

# Zurich Security And Privacy Protection Policy



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SAMPLE

# Zurich Security And Privacy Protection Policy



**COVERAGE UNDER SUBSECTION I.A. LIABILITY COVERAGES APPLIES ONLY TO LOSS FROM CLAIMS FIRST MADE AND REPORTED TO THE UNDERWRITER DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE, FOR WRONGFUL ACTS OCCURRING ON OR AFTER THE RETROACTIVE DATE AND BEFORE THE END OF THE POLICY PERIOD. DEFENSE COSTS REDUCE AND MAY EXHAUST THE APPLICABLE LIMITS OF LIABILITY AND APPLY TO THE RETENTION.**

**THIS POLICY INCLUDES ONLY COVERAGES INDICATED AS PURCHASED IN ITEM 7. OF THE DECLARATIONS.**

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine an **Insured's** rights, duties and what is and is not covered. Refer to Section III. Definitions of this Policy for the special meaning of words and phrases that appear in bold.

In consideration of payment of the premium and in reliance upon the statements made in the **Application**, which is made a part hereof, and subject to the Declarations, definitions, exclusions, limitations, conditions, provisions and other terms of this Policy (including any endorsements hereto), the Underwriter and the **Policyholder** on behalf of all the **Insureds** agree as follows:

## I. INSURING CLAUSES

### A. LIABILITY COVERAGES

#### 1. Security and Privacy

##### a. Security and Privacy Liability Coverage

The Underwriter will pay on behalf of the **Insured** all **Damages** which the **Insured** becomes legally obligated to pay and **Defense Costs** on account of any **Claim** first made against the **Insured** and reported to the Underwriter during the **Policy Period** or any **Extended Reporting Period**, if applicable, for a:

(1) **Security Wrongful Act**; or

(2) **Privacy Wrongful Act**,

provided such **Security Wrongful Act** or **Privacy Wrongful Act** first occurs on or after the Retroactive Date shown in Item 5.A. of the Declarations and before the end of the **Policy Period**, subject to Subsection V.C. and Subsection V.D.

##### b. Regulatory Proceedings Coverage

The Underwriter will reimburse the **Insured** for all **Loss** the **Insured** incurs in responding to any **Regulatory Proceeding** first made against the **Insured** and reported to the Underwriter during the **Policy Period** or any **Extended Reporting Period**, if applicable, if the:

(1) **Security Wrongful Act** concerning a **Privacy Event**; or

(2) **Privacy Wrongful Act**,

applicable to such **Regulatory Proceeding** first occurs on or after the Retroactive Date shown in Item 5.A. of the Declarations and before the end of the **Policy Period**, subject to Subsection V.C. and Subsection V.D.

#### 2. Internet Media Liability Coverage

The Underwriter will pay on behalf of the **Insured** all **Damages** which the **Insured** becomes legally obligated to pay and **Defense Costs** on account of any **Claim** first made against the **Insured** and reported to the Underwriter during the **Policy Period** or any **Extended Reporting Period**, if applicable, for an **Electronic Publishing Wrongful Act**, provided such **Electronic Publishing Wrongful Act** first occurs on or after the

Retroactive Date shown in Item 5.B. of the Declarations and before the end of the **Policy Period**, subject to Subsection V.C. and Subsection V.D.

## B. NON-LIABILITY COVERAGES

### 1. Privacy Breach Costs Coverage

The Underwriter will reimburse the **Company** for the **Privacy Breach Costs** the **Company** incurs during the **Policy Period** that directly result from a **Privacy Event**, provided such **Privacy Event**:

- a. first occurs on or after the Retroactive Date shown in Item 5.C. of the Declarations and before the end of the **Policy Period**; and
- b. is reported to the Underwriter during the **Policy Period**,  
subject to Subsection V.C. and Subsection V.D.

### 2. Business Income Loss, Dependent Business Income Loss and Extra Expenses Coverage

#### a. Business Income Loss and Extra Expenses Coverage

The Underwriter will pay the **Company** any **Business Income Loss** and related **Extra Expenses** the **Company** sustains during the **Period of Restoration** due to an **Interruption of Service** (except for any **Interruption of Service** provided under Subsection 2.b. Dependent Business Income Loss and Extra Expenses Coverage below), provided such **Interruption of Service** first occurs during the **Policy Period**, subject to Subsection V.C. and Subsection V.D.

#### b. Dependent Business Income Loss and Extra Expenses Coverage

The Underwriter will pay the **Company** any **Dependent Business Income Loss** and related **Extra Expenses** the **Company** sustains during the **Period of Restoration** due to an **Interruption of Service**, provided such **Interruption of Service** first occurs during the **Policy Period**, subject to Subsection V.C. and Subsection V.D.

### 3. Digital Asset Replacement Expense Coverage

The Underwriter will reimburse the **Company** for any **Digital Asset Replacement Expenses**, provided such **Security Event** first occurs during the **Policy Period**, subject to Subsection V.C. and Subsection V.D.

### 4. Cyber Extortion Threat and Reward Payments Coverage

#### a. Cyber Extortion Threat Coverage

The Underwriter will reimburse the **Company** for any **Extortion Expenses** and **Extortion Payments** actually paid by the **Company** that directly result from a **Cyber Extortion Threat**, provided the **Company** first receives such **Cyber Extortion Threat** during the **Policy Period**, subject to Subsection V.C. and Subsection V.D.

#### b. Reward Payments Coverage

The Underwriter will reimburse the **Company** for any **Reward Payments** the **Company** pays to any person or entity, other than:

- (1) an external auditor of the **Company**;
- (2) an **Insured Person** who is an internal auditor of the **Company**; or
- (3) an **Insured Person** who supervises or manages an external auditor of the **Company**,

that directly results from a **Cyber Extortion Threat**, provided the **Company** first receives such **Cyber Extortion Threat** during the **Policy Period**, subject to Subsection V.C. and Subsection V.D.

## II. EXTENDED REPORTING PERIOD

### A. Automatic Extended Reporting Period

If the Underwriter or the **Policyholder** cancels or does not renew this Policy, other than for non-payment of premium, the Underwriter will provide an automatic extension of coverage for a period of sixty (60) days immediately after the termination of the **Policy Period** with respect to any **Claim** first made against any **Insured** and reported to the Underwriter in writing within such sixty (60) day period (Automatic Extended Reporting

Period), but only with respect to any **Wrongful Act** committed on or after the applicable Retroactive Date and before the earlier of a Takeover as defined in Subsection V.F.3., if applicable, or the termination of the **Policy Period**. No additional premium shall be payable for such Automatic Extended Reporting Period.

B. Optional Extended Reporting Period

If the Underwriter or the **Policyholder** cancels or does not renew this Policy, other than for non-payment of premium, the **Policyholder** shall have the right, upon payment of the percentage shown in Item 4. of the Declarations of the annual premium, to an extension of the coverage granted by this Policy for the period shown in Item 4. of the Declarations immediately following the termination of the **Policy Period** with respect to any **Claim** first made against any **Insured** and reported to the Underwriter in writing within such period (Optional Extended Reporting Period), but only with respect to any **Wrongful Act** committed on or after the applicable Retroactive Date and before the earlier of a Takeover as defined in Subsection V.F.3., if applicable, or the termination of the **Policy Period**.

This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given to the Underwriter within sixty (60) days following the effective date of cancellation or non-renewal.

In the event of the purchase of the Optional Extended Reporting Period, the entire premium for the Optional Extended Reporting Period shall be deemed earned at its commencement.

- C. Any **Claim** first made during the **Extended Reporting Period**, if applicable, shall be considered made during the **Policy Period**. If the Optional Extended Reporting Period is purchased, the Automatic Extended Reporting Period shall be included within and not in addition to the Optional Extended Reporting Period, and the Underwriter shall issue an endorsement which sets forth the extended period of coverage. A change in Policy terms, conditions, exclusions or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the **Extended Reporting Period**.

III. DEFINITIONS

When used in this Policy, the terms below (whether in the singular or plural) are defined as follows:

A. **Application** means:

1. the application(s) for this Policy or any other approved Security and Privacy, Cyber or Media application provided;
2. the application(s) for all previous policies of which this Policy is a direct or indirect renewal or replacement; and
3. all attachments and materials submitted in connection with or incorporated in the application(s) described in Subsections A.1. or A.2. above.

The **Application** above shall be retained on file by the Underwriter and deemed attached and incorporated into this Policy.

B. **Business Income Loss** means the:

1. net profit before income taxes that the **Company** is prevented from earning during the **Period of Restoration** due to an **Interruption of Service**; and
2. normal operating expenses incurred by the **Company** (including payroll), but solely to the extent that such operating expenses must continue during the **Period of Restoration** and would have been incurred had there been no **Interruption of Service**.

**Business Income Loss** does not include any:

- a. contractual penalties;
- b. costs or expenses incurred to update, restore, replace or improve a **Computer System** to a level beyond that which existed just before the **Interruption of Service**;
- c. expense incurred to identify or remediate software program errors or vulnerabilities;
- d. legal costs or expenses;
- e. loss arising out of liability to any third party;

f. other consequential loss or damage; or

g. **Extra Expenses.**

C. **Claim** means:

1. a written demand against the **Insured** for monetary damages or non-monetary or injunctive relief, including a written demand that the **Insured** toll or waive a statute of limitations;
2. a civil proceeding against the **Insured** for monetary damages or non-monetary or injunctive relief, commenced by the service upon the **Insured** of a complaint or similar pleading, including any appeal thereof; or
3. an arbitration or other alternative dispute resolution proceeding against the **Insured** for monetary damages or non-monetary or injunctive relief, commenced by the **Insured's** receipt of a request or demand for such proceeding, including any appeal thereof.

Solely with respect to:

- a. **Loss** reimbursement coverage afforded under Subsection I.A.1.b. Regulatory Proceedings Coverage; and
- b. payment of a **Consumer Redress Fund**, except with respect to **Electronic Publishing Wrongful Acts**,  
**Claim** includes a **Regulatory Proceeding**.

D. **Company** means, singly or collectively, the **Policyholder** and its **Subsidiaries**.

E. **Company's Computer System** means a **Computer System**:

1. the **Company** leases, owns or operates;
2. a **Service Provider** operates; or
3. owned by employees of the **Company** or **Service Provider** but only while such **Computer System** is operated:
  - a. on behalf of such **Company** or **Service Provider**; and
  - b. in compliance with published security policies of such **Company** or **Service Provider**,

to provide services to the **Company**.

F. **Computer System** means computer hardware and **Software**, and the **Electronic Data** stored thereon, as well as associated input and output devices, data storage devices, networking equipment, components, firmware and electronic backup facilities, including systems accessible through the internet, intranets, extranets or virtual private networks.

G. **Consumer Redress Fund** means any sum of money the **Insured** is legally required to deposit in a fund for the payment of consumer claims due to a settlement of, or an adverse judgment in, a **Regulatory Proceeding**.

H. **Cyber Extortion Threat** means a credible threat or connected series of threats made without the cooperation of an **Executive Officer** to:

1. introduce **Malicious Code** into the **Company's Computer System**;
2. interrupt the **Company's Computer System** through a **Denial of Service Attack**; or
3. disseminate, divulge, or improperly utilize any **Personal Information** or any other corporate information in the care, custody or control of any **Insured** that is specifically identified as confidential and protected under a nondisclosure agreement or similar contract, taken as a result of the **Unauthorized Use** of or the **Unauthorized Access** to the **Company's Computer System**.

I. **Damages** means any amount, including judgments and settlements, pre- and post-judgment interest, the **Insured** is legally obligated to pay as the result of a **Claim** against the **Insured**. **Damages** includes punitive, exemplary or multiple damages, to the extent such damages or penalties are insurable under the internal laws of any applicable jurisdiction most favorable to the **Insured**, including without limitation the jurisdiction in which the **Company**, the **Insured Persons**, the Underwriter, this Policy or such **Claim** is located.

**Damages** does not include:

1. **Defense Costs;**
  2. the loss, offset or return of fees, commissions, royalties, bonuses or profits by the **Insured** or the cost to re-perform any services;
  3. the cost to comply with any injunctive or other non-monetary relief;
  4. the cost to design, upgrade, maintain, or improve a **Computer System**, including correcting any deficiencies or problems;
  5. principal, interest or other moneys paid or due as the result of any loan, lease or extension of credit;
  6. taxes, fines, sanctions or penalties, unless such taxes, fines, sanctions or penalties are imposed pursuant to **Privacy Regulations** or result from a **Regulatory Proceeding**; or
  7. the following:
    - a. **Privacy Breach Costs;**
    - b. **Business Income Loss;**
    - c. **Dependent Business Income Loss;**
    - d. **Extra Expenses;**
    - e. **Digital Asset Replacement Expenses;**
    - f. **Cyber Extortion Threat;** or
    - g. **Reward Payments,**  
as **Non-Liability Coverage.**
- J. **Defense Costs** means the reasonable and necessary attorneys' fees, costs, charges and expenses incurred by or on behalf of the **Insured** in the defense or appeal of a **Claim**, including the cost of attachment or similar bonds, provided the Underwriter shall have no obligation to apply for or furnish such bonds. **Defense Costs** does not, however, include salaries, wages, overhead or benefit expenses associated with **Executive Officers** or employees or any amount paid by the Underwriter or any other insurer pursuant to any policy or policies of insurance, other than this Policy, under which there is a duty to defend.
- K. **Denial of Service Attack** means a malicious attack by a third party which is designed to slow or completely interrupt access to a **Computer System** or website by other third parties authorized to gain access to that **Computer System** or website.
- L. **Dependent Business Income Loss** means the **Business Income Loss** sustained by the **Company** as a direct result of an **Interruption of Service** caused directly by a **Security Event** to the **Service Provider's Computer System**, but only if such **Security Event** would have been covered under this Policy if such **Service Provider** had been the **Company**, applying the same terms and conditions herein.
- M. **Digital Assets** means **Electronic Data, Software**, audio files, and image files stored on the **Company's Computer System**, and the capacity of such **Computer System**. **Digital Assets** does not include accounts, bills, evidences of debts, money, valuable papers, records, abstracts, deeds, manuscripts or other documents, except as they have been converted to **Electronic Data**, and then only in that form.
- N. **Digital Asset Replacement Expenses** means the reasonable and necessary expenses the **Company** incurs to replace, restore or recollect **Digital Assets** from written records or partially or fully matching **Electronic Data** due to their corruption or destruction from a **Security Event**, including any disaster recovery or computer forensic investigation efforts, subject to Subsection V.P. Valuation.

**Digital Asset Replacement Expenses** does not include:

1. any expense incurred to update, replace, restore, or otherwise improve **Digital Assets** to a level beyond that which existed prior to the loss event;
2. any expense incurred to identify or remediate software program errors or vulnerabilities, or costs to update, replace, upgrade, restore, maintain or improve any **Computer System**;
3. any expense incurred to research and develop **Digital Assets**, including trade secrets;
4. the economic or market value of **Digital Assets**, including trade secrets; or

5. any other consequential loss or damage.
- O. **Electronic Data** means information that exists in electronic form, including **Personal Information**; provided, however, **Electronic Data** does not include **Software**.
- P. **Electronic Publishing** means the reproduction, publication, dissemination, transmission or release of information, including **Electronic Data**, image files, audio files or text, on the **Insured's** internet website; provided that such information must have been developed by or for the **Insured** or acquired by the **Insured** for its use.

**Electronic Publishing** does not mean:

1. any software or software technology used to deliver, display or process such information; or
  2. any actual product or service which is the subject of such information.
- Q. **Electronic Publishing Wrongful Act** means any actual or alleged:
1. libel, slander, trade libel or disparagement resulting from **Electronic Publishing** that defames a person or organization or disparages a person's or organization's goods, products or services;
  2. plagiarism, piracy, or the misappropriation or unauthorized use of advertising ideas, advertising material, titles, literary or artistic formats, styles, performances, names or likenesses resulting from **Electronic Publishing** activities;
  3. violation of the right of privacy or seclusion or right of publicity of any person other than an **Insured Person** resulting from **Electronic Publishing** that publicly discloses private facts relating to such person or commercially appropriates such person's name or likeness;
  4. infringement of a copyright, title, slogan, trademark, trade name, trade dress, mark, service mark or service name including, without limitation, infringement of domain name, deep-linking or framing, resulting from **Electronic Publishing** activities; or
  5. unauthorized use of titles, formats, performances, style, characters, plots or other protected material resulting from **Electronic Publishing** activities.
- R. **Executive Officer** means any natural person serving in the position of a Chief Executive Officer, Chief Financial Officer, Chief Security Officer, Chief Technology Officer, Chief Information Officer, Director, General Counsel, Risk Manager or the functional equivalent of such positions.
- S. **Extended Reporting Period** means the period of extended coverage described in Section II. Extended Reporting Period. The Automatic Extended Reporting Period and the Optional Extended Reporting Period, if purchased, shall be collectively referred to in this Policy as the **Extended Reporting Period**. The **Extended Reporting Period** does not reinstate or increase the Limits of Liability, nor extend the **Policy Period**.
- T. **Extortion Expenses** means the reasonable and necessary expenses incurred by the **Company**, with the prior consent of the Underwriter, that are directly attributable to a **Cyber Extortion Threat**.
- U. **Extortion Payments** means monies paid to a third party whom the **Company** reasonably believes to be responsible for **Cyber Extortion Threat**; provided that:
1. the Underwriter's consent is obtained prior to making such **Extortion Payments**; and
  2. such **Extortion Payments** are made in an effort to terminate the **Cyber Extortion Threat**.
- In the event the **Cyber Extortion Threat** is solely made to interrupt the **Company's Computer System** through a **Denial of Service Attack**, then the Underwriter will reimburse only **Extortion Payments** amounts that do not exceed the amount of **Business Income Loss** the Underwriter reasonably believes would have been incurred had such **Extortion Payments** not been made.
- V. **Extra Expenses** means the reasonable and necessary expenses incurred by the **Company** during the **Period of Restoration** to minimize, avoid or reduce an **Interruption of Service**, provided that such expenses are over and above the **Company's** normal operating and payroll expenses and do not exceed the amount of loss that otherwise would have been payable as **Business Income Loss** or **Dependent Business Income Loss**.

**Extra Expenses** does not include:

1. any costs or expenses to correct any deficiencies or problems with any **Computer System** or to identify or remediate **Software** errors or vulnerabilities;



2. any costs or expenses to update, restore, replace or improve any **Computer System** to a level beyond that which existed just before the **Interruption of Service**;
3. any contractual penalties; or
4. **Digital Asset Replacement Expenses, Extortion Expenses or Extortion Payments.**

W. **Healthcare Records Remediation Services** means the following services:

1. conducting credit and non-credit investigations to identify fraudulent use of protected health information;
2. establishing a hotline for the **Company's** affected individuals in compliance with Health Information Technology for Economic and Clinical Health Act (HITECH) requirements; and
3. conducting healthcare identity restoration services for the **Company's** affected individuals.

X. **Insured** means the **Company** and the **Insured Persons**.

Y. **Insured Person** means any natural person who has been, now is, or shall be:

1. an **Executive Officer** or employee of the **Company** acting in such capacity or, with respect to a **Subsidiary** incorporated outside the United States, the functional equivalent of an **Executive Officer** or employee acting in such capacity;
2. an independent contractor of the **Company** other than an **Service Provider**, but solely with respect to a **Wrongful Act** committed within the scope of such person's duties on behalf of the **Company** performed pursuant to a written contract with the **Company**; or
3. a spouse or domestic partner (under any applicable law or formal program established by the **Company**) of any person identified in Subsection 1. above, but solely if a **Claim** made against such person identified in 1. is also made against such spouse or domestic partner due to:
  - a. such spouse's or domestic partner's status as a spouse or domestic partner of the **Insured Person**; or
  - b. such spouse's or domestic partner's ownership interest in property that the claimant seeks as recovery for alleged **Wrongful Acts** of the **Insured Person**;

provided, however, **Insured Person** shall not include a lawful spouse or domestic partner with respect to a **Claim** against that spouse or domestic partner for his or her own **Wrongful Acts**.

**Insured Person** shall also include the estates, heirs, legal representatives or assigns of any person identified above who is deceased, incompetent, insolvent or bankrupt, but only for a **Claim** arising solely out of their status as such.

Z. **Interrelated Security Events** means all **Security Events** which are continuous or repeated or which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.

AA. **Interrelated Wrongful Acts** means all **Wrongful Acts** 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.

AB. **Interruption of Service** means the actual and measurable interruption, suspension, failure, degradation or delay in the performance of the **Company's Computer System**, if directly caused by a **Security Event**.

AC. **Liability Coverages** means the coverages offered under the following Insuring Clauses: Security and Privacy Liability Coverage, Regulatory Proceedings Coverage and Internet Media Liability Coverage.

AD. **Loss** means **Damages** and **Defense Costs**.

AE. **Malicious Code** means unauthorized, corrupting, or harmful **Software**, including but not limited to computer viruses, Trojan horses, keystroke loggers, cookies, spyware, adware, worms, and logic bombs.

AF. **Network Security** means the use of hardware, **Software**, firmware and written security policies and procedures by **Insureds**, or by others on behalf of the **Company**, to protect against **Unauthorized Access** to or the **Unauthorized Use** of the **Company's Computer System** including the use of the **Company's Computer System** in a **Denial of Service Attack**.

- AG. **Non-Liability Coverages** means the coverages offered under the following Insuring Clauses: Privacy Breach Costs Coverage, Business Income Loss and Extra Expenses Coverage, Dependent Business Income Loss and Extra Expenses Coverage, Digital Asset Replacement Expense Coverage, Cyber Extortion Threat Coverage and Reward Payments Coverage.
- AH. **Period of Restoration** means the period from the date and time that a **Computer System** first suffered an **Interruption of Service** to the date and time such **Computer System** was restored, or could have been restored with reasonable speed, to substantially the level of operation that had existed prior to such **Interruption of Service**; provided, however, that in no event shall such period exceed thirty (30) days.
- AI. **Personal Information** means any information from which an individual may be uniquely and reliably identified or contacted, including an individual's name, telephone number, email, social security number, medical or healthcare data or other protected health information, driver's license number or state identification number, account number, credit card number, debit card number, access code or password that would permit access to that individual's financial account or any other non-public personal information as defined in **Privacy Regulations**; provided, however, **Personal Information** does not include information lawfully available to the general public for any reason, including information from federal, state, or local government records.
- AJ. **Policy Period** means the period of time shown in Item 3. of the Declarations or any shorter period resulting from a termination of the Policy.
- AK. **Policyholder** means the organization shown in Item 1. of the Declarations which is the policyholder.
- AL. **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or a state, county, municipality or locality counterpart thereof. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mold, mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but not any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous, thermal, biological, nuclear or radiological irritants, contaminants or smoke, soot, fumes, acids, alkalis, chemicals or waste materials.
- AM. **Privacy Breach Costs** means the reasonable and necessary fees, costs, charges and expenses incurred by the **Company** (whether voluntarily or otherwise) within twelve (12) months of the **Insured** first having knowledge of a **Privacy Event** for the purposes of retaining an accountant, attorney, public relations consultant or other third party to:
1. conduct a computer forensic analysis to investigate the **Company's Computer System** to determine:
    - a. the cause and extent of such **Privacy Event**; or
    - b. whether a **Security Wrongful Act** may be the cause of such **Privacy Event**;
  2. determine indemnification obligations under any written contract with respect to a **Wrongful Act** by a **Service Provider** in connection with such **Privacy Event**;
  3. determine if the **Company** is obligated to notify affected individuals or applicable regulatory agencies of such **Privacy Event**;
  4. effect compliance with any **Privacy Regulation** under the applicable **Privacy Regulation** most favorable to the **Company's** affected individuals;
  5. notify the **Company's** affected individuals or applicable regulatory agencies of such **Privacy Event** and establish new account numbers for the **Company's** affected individuals;
  6. plan, implement, execute and manage a public relations campaign to attempt to counter or minimize any actual or anticipated adverse effects of negative publicity from such **Privacy Event** or to attempt to protect or restore the **Company's** business reputation in response to negative publicity following such **Privacy Event**;
  7. provide credit and identification monitoring services, identification restoration services and identification theft insurance for the **Company's** affected individuals in responding to such **Privacy Event**;
  8. provide call center services to handle inquiries from the **Company's** affected individuals in responding to such **Privacy Event**; or

9. provide **Healthcare Records Remediation Services** for the **Company's** affected individuals in responding to such **Privacy Event**. However, such reasonable and necessary fees, costs, charges and expenses that are voluntarily incurred by the **Company** are only considered **Privacy Breach Costs** if the Underwriter's consent is obtained prior to the **Company** incurring such fees, costs, charges and expenses.

**Privacy Breach Costs** does not include:

- a. regular or overtime wages, salaries or fees of **Executive Officers** or the **Company's** employees;
- b. the cost to comply with any injunctive or other non-monetary relief;
- c. principal, interest or other moneys paid or due as the result of any loan, lease or extension of credit; or
- d. taxes, fines, sanctions or penalties.

AN. **Privacy Event** means:

1. the loss, theft or unauthorized disclosure of:
  - a. **Personal Information** in the care, custody or control of any **Insured** or **Service Provider**; or
  - b. corporate information in the care, custody or control of any **Insured** or **Service Provider** that is specifically identified as confidential or protected under a nondisclosure agreement or similar contract; or
2. a violation of any **Privacy Regulation**.

AO. **Privacy Regulation** means any of the following statutes, including any amendments thereto or regulations thereunder, associated with the control and use of personally identifiable financial, medical or other sensitive information:

1. Health Information Technology for Economic and Clinical Health Act (HITECH) (American Recovery and Reinvestment Act of 2009);
2. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191);
3. Gramm-Leach Bliley Act of 1999;
4. California Security Breach Notification Act (CA SB 1386), CA AB 211 and CA SB 541;
5. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), but solely for alleged unfair or deceptive acts or practices in or affecting commerce;
6. Massachusetts 201 CMR 17;
7. the Identity Red Flags under the Fair and Accurate Credit Transactions Act of 2003; and
8. any similar state, municipal, federal or foreign identity theft or privacy protection statute, regulation or directive.

AP. **Privacy Wrongful Act** means any actual or alleged act, error, omission, neglect or breach of duty by an **Insured**, someone for whom the **Company** is legally responsible, or a **Service Provider**, that results in a **Privacy Event**.

AQ. **Professional Services** means those acts or services requiring specialized knowledge, skill or professional judgment, which the **Insured** renders to others pursuant to a written agreement and for a fee or other consideration.

AR. **Property Damage** means physical injury to tangible property, including all resulting loss of use of that property, or loss of use of tangible property that has not been physically injured; provided, however, **Property Damage** does not mean corruption, loss or destruction of **Electronic Data**.

AS. **Regulatory Proceeding** means:

1. a formal investigation of an **Insured** by an administrative or regulatory agency or similar governmental body concerning a **Privacy Event**; or
2. an administrative adjudicative proceeding against an **Insured** by an administrative or regulatory agency or similar governmental body for a **Privacy Wrongful Act** or **Security Wrongful Act**, including an appeal thereof,

commenced by the **Insured's** receipt of a subpoena, investigative demand, complaint or similar document.

AT. **Related Incident** means any:

1. **Claims** arising out of the same **Interrelated Wrongful Acts** or associated **Privacy Events**;
2. **Privacy Event**;
3. **Interrelated Security Events**; or
4. **Cyber Extortion Threat**,

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.

AU. **Reward Payments** means any amount consented to by the Underwriter prior to it being offered by the **Company** for information that leads to the arrest and conviction of any individual(s) committing or trying to commit any illegal act related to a **Cyber Extortion Threat**.

AV. **Security Event** means any **Unauthorized Access** to, **Unauthorized Use** of, introduction of **Malicious Code** into, or **Denial of Service Attack** upon, the **Company's Computer System**, that results in:

1. an **Interruption of Service**; or
2. the alteration, corruption or destruction of **Digital Assets** or other corporate information in the care, custody or control of any **Insured** that is specifically identified as confidential and protected under a nondisclosure agreement or similar contract.

AW. **Security Wrongful Act** means any actual or alleged act, error, omission, neglect, or breach of duty by an **Insured**, someone for whom the **Company** is legally responsible, or a **Service Provider**, which causes a breach of the **Company's Network Security** that results in:

1. the theft, alteration, destruction, loss or unauthorized release of **Electronic Data** on the **Company's Computer System**;
2. the **Unauthorized Access** to or **Unauthorized Use** of the **Company's Computer System**;
3. the denial of an authorized user's access to the **Company's Computer System**, unless such denial of access is caused by a mechanical or electrical failure outside the control of the **Insured**;
4. the participation by the **Company's Computer System** in a **Denial of Service Attack** directed against a third party's **Computer System**; or
5. the transmission of **Malicious Code** from the **Company's Computer System** to a third party's **Computer System**.

AX. **Service Provider** means a business the **Company** does not own, operate, or control, but that the **Company** hires for a fee pursuant to a written contract to perform services related to the conduct of the **Company's** business, including but not limited to,

1. maintaining, managing, or controlling **Computer Systems**;
2. hosting or facilitating the **Company's** internet website; or
3. providing administrative functions, human relations, marketing or other outsourced services to the **Company**.

AY. **Software** means operations and applications, codes and programs by which **Electronic Data** are electronically collected, transmitted, processed, stored or received. **Software** does not include **Electronic Data**.

AZ. **Subsidiary**, either in the singular or plural, means, subject to Subsection V.F. Material Changes in Company below, any organization, including non-profit/501(c)3 entities, and including, but not limited to, any limited liability company, while more than fifty percent (50%) of the outstanding voting securities or voting rights representing the present right to vote for election of directors or equivalent executives of such organization is owned or controlled, directly or indirectly, in any combination, by the **Policyholder**.

BA. **Unauthorized Access** means the gaining of access to a **Computer System** by an unauthorized person or persons, or by an authorized person or persons in an unauthorized manner.

BB. **Unauthorized Use** means the use of a **Computer System** by an unauthorized person or persons or by an authorized person or persons in an unauthorized manner.

BC. **Waiting Hours Retention** means the dollar amount of **Business Income Loss, Dependent Business Income Loss** and **Extra Expenses** incurred by an **Insured** during the Waiting Period shown in Item 7.B.2. of the Declarations.

BD. **Wrongful Act** means an **Electronic Publishing Wrongful Act, a Security Wrongful Act** or a **Privacy Wrongful Act**.

#### IV. EXCLUSIONS

Except as otherwise indicated below, the Underwriter will not pay any **Loss, Privacy Breach Costs, Business Income Loss, Dependent Business Income Loss, Extra Expenses, Digital Asset Replacement Expenses, Extortion Expenses, Extortion Payments** or **Reward Payments** as follows:

A. based upon, arising out of or attributable to:

1. any dishonest, fraudulent, criminal, or malicious act or omission committed by an **Insured**;
2. any intentional or knowing violation of law committed by an **Insured**; or
3. any gaining of or the attempt to gain any profit, remuneration, or financial or non-financial advantage by an **Insured** to which the **Insured** was not legally entitled;

provided, however, the Underwriter will pay **Defense Costs** and defend **Claims** until there is a final and non-appealable judgment, binding arbitration decision or finding of fact against such **Insured** or an adverse admission under oath or plea of *nolo contendere* or no contest by such **Insured** which establishes such:

- a. dishonest, fraudulent, criminal or malicious act or omission;
- b. intentional or knowing violation of law; or
- c. gaining of or the attempt to gain profit, remuneration or advantage.

In the event of such final and non-appealable judgment, binding arbitration decision or finding of fact against such **Insured** or an adverse admission under oath or plea of *nolo contendere* or no contest by such **Insured**, the **Insured** shall reimburse the Underwriter for any **Defense Costs** paid by the Underwriter on behalf of such **Insured** resulting from the **Claim**.

In applying this exclusion:

- (1) no such acts, omissions, violations, gains or attempted gains committed by an **Insured** shall be imputed to any other **Insured**, unless such acts, omissions, violations, gains or attempted gains were committed by, or knowledge thereof was possessed by, an **Executive Officer**; and
- (2) solely with respect to **Non-Liability Coverages**, this exclusion only applies if such acts, omissions, violations, gains or attempted gains were committed by, or knowledge thereof was possessed by, an **Executive Officer**.

B. solely with respect to any **Loss**, based upon, arising out of or attributable to any actual or alleged bodily injury, mental anguish, emotional distress, pain and suffering, shock, or humiliation, sickness, disease, or death of any person or **Property Damage**; provided, however, this exclusion does not apply to mental anguish, emotional distress, pain and suffering, or shock resulting from a **Privacy Event**.

C. any **Claim** made by or on behalf of, or at the behest of, or for the benefit of, any **Insured** against any other **Insured**. This exclusion shall not apply to any **Claim** brought by:

1. any **Insured Person** in his or her capacity:
  - a. as a customer or client of the **Company**; or
  - b. as an employee or independent contractor of the **Company** for a **Privacy Event** relating to the theft, loss or unauthorized disclosure of such employee's or independent contractor's **Personal Information**; or
2. an entity other than the **Company** if any **Insured Person** served as a director or officer of such entity at the time the **Wrongful Act** took place.

D. based upon, arising out of or attributable to any contractual liability or obligation or any breach of any contract, warranty, guarantee or promise, including any liability of others assumed by any **Insured**, provided however, this exclusion shall not apply:

1. if such liability would have attached to the **Insured** even in the absence of such contract, warranty, guarantee or promise; or
  2. to any obligation to maintain the confidentiality or security of **Personal Information** or corporate information that is specifically identified as confidential and protected under a non-disclosure agreement or similar contract solely if such liability arises out of a **Privacy Wrongful Act** or a **Security Wrongful Act**.
- E. based upon, arising out of or attributable to any actual or alleged:
1. breach of any warranty, guarantee, or promise of fitness or suitability, whether express, implied, constructive, oral or written;
  2. inaccurate, inadequate, or incomplete description of the price of the **Company's** goods, products or services; or
  3. failure of any goods, products or services to conform with an advertised quality or performance.
- Solely with respect to Subsection E.1. above, this exclusion does not apply to any **Loss** or any **Privacy Breach Costs** resulting from any **Claim** made against any **Insured**, any **Privacy Breach Costs** the **Company** incurs resulting from a **Privacy Event** or any other amount claimed under any other Coverage that would exist even in the absence of such warranty, guarantee, or promise.
- F. based upon, arising out of or attributable to any actual or alleged unfair competition, deceptive or unfair trade practice, false or deceptive advertising or misrepresentation, price fixing, restraint of trade, monopolization, consumer fraud or other violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, as amended, or any other federal, state, local, foreign or common law or rules or regulations involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade, or otherwise inhibiting trade competition; provided, however, this exclusion shall not apply to a **Regulatory Proceeding** that may constitute, or a **Privacy Wrongful Act** or a **Security Wrongful Act** alleging, a violation of Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), including a **Consumer Redress Fund** established in resolving such a **Regulatory Proceeding**.
- G. based upon, arising out of or attributable to:
1. incomplete disclosure of the **Insured's** fees; or
  2. any guarantee, representation or promise the **Insured** makes relating to contract price, costs, cost savings, return on investment or profitability, including the **Insured's** failure to meet cost guarantees, representations, or contract price.
- H. based upon, arising out of or attributable to any unsolicited electronic dissemination of faxes, electronic mail or other communications to multiple actual or prospective customers by the **Insured** or any other third party, including actual or alleged violations of:
1. the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
  2. the CAN-SPAM Act of 2003, including any amendment of or addition to such law;
  3. any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003 and their amendments and additions, or any other legal liability, at common law or otherwise, that addresses, prohibits, or limits the dissemination, recording, sending, transmitting, communicating or distribution of material or information.
- This exclusion does not apply if such unsolicited electronic dissemination of faxes, electronic mail or other communications to multiple actual or prospective customers by the **Insured** or any other third party was caused by a **Malicious Code** or hacker.
- I. based upon, arising out of or attributable to any actual or alleged violations of the Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA), provided however, this exclusion only applies to those provisions of said law(s) that specifically regulate the publication of credit card numbers and expiration dates on sales receipts.
- J. based upon, arising out of or attributable to any actual or alleged wrongful refusal to hire, wrongful dismissal, discharge or termination of employment, violation of employment-related practices or policies, wrongful demotion, coercion, evaluation, reassignment or discipline, retaliation, discrimination, malicious prosecution or employment-related defamation, harassment, humiliation, invasion of privacy, defamation or infliction of emotional distress;

provided, however, this exclusion shall not apply to any **Claim** by an employee of the **Company** for a **Privacy Event** relating to the unauthorized disclosure of such employee's **Personal Information**.

- K. based upon, arising out of or attributable to any actual or alleged violation by an **Insured** of the Employee Retirement Income Security Act of 1974, or any similar federal, state or local statutory law or common law in connection with any pension, welfare or other employee benefit plan established for the benefit of the **Company's** employees.

However, this exclusion does not apply to:

1. an otherwise covered **Claim** under Subsection I.A.1.a. Security and Privacy Liability Coverage;
  2. otherwise covered **Privacy Breach Costs** under Subsection I.B.1. Privacy Breach Costs Coverage; or
  3. otherwise covered **Digital Asset Replacement Expenses** under Subsection I.B.3. Digital Asset Replacement Expense Coverage.
- L. 1. based upon, arising out of or attributable to any actual or alleged theft, infringement, dilution, violation or misappropriation of any patent or trade secret provided, however, this exclusion shall not apply to the extent any **Claim** alleges an inadvertent disclosure of a trade secret that constitutes a **Privacy Event**.
2. except with respect to the Subsection I.A.2. Internet Media Liability Coverage, based upon, arising out of or attributable to any actual or alleged theft, infringement, dilution, violation or misappropriation of any copyright, service mark, trade name, trademark or other intellectual property of any third party.
- M. based upon, arising out of or attributable to any mechanical or electrical failure, interruption or outage, however caused, including any electrical power interruption or surge, brownout, blackout, short circuit, over voltage, or power fluctuation or outage to gas, water, telephone, cable, satellite, telecommunications, the internet or any component thereof including hardware or **Software** or any other infrastructure; provided, however, this exclusion shall not apply to any failure, interruption, or outage of telephone, cable or telecommunications under the **Insured's** direct control which is the result of an **Insured's Wrongful Act** or a **Security Event** directed against the **Company's Computer Systems**.
- N. based upon, arising out of or attributable to:
1. any fact, circumstance, or situation which has been the subject of any written notice given under any insurance policy or any policy of which this Policy is a direct or indirect renewal or replacement, or any policy expiring prior to the inception date of this Policy;
  2. any act, error or omission or **Wrongful Act** or fact, circumstance or situation occurring prior to:
    - a. the inception date of this Policy or the inception date of the first policy in an uninterrupted series of privacy and security liability insurance policies continuously issued by the Underwriter to the **Company** of which this Policy is a renewal, whichever inception date is earlier; or
    - b. the applicable Retroactive Date shown in Item 5. of the Declarations,if on or before such earlier inception date or Retroactive Date (if applicable) any **Executive Officer** becomes aware or receives notification of a **Claim**, knew or could have reasonably foreseen that such **Wrongful Act**, fact, circumstance or situation could give rise to a **Claim**, **Privacy Event**, **Security Event** or a **Cyber Extortion Threat**; or
  3. any written demand, suit or proceeding pending, or order, decree or judgment entered, against any **Insured** on or prior to the effective date of this Policy or the effective date of any policy issued by the Underwriter of which this Policy is a continuous renewal or replacement; or is alleged or derived from the same or substantially the same **Wrongful Act**, **Interrelated Wrongful Acts**, fact, circumstance or situation underlying or alleged therein.
- O. based upon, arising out of or attributable to:
1. the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
  2. any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- P. based upon, arising out of or attributable to:

1. the failure of the **Insured's** products, including **Software**, to perform the function, or serve the purpose, intended by any third party or any **Insured**; or
2. the rendering of or failure to render **Professional Services**.

Q. based upon, arising out of or attributable to:

1. war, including undeclared or civil war;
2. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
3. insurrection, rebellion, revolution, riot, usurped power, or action taken by governmental authority in hindering or defending against any of these.

R. based upon, arising out of or attributable to seizure, confiscation, expropriation, nationalization, or destruction of a **Computer System** by order of any governmental authority.

S. based upon, arising out of or attributable to fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, however caused.

T. based upon, arising out of or attributable to the monetary value of any transaction or change in value of any account, including but not limited to: electronic funds transfers, trading losses, trading liabilities, awards, points, coupons, earnings or other intangible property.

U. based upon, arising out of or attributable to loss, transfer or theft of monies, securities or tangible property of others in the care, custody or control of the **Insured**.

V. solely with respect to the Subsection I.A.2. Internet Media Liability Coverage:

1. based upon, arising out of or attributable to the uploading or downloading of digitized music, movies, software or video games by persons who allegedly or actually failed to obtain valid licenses with respect to such music, movies, software or video games.
2. based upon, arising out of or attributable to licensing fees or royalties ordered, directed or agreed to be paid by the **Insured** pursuant to a judgment, arbitration award, settlement agreement or similar order or agreement, for the continued use of a person or entity's copyright, slogan, trademark, trade name, trade dress, service mark, service name, or other protected intellectual property.
3. based upon, arising out of or attributable to advertising services performed by the **Insured** on the **Insured's** internet website on behalf of others.

W. solely with respect to **Non-Liability Coverages**, based upon, arising out of or attributable to the ordinary wear and tear or gradual deterioration of any **Computer System** or **Digital Assets**.

X. based upon, arising out of or attributable to:

1. the illegal, unauthorized or wrongful collection of **Personal Information**, including the collection of **Personal Information** using cookies or **Malicious Code**; or
2. the failure to provide adequate notice that **Personal Information** is being collected, provided, however, this exclusion shall not apply if the collection of **Personal Information** is done by:
  - a. an **Insured Person** acting without the knowledge or approval of an **Executive Officer**; or
  - b. a third party without the knowledge of the **Company**.

Y. based upon, arising out of, or attributable to any taxes, fines or penalties imposed by any self-regulating organization including but not limited to the PCI Security Standards Council or similar organization, or any rules, programs, by-laws, policies, procedures, regulations or requirements established or imposed by any payment card company.

## V. GENERAL CONDITIONS AND LIMITATIONS

### A. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by a written endorsement to this Policy which is signed by an authorized representative of the Underwriter.



The titles and headings to the various sections, subsections and endorsements of this Policy, as well as the schedule of endorsements attached to this Policy, are included solely for ease of reference and do not in any way limit coverage, expand coverage or otherwise affect the provisions or existence of such sections, subsections or endorsements.

## B. REPRESENTATIONS, SEVERABILITY AND NON-RESCINDABLE COVERAGE

### 1. Representations

The **Policyholder**, on behalf of **Insured Persons**, and the **Insured Persons**, if applicable, represent and acknowledge that the statements and information contained in the **Application** are true and complete, are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy. This Policy is issued in reliance upon the truth and completeness of such representations.

### 2. Severability

The **Application** shall be construed as a separate application for coverage by each of the **Insured Persons**. No knowledge of one **Insured Person** shall be imputed to any other **Insured Persons** for purposes of this Subsection V.B.

## C. LIMITS OF LIABILITY

1. The maximum liability of the Underwriter for all payments under all Coverages purchased under this Policy is the amount shown in Item 2. of the Declarations as the Maximum Policy Aggregate Limit of Liability.
2. Subject to Subsection C.1. above, the maximum liability of the Underwriter for all **Loss** from each **Claim** and from all **Claims** in the aggregate under Subsection I.A.1.a. Security and Privacy Liability Coverage is the amount shown in Item 7.A.1.a. of the Declarations as Coverage A.1.a. Limit of Liability.

The maximum liability of the Underwriter for all **Loss** from each **Regulatory Proceeding** and from all **Regulatory Proceedings** in the aggregate under Subsection I.A.1.b. Regulatory Proceedings Coverage is the amount shown in Item 7.A.1.b. of the Declarations as all **Loss** each **Regulatory Proceeding** and all **Regulatory Proceedings** in the aggregate, which amount shall be part of and not in addition to the Limit of Liability shown for Item 7.A.1.a. of the Declarations.

3. Subject to Subsection C.1. above, the maximum liability of the Underwriter for all **Loss** from each **Claim** and from all **Claims** in the aggregate under Subsection I.A.2. Internet Media Liability Coverage is the amount shown in Item 7.A.2. of the Declarations as Coverage A.2. Limit of Liability.
4. Subject to Subsection C.1. above, the maximum liability of the Underwriter for all **Privacy Breach Costs** from each **Privacy Event** and from all **Privacy Events** in the aggregate under Subsection I.B.1. Privacy Breach Costs Coverage, is the amount shown in Item 7.B.1. of the Declarations as Coverage B.1. Limit of Liability.
5. Subject to Subsection C.1. above, the maximum liability of the Underwriter for all **Business Income Loss** and **Extra Expenses** from each **Security Event** under Subsection I.B.2.a. Business Income Loss and Extra Expenses Coverage is the amount shown in Item 7.B.2.a. of the Declarations as Coverage B.2.a. Limit of Liability.

The maximum liability of the Underwriter for all **Dependent Business Income Loss** and **Extra Expenses** from each **Security Event** under Subsection I.B.2.b. Dependent Business Income Loss and Extra Expenses Coverage is the amount shown in Item 7.B.2.b. of the Declarations as each **Security Event**, which amount shall be part of and not in addition to the Limit of Liability shown for Item 7.B.2.a. of the Declarations.

6. Subject to Subsection C.1. above, the maximum liability of the Underwriter for all **Digital Asset Replacement Expenses** from each **Security Event** under Subsection I.B.3. Digital Asset Replacement Expense Coverage is the amount shown in Item 7.B.3. of the Declarations as Coverage B.3. Limit of Liability.
7. Subject to Subsection C.1. above, the maximum liability of the Underwriter for all **Extortion Expenses** and **Extortion Payments** from each **Cyber Extortion Threat** under Subsection I.B.4.a. Cyber Extortion Threat Coverage is the amount shown in Item 7.B.4.a. of the Declarations as Coverage B.4.a. Limit of Liability.

The maximum liability of the Underwriter for all **Reward Payments** for each **Cyber Extortion Threat** under Subsection I.B.4.b. Reward Payments Coverage is the amount shown in Item 7.B.4.b. of the Declarations as all **Reward Payments** each **Cyber Extortion Threat**, which amount shall be part of and not in addition to the Limit of Liability shown for Item 7.B.4.a. of the Declarations.

#### D. RETENTIONS AND SINGLE CLAIM

1. Subject to Subsection D.2. below:
  - a. the Underwriter will pay only **Loss** in excess of the applicable Retention shown in Item 7.A. of the Declarations for each **Claim**, up to the applicable Limit of Liability; and
  - b. the Underwriter will pay only **Loss** in excess of the applicable Retention shown in Item 7.A.1.b. of the Declarations for each **Regulatory Proceeding**, up to the applicable Limit of Liability.

The Underwriter may, however, elect to pay all or any part of the Retention to effect a settlement of any matter covered hereunder and, upon notice of such action by the Underwriter, the **Insured** must promptly reimburse the Underwriter for the Retention paid by the Underwriter.

2. All **Claims** arising out of the same **Wrongful Act** or all **Interrelated Wrongful Acts** or associated **Privacy Events** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**.

Subject to Subsection D.9. below, all such **Claims** shall be subject to the highest applicable single Retention.

3. Subject to Subsection D.9. below, the Underwriter will pay only **Privacy Breach Costs** in excess of the applicable Retention shown in Item 7.B.1. of the Declarations for each **Privacy Event**, up to the applicable Limit of Liability.
4. Subject to Subsection D.8. below, the Underwriter will pay only **Business Income Loss, Dependent Business Income Loss and Extra Expenses** in excess of the applicable Retention shown in Item 7.B.2. of the Declarations for each **Security Event**, up to the applicable Limit of Liability. The applicable Retention is the greater of:
  - a. the dollar retention amount; or
  - b. the **Waiting Hours Retention**,

set forth in Item 7.B.2. of the Declarations. The **Business Income Loss, Dependent Business Income Loss and Extra Expenses** applicable to the Retention shall be computed as of the start of the **Interruption of Service**.

5. Subject to Subsection D.8. below, the Underwriter will pay only **Digital Asset Replacement Expenses** in excess of the applicable Retention shown in Item 7.B.3. of the Declarations for each **Security Event**, up to the applicable Limit of Liability.
6. **Interrelated Security Events** shall be deemed one **Security Event** and shall be deemed to first occur at the time the earliest **Security Event** of the **Interrelated Security Events** first occurs.
7. Subject to Subsection D.9. below, the Underwriter will pay only **Extortion Expenses and Extortion Payments** in excess of the applicable Retention shown in Item 7.B.4.a. of the Declarations for each **Cyber Extortion Threat**, up to the applicable Limit of Liability. No Retention applies to **Reward Payments**.
8. Subject to Subsection D.9. below, in the event any **Interrelated Security Events** trigger more than one Coverage under:
  - a. Subsection I.B.2.a. Business Income Loss and Extra Expenses Coverage;
  - b. Subsection I.B.2.b. Dependent Business Income Loss and Extra Expenses Coverage; or
  - c. Subsection I.B.3. Digital Asset Replacement Expense Coverage,only the highest applicable Retention shall apply to such **Interrelated Security Events**.
9. In the event any one **Related Incident** triggers more than one Coverage under this Policy, only the highest applicable Retention corresponding to such Coverages shall apply to such **Related Incident**.

All Retention amounts shall be borne by the **Insureds** uninsured and at their own risk.

#### E. SUBROGATION

In the event of any payment under this Policy, the Underwriter shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery, and the **Insureds** shall execute all papers required and shall do

everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Underwriter effectively to bring suit in the name of the **Insureds**.

The Underwriter will waive its right to be subrogated to all of the **Insureds'** rights of recovery, provided the **Insured** has waived their rights of recovery in a written contract or written agreement with a customer or client of the **Company**, which is executed prior to an event that may give rise to a **Claim**.

All recoveries (except from sureties, insurance, reinsurance or indemnity taken by or for the Underwriter's benefit) obtained after any payment under this Policy, less the actual cost of recovery, will be applied and distributed as follows:

1. first, to satisfy the **Company's** liability for amounts which would have otherwise been paid under this Policy but for being in excess of the applicable Limit of Liability;
2. second, to reimburse the Underwriter for any amounts it paid; and
3. third, to the **Company** to satisfy any Retention the **Company** incurred.

#### F. MATERIAL CHANGES IN COMPANY

##### 1. Acquisition or Formation of Subsidiary

- a. If, during the **Policy Period**, the **Policyholder** acquires or forms any **Subsidiary**, then the coverage of this Policy shall automatically apply to such organization and its **Insured Persons** from the date of such acquisition or formation, unless such organization has revenues representing more than ten percent (10%) of the **Company's** revenues.
- b. If, during the **Policy Period**, the **Policyholder** acquires or forms any **Subsidiary** which has revenues representing more than ten percent (10%) of the **Company's** revenues, coverage for such organization and its **Insured Persons** shall apply from the date of such acquisition or formation and be conditioned upon:
  - (1) the **Policyholder** notifying the Underwriter in writing within ninety (90) days of the acquisition or formation of such organization;
  - (2) the Underwriter receiving full information including an application as deemed necessary by the Underwriter;
  - (3) the **Policyholder's** agreement to any modification and/or premium adjustment to this Policy which the Underwriter may require with respect to such organization;
  - (4) the Underwriter's agreement in writing to provide such coverage; and
  - (5) the **Policyholder's** payment of any additional premium when due.
- c. Coverage under this Policy for any **Subsidiary** formed or acquired during the **Policy Period** and its **Insured Persons** will apply only to **Wrongful Acts, Privacy Events, Regulatory Proceedings** or **Non-Liability Coverages** occurring after the **Policyholder's** acquisition or formation of such **Subsidiary**.

##### 2. Cessation of Subsidiaries

If any organization ceases to be a **Subsidiary**, no coverage will be provided under this Policy with respect to any such organization and its **Insured Persons** for any **Wrongful Act** by any such organization or persons, any **Privacy Event, Regulatory Proceeding** or **Non-Liability Coverage** involving such organization or persons or any other amount claimed under any other Coverage incurred or sustained by any such organization or persons, after the date such organization ceased to be a **Subsidiary**.

##### 3. Acquisition or Bankruptcy of Policyholder

If during the **Policy Period** any of the following events occur:

- a. the acquisition by any person or entity or affiliated group of persons or entities of fifty percent (50%) or more of the **Policyholder's** issued and outstanding voting securities representing the present right to vote for the election of the **Policyholder's** directors;
- b. the acquisition, divestiture or sale of more than fifty percent (50%) of the **Company's** assets or liabilities (as reflected in the **Policyholder's** most recent consolidated financial statement) by or to any person or entity or affiliated group of persons or entities;

- c. the appointment of a receiver, conservator, trustee, liquidator, rehabilitator or any similar official for or with respect to the **Policyholder**; or
- d. the **Policyholder's** merger with or consolidation into any other entity such that the **Policyholder** is not the surviving entity;

(such events referred to herein as a "Takeover") then such coverage as existed under this Policy before such Takeover will continue in full force and effect for any **Wrongful Act, Privacy Event, Regulatory Proceeding** or **Non-Liability Coverage** occurring before such Takeover. However, solely with respect to the events shown under Subsections 3.a., 3.b. and 3.d above, coverage will cease with respect to any **Wrongful Act, Privacy Event, Regulatory Proceeding** or **Non-Liability Coverage** occurring after such Takeover.

The occurrence of a Takeover will not affect the **Insured's** right to purchase an **Extended Reporting Period** unless all premium due for the remainder of the **Policy Period** has not been fully paid within thirty (30) days of the effective date of such event, in which case the **Insured** will have no right to purchase the **Extended Reporting Period**.

## G. DEFENSE, SETTLEMENT & COOPERATION

### 1. Liability Coverage Defense and Settlement

With respect to any **Liability Coverage Claim**, other than a **Regulatory Proceeding**, the Underwriter has the right and duty to defend such **Claim**, even if the allegations are groundless, false or fraudulent. The **Insured** may not incur any **Defense Costs** in or settle any such **Claim**, or otherwise admit or assume any liability or obligation, without the Underwriter's consent. The Underwriter will not be liable for any **Defense Costs**, settlement, liability or obligation to which it has not consented.

The Underwriter may investigate any such **Claim**, other than a **Regulatory Proceeding**, as it deems necessary and make any settlement or compromise of such **Claim** as it deems expedient with the **Insured's** consent, but the Underwriter's right and duty to defend ends when the applicable Limit of Liability is exhausted by payment of **Loss**. If the Underwriter recommends a settlement in any such **Claim** acceptable to the claimant and the **Insured** refuses to consent to such settlement then, subject to the applicable Limit of Liability, the Underwriter's liability for such **Claim** will not exceed:

- a. the amount for which such **Claim** could have been settled by the Underwriter plus **Defense Costs** up to the date the **Insured** refused to settle such **Claim**; plus
- b. fifty percent (50%) of any:
  - (1) **Damages**; and
  - (2) **Defense Costs**,in excess of Subsection a. above incurred in such **Claim**. The remaining **Damages** and **Defense Costs** will be borne by the **Insured** at its own risk uninsured.

### 2. Regulatory Proceeding Defense

The Underwriter shall have the right, but not the duty, to defend any **Regulatory Proceeding**. The **Insured** may not incur any **Defense Costs** in any **Regulatory Proceeding** without the Underwriter's consent, such consent not to be unreasonably withheld. The Underwriter will not be liable for any **Defense Costs** to which it has not consented. The Underwriter has the right to associate in the defense of, and may investigate, any such **Regulatory Proceeding** as it deems necessary

### 3. Cooperation

The **Insured** agrees not to offer to settle or to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation, admit any liability or stipulate to any judgment with respect to any **Claim** without the Underwriter's written consent, which consent shall not be unreasonably withheld. The Underwriter shall not be liable for any offer to settle, settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which it has not given its prior consent.

The Underwriter shall have the right and shall be given the opportunity to conduct any investigation it deems necessary and to effectively associate with the **Insured** in the investigation, defense and settlement, including but not limited to the negotiation of a settlement, of any **Claim** that is or reasonably could be covered in whole or in part by this Policy.

The **Insured** agrees to provide the Underwriter with all information, assistance and cooperation that the Underwriter reasonably requests and agrees that in the event of a **Claim**, the **Insured** will do nothing that shall prejudice the Underwriter's position or its potential or actual rights of recovery. However, no **Insured's** failure to comply with any obligation under this Subsection V.G. shall be imputed to any other **Insured** for the purpose of determining an **Insured's** compliance with this Subsection V.G.

#### H. TERRITORY AND VALUATION

1. All premiums, Limits of Liability, Retentions, and other amounts under this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of loss under this Policy is stated in a currency other than the United States of America dollars, payment under this Policy shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the judgment is reached, the amount of the settlement is agreed upon or the other element of loss is due, respectively, or, if not published on such date, the next date of publication of *The Wall Street Journal*.
2. This Policy applies to **Wrongful Acts** occurring, **Claims** made, **Privacy Events** occurring, and any other loss, cost, expense or damage claimed under any other Coverage, anywhere in the world, to the extent permitted by applicable law.

#### I. REPORTING AND NOTICE

1. The following applies to all **Liability Coverages** and **Non-Liability Coverages**:

##### General Notice and Duties Provisions

- a. Except as otherwise provided in this Policy, all notices under any provision of this Policy shall be in writing and given by prepaid express courier, certified mail, electronic mail or fax properly addressed to the appropriate party. Notice to the **Insured** may be given to the **Policyholder** at the address as shown in Item 1. of the Declarations. Notice to the Underwriter shall be given to the applicable address shown in Item 6. of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier, subject to proof of transmittal.
- b. In the event of any claim under any Coverage, the **Insured** must:
  - (1) cooperate with the Underwriter in its investigation; and
  - (2) allow the Underwriter to question the **Insureds** under oath at such times as may be reasonably required regarding the **Insured's** books, records, and any other matters relating to such claim for coverage.

2. The following applies to **Liability Coverages**:

##### a. Notice of Claim

As a condition precedent to the **Insured's** rights under Subsection I.A. Liability Coverages, the **Insured** must give the Underwriter written notice of any **Claim** made against the **Insured** as soon as practicable after it is made, once any **Executive Officer** becomes aware or receives notification of such **Claim**, but in no event later than:

- (1) sixty (60) days after the termination of the **Policy Period**; or
- (2) the termination of the **Extended Reporting Period**, if exercised.

##### b. Notice of Circumstances

If, during the **Policy Period**, any **Executive Officer** becomes aware of any specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this Policy and gives written notice to the Underwriter during the **Policy Period** of:

- (1) the identity of the potential claimants;
- (2) a description of the anticipated **Wrongful Act** allegations;
- (3) the identity of the **Insureds** allegedly involved;
- (4) the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;

- (5) the consequences which have resulted or may result; and
- (6) the nature of the potential damages;

then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was first received by the Underwriter.

3. The following applies to **Non-Liability Coverages**:

a. Notice of a Privacy Event and Insured's Duties

- (1) As a condition precedent to the **Insured's** rights under Subsection I.B.1. Privacy Breach Costs Coverage, the **Insured** must give the Underwriter written notice of any **Privacy Event** during the **Policy Period** as soon as practicable after it occurs, but in no event later than thirty (30) days after any **Executive Officer** becomes aware or receives notification of such **Privacy Event**. Any notice to the Underwriter of a **Privacy Event** shall not constitute notice of a **Claim**, unless such notice expressly states it also is a notice under Subsection V.I.2.a. above.
- (2) In the event of a **Privacy Event**, the **Insured** must take all reasonable steps to protect **Computer Systems, Personal Information**, or confidential corporate information from further loss or damage.

b. Notice of a Cyber Extortion Threat and Insured's Duties

Following a **Cyber Extortion Threat**, the **Company** must provide the Underwriter with prompt written notice as soon as practicable of such **Cyber Extortion Threat**, but in no event later than thirty (30) days after the **Company** first receives such **Cyber Extortion Threat**.

c. Notice of a Security Event and Insured's Duties

- (1) Following a **Security Event**, the **Company** must provide the Underwriter with prompt written notice as soon as practicable of such **Security Event**, but in no event later than sixty (60) days after the occurrence of such **Security Event**.

The **Company** agrees to take all reasonable steps and measures to limit or mitigate **Business Income Loss** and **Dependent Business Income Loss**.

Within six (6) months after the occurrence of any such **Security Event**, the **Insured** must furnish the Underwriter with a written proof of the **Company's** claimed loss, duly sworn to, with full particulars.

- (2) No legal proceedings for the recovery of any amount may be brought prior to the expiration of sixty (60) days after the **Insured's** original proof of loss is submitted to the Underwriter or more than twelve (12) months after the occurrence of the **Security Event** in question.

J. OTHER INSURANCE

The insurance afforded by this Policy is excess over any valid and collectible insurance available to an **Insured**. However:

- 1. This insurance shall be primary to any insurance specifically arranged by an **Insured** to apply in excess of this insurance; and
- 2. When this Policy and any other Coverage Form or Policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Liability of our Policy bears to the total of the limits of all Coverage Forms and policies covering on the same basis.

K. AUTHORIZATION CLAUSE

By acceptance of this Policy, the **Policyholder** agrees to act on behalf of the **Insureds** with respect to termination of this Policy, paying premiums, receiving any return premiums that may become due under this Policy, agreeing to endorsements, and giving or receiving of notices, including but not limited to notices for **Claims** provided for in this Policy. The **Insureds** agree that the **Policyholder** shall act on their behalf.

No action shall lie against the Underwriter unless, as a condition precedent thereto, the **Policyholder** and/or **Insured** have complied fully with all the terms of the Policy.

L. BANKRUPTCY

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate will not relieve the Underwriter of its obligations under this Policy nor deprive the Underwriter of its rights or defenses under this Policy.

In the event a liquidation or reorganization proceeding is commenced by or against a **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar foreign, state or local law, the **Company** and the **Insured Persons** hereby

1. waive and release any automatic stay or injunction which may apply in such proceeding to this Policy or its proceeds under such bankruptcy law, and
2. agree not to oppose or object to any efforts by the Underwriter, the **Company**, or any **Insured Person** to obtain relief from any such stay or injunction.

#### M. LEGAL ACTION AGAINST THE UNDERWRITER

No person or organization has a right under this Policy:

1. to join the Underwriter as a party or otherwise bring the Underwriter into a **Claim**; or
2. to sue the Underwriter on this Policy unless all of its terms have been fully complied with.

A person or organization may sue the Underwriter to recover on an agreed settlement or on a final and non-appealable judgment against an **Insured**; but the Underwriter will not be liable for sums that are not payable under the terms of this Policy or that are in excess of the applicable limit of liability. An agreed settlement means a settlement and release of liability agreed to by the Underwriter, the **Insured** and the claimant or the claimant's legal representative.

#### N. POLICY TERMINATION AND NONRENEWAL

This Policy shall terminate at the earliest of the effective date of nonrenewal of the policy or the effective date of cancellation, as described below.

##### 1. Cancellation

- a. The **Policyholder** may cancel this Policy by surrender of this Policy to the Underwriter or by giving prior written notice to the Underwriter stating when such cancellation shall take effect.
- b. If this Policy has been in effect for sixty (60) days or more or is a renewal of a policy issued by the Underwriter, this Policy may not be cancelled by the Underwriter except for one (1) or more of the following reasons:
  - (1) nonpayment of premium; or
  - (2) fraud or material misrepresentation affecting the Policy.
- c. Written notice of cancellation shall be mailed or delivered by the Underwriter to the **Policyholder** at least:
  - (1) fifteen (15) days prior to the effective date of cancellation, if this Policy is cancelled for nonpayment of premium; or
  - (2) sixty (60) days prior to the effective date of cancellation, if this Policy is cancelled for any reason other than nonpayment of premium.
- d. In the event of cancellation, the Underwriter shall refund the unearned premium computed pro rata.

##### 2. Nonrenewal

If the Underwriter elects not to renew this Policy, the Underwriter shall mail to the **Policyholder** written notice thereof at least sixty (60) days prior to the expiration of the **Policy Period** unless:

- a. the reason for the nonrenewal is due to the non-payment of premium; or
- b. the **Policyholder** has obtained replacement coverage with another insurance company.

The Underwriter's offer of renewal terms and conditions or premium different than those in effect prior to the renewal shall not constitute an election by the Underwriter not to renew the Policy.

##### 3. Notice

The Underwriter shall send all notices required under this Subsection V.N. by certified mail to the **Policyholder** at the address in Item 1. of the Declarations, and by mail or electronic mail to the **Policyholder's** authorized agent, if any. Proof of mailing will be sufficient proof of notice.

O. ALTERNATIVE DISPUTE RESOLUTION (ADR)

The **Policyholder** and the Underwriter shall submit any dispute or controversy arising out of or relating to this policy to non-binding mediation. Unless otherwise agreed by the parties, such non-binding mediation shall be administered by the American Arbitration Association in accordance with its then-prevailing Commercial Mediation Rules.

If the dispute is not resolved in the mediation, then either party to the mediation may thereafter commence a judicial proceeding against the other party with respect to such dispute, provided that neither party may commence such a judicial proceeding prior to ninety (90) days following termination of the mediation.

The parties to the mediation shall share equally the fees and expenses of the mediator as well as other common expenses of the mediation process.

P. VALUATION

Subject to Subsection V.C. and Subsection V.D.:

1. Business Income Loss and Dependent Business Income Loss

**Business Income Loss** and **Dependent Business Income Loss** will be calculated on an hourly basis based on the actual **Business Income Loss** and **Dependent Business Income Loss** the **Company** sustains during the time period in which the **Company's Computer System** is affected by the **Interruption of Service**. In determining the amount of net profit or loss and expenses covered under Subsection I.B.2. Business Income Loss, Dependent Business Income Loss and Extra Expenses Coverage, the Underwriter will give due consideration to the net profit or loss of the **Company** before the **Interruption of Service** occurred and the probable net profit or loss of the **Company** if no **Interruption of Service** had occurred. However, 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 the volume of the **Company's** business due to favorable business conditions caused by the impact of any event similar to a **Security Event** suffered by other businesses. The **Company** will provide the Underwriter with access to all relevant sources of information, including, but not limited to:

- a. the **Company's** financial records, tax returns, accounting procedures;
- b. bills, invoices and other vouchers; and
- c. deeds, liens and contracts.

2. Digital Asset Replacement Expenses

- a. If the **Company** cannot restore **Digital Assets** but can recollect such **Digital Assets**, then **Digital Assets Replacement Expenses** shall be limited to the actual cost the **Company** incurs to recollect such **Digital Assets**.
- b. If the **Company** cannot restore or recollect **Digital Assets**, then **Digital Assets Replacement Expenses** shall be limited to the actual cost the **Company** incurs to reach this determination.