means: (1) any **Insured Person**; and (2) the **Insured Entity**.

CC. **Insured Entity** means the **Named Insured** and any **Subsidiary** thereof.

DD. **Insured Person** means:

1. any person who has been, now is or shall be a duly elected or appointed director, officer, general counsel, risk manager, and in the case of a limited liability company, any manager or member of the management board (or equivalent position), of the **Insured Entity**; and
2. any past, present or future employee (including any part-time, temporary or leased employee), but only with respect to a **Security Incident, Privacy Violation or Media Wrongful Act** occurring as the result of an act, error or omission within the scope of such person's duties on behalf of the **Insured Entity**.

EE. **Loss** means **Damages, Defense Costs, Cyber Extortion Expenses, Breach Management Expenses, Computer System Interruption Loss** and **Data Restoration Expenses**.

FF. **Media Wrongful Act** means content in any form, including electronic or printed media, which is displayed and made available to the general public, which results in any:

1. infringement of copyright, title, slogan, trademark, trade dress, service mark, domain name, logo or service name;
2. plagiarism, piracy, misappropriation of ideas under implied contract;
3. defamation, libel, slander, trade libel, or other tort related to disparagement or harm to the reputation or character of any person or organization; or
4. violation of rights of privacy or publicity, false light, public disclosure of private facts or misappropriation of name, persona or likeness.

GG. **Named Insured** means the company named in Item 2. of the Declarations.

HH. **Period of Recovery** means timeframe that:

1. starts at the date and time that the **Computer Interruption** first occurred; and
2. ends at the earlier of that date and time that the **Computer Interruption** ends or would have ended had the **Insured** acted with due diligence and dispatch.

Provided, however, in no event shall the **Period of Recovery** mean more than or exceed one hundred twenty (120) days.

- II. **Personal Information** means:
1. personal data, personal information or personally identifiable information, however defined, under any **Breach Notification Law** or privacy law, including but not limited to Protected Health Information under Health Insurance Portability and Accountability Act of 1996, non-public personal information under the Gramm-Leach Bliley Act of 1999 and sensitive customer information under Interagency Guidelines Establishing Information Security Standards for financial institutions; and
  2. non-public personally identifiable information, including any individual's name, social security number, driver's license number, passport number, financial account information, e-mail address, passwords, web browsing history, location data and biometric data.
- JJ. **Policy Period** means the period from the effective date to the expiration date of this Policy as set forth in Item 3. of the Declarations or any earlier cancellation date.
- KK. **Pollutants** means but is not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, mold, fungi, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products and waste (including any material to be recycled, reconditioned or reclaimed), and any electric, magnetic or electromagnetic field of any frequency.
- LL. **Privacy Violation** means the wrongful or unauthorized collection or unauthorized disclosure of its customers' **Personal Information** by the **Insured** including without limitation any such collection or disclosure that results in the violation of any federal, state, local or foreign privacy law.
- MM. **Property Damage** means damage to, destruction of or loss of use of tangible property. For purposes of this Policy, tangible property shall not include **Third Party Data**.
- NN. **Regulatory Proceeding** means a civil and formal, administrative or regulatory proceeding or investigation, brought against the **Insured Entity**, by or on behalf of any state attorney general, the Federal Trade Commission, the Federal Communications Commission, or any other federal, state, local or foreign governmental entity, as the result of a **Security Incident** or **Privacy Violation**.
- OO. **Retention** means the applicable **Retention** set forth in Item 6. of the Declarations.
- PP. **Retroactive Date** means the date set forth in Item 8. of the Declarations.
- QQ. **Security Incident** means any:
1. loss, theft or unauthorized acquisition of, or unauthorized access to, **Third Party Data**, including the failure to disclose the loss, theft or unauthorized acquisition of **Personal Information**;
  2. alteration, corruption, deletion, or unauthorized encryption by a malicious third party, of data stored on the **Computer System**;
  3. failure of the security of the **Computer System** that results in the transmission of malicious code, unauthorized access, unauthorized use or a **Denial of Service Attack** against a third party's computer system; or
  4. theft of passwords or access codes, by physical or electronic means, from an **Insured's** employees, premises or **Computer System**, which results in the unauthorized access to a **Computer System**, including without limitation theft of passwords resulting from a phishing attack or other social engineering attack.
- RR. **Service Provider** means a third party that the **Insured** does not own, operate or control, but that the **Insured** hires pursuant to a written contract to process, store, host or maintain the **Insured's Third Party Data**.

SS. **Subsidiary** means:

1. any corporation in which the **Named Insured** owns on or before the inception of this Policy more than fifty percent (50%) of the issued and outstanding voting stock, either directly or indirectly through one or more of its **Subsidiaries**;
2. any corporation in which the **Named Insured** acquires after the inception of this Policy more than fifty percent (50%) of the issued and outstanding voting stock, either directly or indirectly through one or more of its **Subsidiaries**, provided that the assets of such corporation total:
  - a. less than twenty-five percent (25%) of the total consolidated assets of the **Insured Entity** as of the inception of this Policy; or
  - b. twenty-five percent (25%) or more of the total consolidated assets of the **Insured Entity** as of the inception of this Policy, and within ninety (90) days of such acquisition, the **Named Insured** has provided the **Company** with full particulars, paid any additional premium and agreed to any amendment of this Policy required by the **Company** relating to such new **Subsidiary**.

A corporation ceases to be a **Subsidiary** when the **Named Insured** ceases to own more than fifty percent (50%) of the issued and outstanding voting stock, either directly or indirectly through one or more of its **Subsidiaries**.

No coverage shall be afforded under this Policy with respect to any **Claim** made against, or **Loss** of, a **Subsidiary** or any **Insured Person** thereof, based upon, arising out of or attributable to any **Security Incident, Privacy Violation, Media Wrongful Act, Computer Attack, System Failure, Data Loss, Computer Interruption** or **Cyber Extortion Threat** first occurring or made before the effective time that such entity became a **Subsidiary** or occurring or made any time after such **Subsidiary** ceased to be a **Subsidiary**.

TT. **System Failure** means any unintentional and unplanned outage or operational failure of a **Computer System**. Any **System Failure** that has as a common nexus with another **System Failure**, any fact, circumstance, situation, event, transaction, vulnerability, cause, or series of causally connected facts, circumstances, situations, events, transactions, vulnerabilities, or causes, shall be considered a single **System Failure** and deemed to have first occurred at the time of the first such **System Failure**.

UU. **Terrorism** means any act, including without limitation the use of force or violence, or the threat thereof, by any individual or group(s) of individuals, whether acting alone, on behalf of or in connection with any organization(s) or government(s), to cause harm, loss or damage, committed for or to further social, ideological, religious, political or similar objectives, or to intimidate or influence any person(s), organization(s), government(s) or the public, or any segment of the public, in furtherance of such objectives, including without limitation any **Security Incident** or **Privacy Violation** (or act related thereto), or threat thereof. **Terrorism** shall not include **Cyberterrorism**.

VV. **Third Party Data** means **Personal Information** or **Confidential Information** in the care, custody or control of the **Insured Entity** or a **Service Provider**.

WW. **Waiting Period** means the time frame set forth in Item 7. of the Declarations.

### Section III—EXCLUSIONS

This Policy does not cover any **Claim, Security Incident, Privacy Violation, Computer Attack, System Failure, Computer Interruption, Cyber Extortion Threat, Data Loss, Media Wrongful Act** or **Loss**:

- A. based upon, arising out of or attributable to an **Executive Officer's** intentional failure to internally disclose or provide notice of a **Security Incident** if that **Executive Officer** was aware of such **Security Incident**;



- B. based upon, arising out of or attributable to any discrimination of any kind, including but not limited to, race, creed, religion, age, handicap, sex, pregnancy, sexual orientation, marital status or financial condition;
- C. based upon, arising out of or attributable to any refusal to employ, dismissal, discharge or termination of employment, coercion, demotion, evaluation, reassignment, discipline, harassment, hostile work environment, deprivation of career opportunity, failure to promote, inadequate policies, or humiliation, or any other employment-related practices, policies, acts, errors, or omissions; provided, however, this exclusion shall not apply to any otherwise covered **Claim** under Insuring Agreement I.A. for a **Security Incident**;
- D. based upon, arising out of or attributable to any **Bodily Injury** or **Property Damage**; provided, however, this exclusion will not apply to an otherwise covered **Claim** under Insuring Agreement I.A. for mental anguish or emotional distress directly resulting from a **Security Incident, Privacy Violation** or **Media Wrongful Act**;
- E. brought by, on behalf of or in the right of any:
  - 1. **Insured** or any other natural person or entity for whom or which an **Insured** is legally liable, or the parent of the **Insured**; provided, however, this exclusion shall not apply to an otherwise covered **Claim** under Insuring Agreement I.A. by a current or former employee of the **Insured Entity** for a **Security Incident** or **Privacy Violation** so long as such employee did not commit such **Security Incident, Privacy Violation** or **Media Wrongful Act**; or
  - 2. stockholders, members, principals or owners of the **Insured Entity**, including without limitation any derivative suit brought by such individuals; provided, however, this exclusion shall not apply to an otherwise covered **Claim** under Insuring Agreement I.A. by such stockholders, members, principals or owners that are **Affected Individuals** or whose **Personal Information** was the subject of a **Privacy Violation**;
- F. based upon, arising out of or attributable to any fees or costs, paid to or charged by the **Insured**, including, without limitation, the collection of or seeking the return of fees or royalties or other compensation from the **Insured**;
- G. based upon, arising out of or attributable to any violation(s) of any of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, or amendments thereto, or any similar provisions of state or foreign statutory or common law in connection with any pension or employee benefit plan sponsored or established by any **Insured Entity**;
- H. based upon, arising out of or attributable to any false or deceptive advertising or misrepresentation, unfair competition, price fixing, restraint of trade, monopolization, or any violation of the Sherman Anti-Trust Act, the Clayton Anti-Trust Act of 1914, or The Robinson-Patman Act of 1936, as amended;
- I. based upon, arising out of or attributable to any actual or alleged unfair competition, deceptive or unfair trade practice, consumer fraud, or any violation of the Federal Trade Commission Act, as amended, or any similar provision of any federal, state or local statutory law or common law or rules or regulations involving antitrust, monopoly, price fixing, price discrimination, consumer protection, predatory pricing or restraint of trade or otherwise protecting trade competition; provided, however, this exclusion shall not apply to any otherwise covered **Claim** under Insuring Agreement I.A.;
- J. based upon, arising out of or attributable to any:
  - 1. actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time; or
  - 2. request, demand or order to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of **Pollutants**;

- K. based upon, arising out of or attributable to any war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, nationalization, requisition, or destruction of, or damage to, property by or under the order of any government, public or local authority; or **Terrorism**;
- L. based upon, arising out of or attributable to fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God, or any other physical event, however caused;
- M. based upon, arising out of or attributable any electrical or mechanical breakdown, failure or interruption, disturbance, surge, spike, brownout or blackout, or any failures, interruptions or outages to gas, heat or water;
- N. based upon, arising out of or attributable to any failure, outages or interruptions of telephone, cable, telecommunications, any Internet service provider, data transmission lines or networking infrastructure comprising or supporting the Internet not under the direct operational control of the **Insured Entity**;
- O. based upon, arising out of or attributable to any satellite failure, outages or interruption;
- P. based upon, arising out of or attributable to any loss, theft or transfer of funds, money or securities, or any trading liabilities or trading losses or changes in the value of accounts, or the monetary value of any electronic fund transfer or transaction by an **Insured** or on the **Insured's** behalf, which is lost or diminished during transfer into, out of or between an **Insured's** accounts;
- Q. based upon, arising out of or attributable to any contractual liability or obligation, liability assumed under contract, or any breach of any oral or written contract or agreement; provided, however, that this exclusion shall not apply to any otherwise covered **Claim** under Insuring Agreement I.A.:
  - 1. for breach of any contractual or implied contractual obligation to prevent a **Security Incident** or **Privacy Violation**;
  - 2. for a **Media Wrongful Act** that is a misappropriation of ideas under implied contract; or
  - 3. to the extent the **Insured** would have been liable in the absence of a contract;
- R. based upon, arising out of or attributable to any unsolicited e-mail, robocalls, text messages, direct mail or facsimiles, wiretapping, audio or video recording, or telemarketing, or any online, social media or mobile advertisements, including without limitation any actions brought under the Telephone Consumer Protection Act of 1991, any federal or state anti-spam statutes, and/or any other federal or state statute, law or regulation relating to a person's or entity's right of seclusion;
- S. based upon, arising out of, or attributable to any:
  - 1. act, error, omission, circumstance, situation, incident, event, vulnerability, **Security Incident, Privacy Violation, Media Wrongful Act, Computer Attack, Computer Interruption, Data Loss, Cyber Extortion Threat** or **System Failure**, if prior to the inception date of this Policy, the **Insured** knew, or reasonably could have foreseen, that such act, error, omission, circumstance, situation, incident, event, vulnerability, **Security Incident, Privacy Violation, Media Wrongful Act, Computer Attack, Computer Interruption, Data Loss, Cyber Extortion Threat** or **System Failure** formed, or might form, the basis of a **Claim**, covered event, **Loss** or **Security Incident**;
  - 2. act, error, omission, circumstance, situation, incident, event, **Security Incident, Computer Attack, Computer Interruption, Data Loss, Cyber Extortion Threat, System Failure, Privacy Violation** or **Media Wrongful Act** first occurring or made prior to the **Retroactive Date**;
  - 3. **Security Incident, Computer Attack, Computer Interruption, Data Loss, Cyber Extortion Threat, System Failure, Privacy Violation** or **Media Wrongful Act, Claim**, matter, fact, circumstance or event which has been the subject of notice: (a) under any prior policy of which

- this Policy is a renewal or replacement or to which it may succeed in time; or (b) to any insurer as a circumstance or event that might lead to a **Claim, Loss** or other potentially covered claim, suit, matter or loss under such insurer's policy; and
4. any prior or pending litigation, **Claim**, demands, arbitration, administrative or **Regulatory Proceeding** or investigation, which was made, filed or commenced against an **Insured**, and of which an **Insured** had notice, on or before the earlier of the effective date of this Policy or the effective date of any policy issued by the **Company** of which this Policy is a continuous renewal or a replacement, or alleging or derived from the same or substantially the same fact, circumstance or situation underlying or alleged therein;
- T. based upon, arising out of, or attributable to any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, any **Security Incident, Cyber Extortion Threat, Computer Attack, Data Loss**, intentional **Privacy Violation**, or gaining of any profit or advantage to which any **Insured** is not legally entitled, if committed by any **Insured** or by others in collusion with any **Insured**; provided, however:
1. the insurance afforded by this Policy shall apply to **Defense Costs** incurred in defending the **Insured** against any otherwise covered **Claim** arising out of such act, error, conduct or omission, but shall not apply to any **Loss** which the **Insured** may become legally obligated to pay for such conduct or omission. Furthermore, upon the determination by a court, jury, or arbitrator establishing that such conduct or omission was committed, or upon any adverse admission by, finding of fact against, or plea of nolo contendere or no contest by the **Insured**, the **Insured** shall reimburse the **Company** for all **Defense Costs** incurred defending the **Claim** and the **Company** shall have no further liability for **Defense Costs**;
  2. such act, error, conduct or omission shall not be imputed to the **Insured Entity** unless it is committed by, or occurs with the participation, knowledge, consent or acquiescence of, any **Executive Officer**; and
  3. such act, error, conduct or omission shall not be imputed to an **Insured Person** unless it is committed by, or occurs with the participation, knowledge, consent or acquiescence of, such **Insured Person**;
- U. based upon, arising out of, or attributable to any infringement, misuse, violation or misappropriation of any patent or patent rights, or any copyright, trade mark, title, slogan, trademark, trade name, trade dress, service mark, service name, license or other intellectual property rights related to any software, software code or application;
- V. based upon, arising out of, or attributable to any misuse or misappropriation of any ideas, trade secrets, or proprietary or **Confidential Information** by any **Insured Person** where such idea, trade secret, or proprietary or **Confidential Information** was accessible to such **Insured Person** prior to joining or becoming an **Insured Person** of the **Insured Entity**;
- W. based upon, arising out of, or attributable to any coupons, price discounts, points, rewards, prizes, awards or any other valuable consideration given in excess of the total contracted or expected amount;
- X. based upon, arising out of, or attributable to any:
1. actual or alleged obligation to pay licensing fees, royalties or other fees associated with the use of any person or entity's copyright, title, slogan, trademark, trade name, trade dress, service mark, service name, or other protected property right;
  2. production costs of, or the cost or expenses of any recall, reproduction, retracting, removal, disposal, reprinting or correction of, any content, media, material or information by any person or entity;

3. action, claim or demand brought by or on behalf of any intellectual property enforcement or licensing organization, body or association, including without limitation, the ASCAP, SESAC, BMI, MPAA and RIAA;
  4. inaccurate, inadequate, or incomplete description of the price of goods, products or services; or any failure of goods, products or services to conform with an advertised quality or performance; or any failure to provide goods or products, or perform services within a specified time period, by a deadline or according to specified milestones; or the authenticity of any products, goods or services; or any cost or profit guarantees, cost representations, contract price, or estimates of probable costs or cost estimates;
  5. contest, gambling, game of chance, sweepstakes, promotional game, lottery or similar event or promotion; or
  6. dispute or controversy with any independent contractor, third party distributor, licensee, sub-licensee, joint venturer, venture partner, any employee of the foregoing or any employee, contractor or agent of an **Insured**, arising out of or resulting from: (i) the ownership or exercise of rights in content, material or information; or (ii) services supplied by such independent contractor, third party distributor, licensee, sub-licensee, joint venturer, venture partner or any such employee, contractor or agent;
- Y. based upon, arising out of, or attributable to any collection of **Personal Information** by the **Insured Entity** (or any **Insured Person**, agent, subcontractor or third party for or on its behalf or with its permission) without written or adequate notice to the relevant individual that such **Personal Information** is being collected; provided, however, that such conduct shall not be imputed to the **Insured Entity** unless it is committed by, or occurs with the participation, knowledge, consent or acquiescence of, any **Executive Officer**;
- Z. based upon, arising out of, or attributable to any **Insured Person's** acts, errors, omissions or conduct as a trustee, principle, shareholder, partner, member, manager, officer, director or employee of any entity, trust, organization, corporation, company or business that is not an **Insured Entity**;
- AA. based upon, arising out of, or attributable to any seizure, confiscation, nationalization, or destruction of the **Computer System** or any **Data Asset**, in whole or part, by order of any governmental or public authority; or
- BB. based upon, arising out of, or attributable to any **Insured's** rendering or failure to render professional services to others.

#### Section IV—LIMIT OF LIABILITY AND RETENTIONS

- A. The **Limit of Liability** stated in Item 4.A. of the Declarations is the aggregate limit of the **Company's** liability for all **Loss**, including, without limitation, **Defense Costs**, covered under this Policy, combined. The **Company's** payment of any **Loss**, including **Defense Costs**, shall reduce, and may exhaust, the **Limit of Liability** and any applicable sub-limits of liability. The hourly sub-limit stated in Item 4.B. of the Declarations is the aggregate limit of the **Company's** liability for all **Income Loss** per hour covered under this Policy.
- B. The **Company** shall only be liable for the amount of **Loss** in excess of the applicable **Retention** stated in Item 6. of the Declarations (or elsewhere) for each Insuring Agreement, such **Retention** to be borne by the **Insured** and uninsured. If more than one **Retention** applies to a covered **Claim**, the maximum **Retention** payable by the **Insureds** for such **Claim** shall be the highest applicable **Retention**. In addition, with respect to Insuring Agreement I.E., the **Company** shall not be liable for any **Income Loss** or **Extra Expense** incurred during the **Waiting Period**, and such **Income Loss** and **Extra Expense** shall be borne by the **Insured Entity** and uninsured; provided, however, that coverage for any Forensic Assessor **Extra Expense** shall not be subject to any **Waiting Period**.

- C. All **Claims** based upon or arising out of the same **Security Incident, Privacy Violation or Media Wrongful Act**, or any **Security Incident, Privacy Violation or Media Wrongful Act** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes (**Interrelated Wrongful Acts**), will be treated as a single **Claim** made when the earliest such **Claim** was first made, or when the earliest such **Claim** is treated as having been made in accordance with Section V.C., whichever is earlier. A single **Retention** shall apply to **Damages** and **Defense Costs** as a result of all **Claims** based upon or arising out of the same **Security Incident, Privacy Violation, Media Wrongful Act or Interrelated Wrongful Acts**.
- D. The **Company** shall not be obligated to pay any **Loss** or to undertake or continue the defense of any **Claim** after the **Limit of Liability** or any applicable sub-limit of liability has been exhausted by such payment or after deposit of the applicable limit of the **Company's** liability with or subject to control of a court of competent jurisdiction.
- E. There shall be no coverage under this Policy for, or any **Limit of Liability** available for, any Insuring Agreement that has not been identified as elected in Item. 5 of the Declarations.

#### Section V—NOTICES AND CONSENT

- A. All notices to the **Company** shall be given in writing and sent by mail, e-mail, prepaid express courier or by facsimile, to the address listed in Item 2. of the Declarations and shall be effective upon receipt.
- B. As a condition precedent to the obligations of the **Company** under this Policy, the **Insured** shall give written notice to the **Company**:
  1. with respect to Insuring Agreement 1.A., as soon as practicable after such **Claim** is made, but in no event later than: (1) the end of the **Policy Period** or the **Discovery Period** (if applicable); or (2) thirty (30) days after the end of the **Policy Period** (if the **Discovery Period** is not applicable), but only if such **Claim** was first made against an **Insured** within the final thirty (30) days of the **Policy Period**.
  2. with respect to Insuring Agreement I.B., as soon as practicable after discovery of a **Security Incident or Privacy Violation**, but in no event later than: (a) thirty (30) days after the end of the **Policy Period**; and (b) thirty (30) days after the **Insured** first discovers such **Security Incident or Privacy Violation** or reasonably suspected **Security Incident or Privacy Violation**;
  3. with respect to Insuring Agreement I.C., as soon as practicable after discovery of a **Cyber Extortion Threat**, but in no event later than: (a) thirty (30) days after the end of the **Policy Period**; and (b) thirty (30) days after the **Insured** first discovers such a **Cyber Extortion Threat**;
  4. with respect to Insuring Agreement I.D., as soon as practicable after discovery of a **Data Loss**, but in no event later than: (a) thirty (30) days after the end of the **Policy Period**; and (b) thirty (30) days after the **Insured** first discovers such **Data Loss**; and
  5. with respect to Insuring Agreement I.E., as soon as practicable after discovery of a **Computer Interruption**, but in no event later than: (a) thirty (30) days after the end of the **Policy Period**; and (b) thirty (30) days after the **Insured** first discovers such **Computer Interruption**.
- C. If during the **Policy Period** the **Insured** first becomes aware of any circumstance, **Security Incident, Privacy Violation or Media Wrongful Act** that may reasonably be expected to give rise to a **Claim** being made against an **Insured**, and if written notice of such circumstance, **Security Incident, Privacy Violation or Media Wrongful Act** is given to the **Company**, including the reason for anticipating such a **Claim**, the nature and date of the circumstance, **Security Incident, Privacy Violation or Media Wrongful Act**, the identity of the **Insureds** allegedly involved, the alleged

injuries or damages sustained, the names of potential claimants, and the manner in which the **Insureds** first became aware of the circumstance, **Security Incident, Privacy Violation or Media Wrongful Act**, then a **Claim** subsequently made against such **Insured** arising out of such circumstance, **Security Incident, Privacy Violation or Media Wrongful Act** shall be considered made at the time the **Insured** gave such notice of such circumstance, **Security Incident, Privacy Violation or Media Wrongful Act** to the **Company**; provided any such **Claim** must be reported to the **Company** no later than ninety (90) days after the in-house general counsel or risk manager of the **Insured Entity** becomes aware of such **Claim**. In addition, in the event that the **Insured Entity** provides notice of a **Security Incident or Privacy Violation** under Insuring Agreement I.B., the notice of such **Security Incident or Privacy Violation** shall be deemed a notice of circumstance under this Policy, and any **Claim** arising from the relevant **Security Incident or Privacy Violation** shall be deemed to be first made during the **Policy Period** in which the notice of such **Security Incident or Privacy Violation** was made by the **Insured Entity**.

- D. As a condition precedent to coverage under this Policy, the **Insured** shall obtain written consent from **Company** prior to incurring any **Breach Management Expenses** (except **Forensics expenses**), **Defense Costs, Cyber Extortion Expenses, Data Restoration Expenses or Extra Expenses**.

#### Section VI—SETTLEMENTS AND DEFENSE

- A. The **Company** shall have the right and duty to defend the **Insured** against any covered **Claim**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Company's** duty to defend ends after the **Limit of Liability** or applicable sub-limits of liability have been exhausted by payment of **Loss**, including **Defense Costs**. In addition, the **Company's** duty to defend ends if the **Insured** refuses to consent to a settlement of a **Claim** that the **Company** recommends and that the claimant will accept. The **Insured** must then defend, investigate or settle the **Claim** at its own expense. As a consequence of the **Insured's** refusal, the **Company's** liability for covered **Damages** shall not exceed the amount for which the **Company** could have settled such **Claim** had the **Insured** consented, plus covered **Defense Costs** incurred prior to the date of such refusal, plus fifty percent (50%) of covered **Defense Costs** incurred after the date of such refusal and fifty percent (50%) of covered **Damages** in excess of the amount for which the **Company** could have settled such **Claim** had the **Insured** consented.
- B. Selection of defense counsel and third party vendors shall be mutually agreed upon between the **Insured** and the **Company**. If the **Insured** and the **Company** cannot agree on the selection of defense counsel and third party vendors, the **Company's** decision shall be final.
- C. The **Insured** agrees not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Company**, such consent not to be unreasonably withheld. The **Company** shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. The **Company** shall have the right to investigate and settle any **Claim**; provided, however, no settlement shall be made without the consent of the **Named Insured**, such consent not to be unreasonably withheld. The **Insured** shall promptly send to the **Company** all settlement demands or offers received by any **Insured** from the claimant(s).
- D. The **Insured** agrees to provide the **Company** with all information, assistance and cooperation which the **Company** reasonably requests, and agrees that, in the event of a **Claim**, the **Insured** will do nothing that shall prejudice the position of the **Company** or its potential or actual rights of recovery. The **Company** may make any investigation it deems necessary.
- E. The **Company** agrees that the **Insured** may settle any **Claim** where the **Damages and Defense Costs** (combined) 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.

## Section VII—ALLOCATION

- A. If **Damages**, in part, covered by this Policy and, in part, not covered by this Policy, are incurred on account of a single **Claim** for which the **Company** retains the duty to defend, the Policy will pay one hundred percent (100%) of reasonable and necessary **Defense Costs** incurred in the defense of such **Claims**.
- B. **Damages** and Claims Expenses incurred by the **Insured** on account of any **Claim** for which the **Company** does not retain the duty to defend shall be allocated between covered and uncovered loss based on the relative legal and financial exposures of the parties and loss at issue.

## Section VIII—DISCOVERY PERIOD

- A. Except as provided in Section VIII.B. below, if either the **Company** or the **Named Insured** shall cancel or refuse to renew this Policy, the **Named Insured** shall have the right, upon payment of the **Discovery Period** Premium stated in Item 10. of the Declarations, to an additional period stated in Item 10. of the Declarations immediately following the effective date of such cancellation or non-renewal (herein referred to as the **Discovery Period**) in which to give to the **Company** written notice of any **Claim** first made against the **Insured** during the **Discovery Period**, but only if such **Claim** is for a **Security Incident, Privacy Violation** or **Media Wrongful Act** otherwise covered by this Policy that first occurs prior to the earlier of any **Transaction** or the effective date of such cancellation or non-renewal. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Company** within thirty (30) days of the effective date of cancellation or non-renewal.
- B. The additional premium for the **Discovery Period** shall be fully earned at the inception of the **Discovery Period**. The **Discovery Period** is not cancelable. This Section and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium, or as a result of a renewal quotation with different terms and conditions.
- C. The purchase of the **Discovery Period** shall not increase or reinstate the **Limit of Liability** or any applicable sub-limits.

## Section IX—CANCELLATION

- A. The **Named Insured** may cancel this Policy by surrender thereof to the **Company** or any of its authorized representatives or by mailing to the **Company** written notice stating when thereafter the cancellation shall be effective.
- B. The **Company** may cancel this Policy for non-payment of premium or any other reason by mailing to the **Named Insured** at the address shown in the Declarations and to its agent of record written notice stating when, not less than ten (10) days thereafter for non-payment of premium or sixty (60) days for any other reason, such cancellation shall be effective. Proof of mailing will be sufficient proof of notice.
- C. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**.
- D. If the **Named Insured** cancels this Policy, earned premium shall be the customary short rate amount of the annual premium, and if the **Company** cancels this Policy, earned premium shall be the pro rata amount of the annual premium; provided, however, if at the time of cancellation the **Limit of Liability** has been exhausted, the entire premium shall be considered earned. Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. Mailing of the **Company's** check shall be sufficient tender of any refund of premium due to the **Named Insured**.

## Section X—CHANGES IN EXPOSURE

### A. If during the **Policy Period**:

1. the **Named Insured** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert;
2. any person or entity or group of persons and/or entities acting in concert shall acquire an amount of the outstanding securities representing more than fifty percent (50%) of the voting power for the election of directors of the **Named Insured**, or acquires the voting rights of such an amount of such securities; or
3. a receiver, conservator, trustee, liquidator, rehabilitator, or any similar official for or with respect to the **Named Insured**, is appointed;

(any such event referred to herein as a **Transaction**) then, this Policy shall continue in full force and effect as to any otherwise covered **Security Incident, Privacy Violation, Media Wrongful Act, Computer Attack, Computer Interruption, Data Loss, Cyber Extortion Threat** or **System Failure** occurring prior to the effective date of the **Transaction**, but there shall be no coverage afforded by any provision of this Policy for any actual or alleged **Security Incident, Privacy Violation, Media Wrongful Act, Computer Attack, Computer Interruption, Data Loss, Cyber Extortion Threat** or **System Failure** after the effective date of the **Transaction** unless the **Company** agrees by endorsement to this Policy to extend such coverage. This Policy may not be canceled after the effective date of the **Transaction** and the entire premium for this Policy shall be deemed earned as of such date. The **Named Insured** shall give the **Company** written notice of the **Transaction** as soon as practicable, but not later than thirty (30) days after the effective date of the **Transaction**.

- ### B. If during the **Policy Period** any **Named Insured** acquires an entity or merges with another entity such that the **Named Insured** is the surviving entity, then such newly acquired or merged entity and its subsidiaries, managers, directors, officers and employees shall be deemed **Insureds**, but only for any otherwise covered **Security Incident, Privacy Violation, Media Wrongful Act, Computer Attack, Computer Interruption, Data Loss, Cyber Extortion Threat** or **System Failure** after the effective date of such acquisition or merger; provided, however, if the fair value of the assets or the assets under management of the newly acquired or merged entity exceeds twenty percent (20%) of the total assets or the assets under management of all of the **Named Insureds** as reflected in the most recent consolidated audited financial statements prior to such acquisition or merger, such newly acquired or merged entity and its subsidiaries, managers, directors, officers and employees shall not be deemed **Insureds** unless the **Insureds** have given the **Company** full details of the transaction in writing as soon as practicable thereafter and pay any additional premium and accept any additional terms and conditions as the **Company**, in its sole discretion, shall require.

## Section XI—SUBROGATION

If the **Company** pays any **Loss**, the **Company** shall be subrogated to the **Insured's** right of recovery against any other person or organization for such **Loss**, and the **Insured** shall execute all papers required, and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Company** effectively to bring suit in the name of the **Insured**. Any recovery (after expenses) shall be used to reduce the **Loss**, and so much of such recovery shall be paid to the **Company** as will reduce the **Loss** ultimately borne by the **Company** to what it would have been had the recovery preceded any payment of such **Loss** by the **Company**.

## Section XII—OTHER INSURANCE AND INDEMNITY

The insurance provided by this Policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is written only as specific excess insurance over the applicable



Limit of Liability provided by this Policy. This Policy shall also be specifically excess over any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** or pay **Loss** for which this Policy may be obligated to pay **Loss**.

#### Section XIII—**ARBITRATION**

If requested by the **Insured**, the **Company** shall submit any dispute, controversy or **Claim** arising out of or relating to this Policy or the breach, termination or invalidity thereof to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot so agree, the arbitration shall be administered by the American Arbitration Association in accordance with its then prevailing commercial arbitration rules. The arbitration panel shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by the **Company**, and a third independent arbitrator selected by the first two arbitrators. Each party will bear its own legal fees and expenses.

#### Section XIV—**NOTICE AND AUTHORITY**

It is agreed that the **Named Insured** shall act on behalf of all **Insureds** with respect to giving notice of **Claim**, giving and receiving notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the receipt and acceptance of any endorsements issued to form a part of this Policy and the exercising or declining to exercise any right to a **Discovery Period**.

#### Section XV—**ACTION AGAINST COMPANY**

No action shall lie against the **Company** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and the amount of the **Insured's** obligation to pay **Loss** shall have been finally determined (with respect to otherwise covered **Claims**) either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the **Company**).

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of any insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the **Company** as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the **Company** be impleaded by the **Insured** or his legal representative. Bankruptcy or insolvency of the **Insured** or the **Insured's** estate shall not relieve the **Company** of any of its obligations hereunder.

#### Section XVI—**REPRESENTATIONS**

- A. By accepting this Policy the **Insureds** agree that the statements, representations and information in the **Application** are their agreements and representations and that this Policy is issued in reliance upon the truth of such agreements and representations, which are deemed material to the acceptance of the risk or the hazard assumed by the **Company** under the Policy.
- B. The **Insureds** further agree that in the event of any material misstatement, misrepresentation or omission in the **Application**, this Policy will be void as to any:
  1. **Insured Person** who knew of such misstatement, misrepresentation or omission (regardless of the Insuring Agreement); and
  2. other **Insured** to whom knowledge of such misstatement, misrepresentation or omission is imputed.

For the purpose of determining imputation, the **Insureds** agree that:

1. any knowledge possessed by the signer of the **Application** or the Chief Executive Officer, Chief Financial Officer, Chief Compliance Officer, Chief Security Officer, Chief Information Security Officer, Chief Information Officer, President or the Chairman of the Board of Directors (or similar positions with different titles) of the **Named Insured** shall be imputed to the **Insured Entity**; and

2. the knowledge of an **Insured Person** shall not be imputed to any other **Insured Person**.

#### Section XVII—**ASSIGNMENT**

No assignment of interest under this Policy shall be valid unless endorsed in writing by the **Company**.

#### Section XVIII—**ENTIRE AGREEMENT**

This Policy, together with the Declarations, **Application** and Endorsements, embodies all agreements existing between the **Insured** and the **Company** or any of its agents relating to this insurance.

#### Section XIX—**CAPTIONS**

The headings or captions used in this Policy are for reference only and do not affect the meaning of this Policy.

#### Section XX—**COVERAGE TERRITORY**

Coverage under this Policy applies worldwide, provided, however, that any **Claims** made against an **Insured** must be brought and held against the **Insured** in the United States of America, its territories or possessions, Puerto Rico or Canada.

#### Section XXI—**ASSISTANCE AND COOPERATION**

As a condition precedent to coverage under this Policy, the **Insured** shall provide the **Company** with any cooperation and assistance that the **Company** may request, including assisting the **Company** in any investigation of a **Claim, Loss, Security Incident, Privacy Violation, Media Wrongful Act, Computer Attack, Computer Interruption, Data Loss, Cyber Extortion Threat, System Failure**, event, attack, threat or circumstance (including submission to an examination by the **Company** or the **Company's** designee, under oath if required), making settlements, enforcing any legal rights the **Insured** or the **Company** may have against anyone who may be liable to the **Insured**, attending depositions, hearings and trials, executing any documents that the **Company** deems are necessary to secure the **Company's** rights under this Policy, securing and giving evidence, and obtaining the attendance of witnesses. Expenses incurred by the **Insured** in assisting and cooperating with the **Company** do not constitute **Defense Costs** under the Policy, and shall be borne entirely by the **Insured**.

#### Section XXII—**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.

#### Section XXIII—**NET PROFIT CALCULATIONS**

In determining the amount of net profit that the **Insured Entity** is prevented from earning, or net loss that the **Insured Entity** is unable to avoid (as applicable), and expenses covered hereunder for the purpose of ascertaining the amount of **Income Loss** (and otherwise) sustained under Insuring Agreement I.E., due consideration shall be given to the prior experience of the **Insured Entity's** business before the beginning of the **Period of Recovery** and to the probable business the **Insured Entity** could have performed had no **Computer Interruption** occurred. Provided, however, that such net profit (or loss) calculations shall not include, and this policy shall not cover, net income that would likely have been earned as a result of an increase in volume of the **Insured Entity's** business due to favorable business conditions caused by the impact of computer attacks on or system failures of other businesses. All such net profit (or loss) and charges and expenses shall be calculated on an hourly basis and based on the **Insured Entity's** actual net profit (or loss) and expenses.

#### Section XXIV—**APPRAISAL**

If the **Insured Entity** and the **Company** disagree on the amount of **Computer System Interruption Loss**, either may make a written demand for an appraisal of such **Computer System Interruption Loss**. If such demand is made each party will select a competent and impartial appraiser. The appraisers will then jointly select an umpire. If the appraisers cannot agree on an umpire they may request that

selection be made by a judge of a court having jurisdiction. Each appraiser will separately state the amount of the **Computer System Interruption Loss**. If they fail to agree they will submit their differences to the umpire. A decision agreed to by any of the two of these will be binding on the parties. The parties shall bear the costs for their chosen appraiser and split the costs for the umpire equally. Any appraisal of **Computer System Interruption Loss** shall be calculated in accordance with the terms, conditions and exclusions of this Policy.