



ENDURANCE PREMIER PROFESSIONAL LIABILITY AND NETWORK RISK INSURANCE POLICY

This is a Claims Made and Reported Policy. Please Read It Carefully.

In consideration of the payment of premium, in reliance upon the information, representations and warranties contained in the **Application** and subject to all the terms, limitations and conditions of this Policy, the **Insurer** and the **Insured** agree as follows:

I. INSURING AGREEMENTS

A. Professional Services, Technology and Media Liability

If Insuring Agreement A. is purchased as designated in Item 4. of the Declarations, the **Insurer** shall pay **Damages** and **Claim Expenses** resulting from any **Claim** first made against the **Insured** during the **Policy Period** and reported to the **Insurer** in writing during the **Policy Period**, or any applicable Extended Reporting Period, for any **Professional Services Wrongful Act**, **Technology Wrongful Act** or **Media Wrongful Act** committed on or after the **Retroactive Date** and before the Policy terminates.

B. Network Security and Privacy Liability

If Insuring Agreement B. is purchased as designated in Item 4. of the Declarations, the **Insurer** shall pay **Damages** and **Claim Expenses** resulting from any **Claim** first made against the **Insured** during the **Policy Period** and reported to the **Insurer** in writing during the **Policy Period**, or any applicable Extended Reporting Period, for any **Network Security Wrongful Act** or **Privacy Wrongful Act** committed on or after the **Retroactive Date** and before the Policy terminates.

The **Insurer** will reimburse the **Insured** for all **Claim Expenses** the **Insured** incurs in responding to any **Regulatory Proceeding** resulting from any **Claim** first made against the **Insured** during the **Policy Period** and reported to the **Insurer** in writing during the **Policy Period**, or any applicable Extended Reporting Period, for a **Network Security Wrongful Act** or **Privacy Wrongful Act** that results in a **Privacy Event**, provided such **Network Security Wrongful Act** or **Privacy Wrongful Act** first happens on or after the **Retroactive Date** and before the Policy terminates.

C. Privacy Breach Costs

If Insuring Agreement C. is purchased as designated in Item 4. of the Declarations, the **Insurer** shall reimburse the **Insured** for **Privacy Breach Costs** incurred by the **Insured** which are directly attributable to a **Privacy Event** commencing during the **Policy Period**, if such **Privacy Event** is reported to the **Insurer** pursuant to Subsection VII.B. of this Policy.

II. DEFINITIONS

Whenever used in this Policy:

- A. **Advertisement** means a notice that is disseminated with the consent of the **Insured** about the goods, products or services of the **Insured** for the purpose of attracting customers or supporters. **Advertisement** shall include promotional material and media publicly disseminated on the Internet either on behalf of the **Insured** or by the **Insured** on behalf of others.
- B. **Application** means all applications, including attachments, and all other materials and information provided by the **Insured** to the **Insurer** for the purposes of underwriting or issuing this Policy or any policy of which this Policy is a renewal or replacement.
- C. **Bodily Injury** means physical injury, sickness, disease or death of any person, and includes emotional distress or mental anguish whether or not accompanied by physical injury, sickness or disease. **Bodily Injury** does not include emotional distress or mental anguish as a result of a **Privacy Event**.
- D. **Claim** means a written demand received by the **Insured** for monetary damages or non-monetary relief which alleges a **Wrongful Act**, including:
1. the service of suit or any civil proceeding in a court of law or at equity, including any appeal therefrom, which is commenced by the filing of a complaint or similar legal instrument;
 2. institution of arbitration, mediation or other formal alternative dispute resolution proceeding;
 3. any prosecution or governmental action related to a **Privacy Event**;
 4. any written request to toll or waive a statute of limitations; or
 5. for the purposes of Insuring Agreement B. only, if purchased, any **Regulatory Proceeding**.

Claim shall not include any form of criminal proceeding. A **Claim** for injunctive relief alleging any **Wrongful Act** for which insurance would have been granted under this Policy if **Damages** had been sought will be considered a **Claim** for the purposes of this Policy, but only the **Claim Expenses** arising therefrom shall be covered by this Policy.

- E. **Claim Expenses** means attorneys' fees and all other reasonable fees, costs and expenses resulting from the investigation and defense of a **Claim**, but only if incurred by the **Insurer** or by the **Insured** with the prior written consent of the **Insurer**.

Claim Expenses shall not include any compensation of any employee or officer of the **Insured** or any supervisory counsel retained by the **Insured**. The determination by the **Insurer** as to the reasonableness of **Claim Expenses** shall be binding on the **Insured**.

- F. **Consumer Redress Fund** means any sum of money the **Insured** is legally required to deposit in a court-administered fund solely for the payment of consumer claims due to a settlement of, or an adverse judgment in, a **Regulatory Proceeding**.
- G. **Computer System** means computers and associated software, input and output devices, data storage devices, networking equipment and back up facilities.

H. **Damages** means:

1. compensatory sums;
2. monetary judgments or settlements;
3. punitive or exemplary damages to the extent such damages are insurable under the law most favorable to the insurability of such damages of any jurisdiction which has a substantial relationship to the **Insured**, the **Insurer**, this Policy or the **Claim**; and
4. pre-judgment and post-judgment interest.

With respect to Insuring Agreement B. only, if purchased, **Damages** shall also mean amounts in respect of any **Consumer Redress Fund**.

Damages shall not include:

1. taxes, fines or statutory penalties levied against the **Insured**, or sanctions, whether imposed by law or otherwise (except (i) as provided above with respect to punitive or exemplary damages, or (ii) **Regulatory Fines** with respect to Insuring Agreement B.);
2. the return, reduction or restitution of fees, commissions, royalties, expenses or costs for **Professional Services** or **Technology Services** performed or to be performed by the **Insured**;
3. disgorgement of any profit, remuneration or financial advantage to which the **Insured** was not legally entitled;
4. liquidated damages or penalties of any nature pursuant to a contract or agreement of any kind, unless such liability would have attached to the **Insured** in the absence of such contract or agreement;
5. matters uninsurable under the law pursuant to which this Policy is construed;
6. the **Insured's** cost of correcting, re-printing or re-performing or completing **Professional Services**, **Technology Services** or **Media Material**, including any media or products containing such **Media Material**; or
7. future profits, future royalties, costs of licensing or the costs to comply with orders granting equitable relief, including injunctions, temporary restraining orders, specific performance, or any agreement to provide such relief.

I. **Denial of Service Attack** means a malicious attack which is designed to slow or completely interrupt access to a targeted **Computer System** or website by other third parties authorized to gain access to that **Computer System** or website. **Denial of Service Attack** does not include a malicious attack by any principal, partner, executive officer, director or organizational equivalent of an **Insured**, whose acts shall be imputed to other **Insureds**.

J. **Insured** means the **Named Insured**, any **Subsidiary**, any **Insured Person** and any of the following persons:

1. independent contractors but only for **Professional Services** or **Technology Services** performed on behalf and at the direction of the **Insured** or any **Subsidiary**, and the **Insured** has agreed in writing to provide insurance for the independent contractors' **Professional Services** or **Technology Services**; and

2. leased employees but only for **Professional Services** or **Technology Services** performed while acting under the direct supervision and exclusively on behalf of the **Insured** or any **Subsidiary**.

K. **Insured Person** means any natural person who was, is or becomes a principal, partner, managing member, officer, director, employee or **Volunteer** of the **Insured** or **Subsidiary**, but only while in the performance of **Professional Services** or **Technology Services** on behalf of the **Insured** or **Subsidiary**. Coverage under this Policy shall also extend to:

1. the lawful spouse or lawful domestic partner of an **Insured Person**, if named as a co-defendant with such **Insured Person** solely by reason of such spouse's status as a spouse or such domestic partner's status as a domestic partner, or such spouse's or domestic partner's ownership interest in property that is sought by a claimant as recovery for an alleged **Wrongful Act** of such **Insured Person**; and
2. the estate, heirs, executors, administrators, assigns and legal representatives of any **Insured Person** in the event of the death, incapacity, insolvency or bankruptcy of such **Insured Person**, but any such coverage shall apply only with respect to a **Wrongful Act** of such **Insured Person**.

All terms and conditions of this Policy including, without limitation, the self-insured retention applicable to **Claim Expenses** and **Damages** incurred by the **Insured Person**, shall also apply to **Claim Expenses** and **Damages** incurred by the lawful spouse, lawful domestic partner, estate, heirs, executors, administrators, assigns and legal representatives of such **Insured Person**.

L. **Insured's Computer System** means computers and associated software, input and output devices, data storage devices, networking equipment and back up facilities:

1. operated by and either owned by or leased to the **Insured**; and
2. operated by a third party service provider and used for the purpose of providing hosted services to the **Insured** or for processing, maintaining, hosting or storing electronic data of the **Insured**, pursuant to a written contract with the **Insured** for such services.

Insured's Computer System shall also include the websites of the **Insured** and the **Media Material** stored thereon.

M. **Insurer** means <<Endurance American Specialty Insurance Company>>.

N. **Malicious Code** means unauthorized, corrupting or harmful software code, including computer viruses, Trojan horses, keystroke loggers, cookies, spyware, adware, worms and logic bombs.

O. **Media Communications** means the display, broadcast, dissemination, distribution or release of **Media Material** to the public by the **Insured**, including **Media Material** disseminated on the Internet.

P. **Media Material** means any data, text, sounds, graphics, images or similar matter, including **Advertisements**. **Media Material** shall not include **Technology Products** or data, text, sounds, images or similar matter incorporated into or otherwise part of the **Insured's Technology Products**.

Q. **Media Wrongful Act** means any act, error, omission, misstatement, misleading statement, neglect, **Personal Injury** offense or breach of duty actually or allegedly committed or attempted

by an **Insured** in connection with the **Insured's** rendering or failure to render **Media Communications**, including any such actual or alleged conduct which constitutes:

1. libel, slander, defamation or other tort related to the disparagement or harm to the reputation or character of any person or organization;
2. invasion, infringement, or interference with the right to privacy;
3. plagiarism, piracy, or the misappropriation or unauthorized use of advertising ideas, advertising material, titles, literary or artistic formats, styles, performances, names or likenesses;
4. the infringement of any copyright, domain name, trademark, trade name, trade dress, title or slogan, service mark or service name, except for the **Insured's** own trademark;
5. negligence with respect to the **Insured's** creation or dissemination of **Media Material**;
6. misrepresentation, wrongful publication, product or service disparagement or trade libel; or
7. an unintentional breach of a contract to render **Media Communications**.

R. **Named Insured** means the entity stated in Item 2. of the Declarations.

S. **Network Security** means those activities performed by the **Insured**, or by others for or on behalf of the **Insured**, to protect against **Unauthorized Access** to, **Unauthorized Use** of, or a **Denial of Service Attack** by a third party directed against, or the transmission of **Malicious Code** to, the **Insured's Computer System**.

T. **Network Security Wrongful Act** means any actual or alleged act, error, omission, neglect, or breach of duty by an **Insured** or the **Insured's Service Provider** which causes a breach of the **Insured's Network Security** that results in:

1. the theft, alteration, or destruction of electronic data on the **Insured's Computer System**;
2. the **Unauthorized Access** to or **Unauthorized Use** of the **Insured's Computer System**;
3. the denial of an authorized user's access to the **Insured's Computer System**, unless the denial of such authorized user's access is caused by a mechanical or electrical failure outside the control of the **Insured**;
4. the participation by the **Insured'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 **Insured's Computer System** to a third party's **Computer System**.

U. **Newly Acquired Subsidiary** means any entity of which the **Insured** owns, either legally or beneficially, more than a fifty percent (50%) interest and either:

1. subsequent to the inception date of this Policy by reason of being formed or acquired by the **Insured** after such date, if the total annual revenue of such entity does not exceed fifteen percent (15%) of the total consolidated annual revenue of the **Insured** as of the immediate past twelve (12) months prior to the inception date of this Policy; or
2. subsequent to the inception date of this Policy by reason of being formed or acquired by the **Insured** other than as described in U.1. above, but only upon the conditions that:

- a. within sixty (60) days of such formation or acquisition, the **Named Insured** has provided the **Insurer** with written notice thereof, and the **Insurer** has agreed in writing to insure such entity. The **Insurer** at its sole and absolute discretion shall not be required to insure such entity; and
- b. the **Named Insured** has paid the additional premium, if any, charged by the **Insurer** and has agreed to any endorsement required by the **Insurer** to this Policy.

V. **Personal Information** means:

1. an individual's name, social security number, medical or healthcare data, other legally protected health information, drivers license number, state identification number, credit card number(s), debit card number(s), address, telephone number(s), bank or other financial institution account numbers, account histories, or passwords, in any format; and
2. other nonpublic personal information, in any format, as defined in **Privacy Regulations**.

Personal Information shall not include information that is lawfully made available to the general public for any reason, including, but not limited to, information lawfully obtained from federal, state or local government agencies.

W. **Personal Injury** means injury other than **Bodily Injury** arising out of one or more of the following offenses: wrongful entry or eviction, trespass, eavesdropping, false arrest or malicious prosecution; or invasion, infringement or interference with the right to privacy, including false light, public disclosure of private facts, intrusion or commercial appropriation of name or likeness.

X. **Policy Period** means the period from the inception date of this Policy to the Policy expiration date stated in Item 3. of the Declarations or its earlier cancellation date, if any.

Y. **Privacy Breach Costs** means the reasonable and necessary fees, costs, charges and expenses incurred by the **Insured** 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 **Insured's Computer System** to determine the cause and extent of such **Privacy Event**;
2. determine indemnification obligations under any written contract with respect to a **Network Security Wrongful Act** or **Privacy Wrongful Act** by a **Service Provider** in connection with such **Privacy Event**;
3. determine if the **Insured** is obligated to notify affected individuals or applicable regulatory agencies of such **Privacy Event**;
4. effect compliance with any applicable **Privacy Regulation** most favorable to the individuals affected by the **Privacy Event**;
5. notify the individuals affected by the **Privacy Event** or applicable regulatory agencies of such **Privacy Event**;
6. plan, implement, execute and manage a public relations campaign to counter or mitigate any actual or anticipated adverse effects of negative publicity from such **Privacy Event** or to protect the **Insured's** business reputation in response to negative publicity following such **Privacy Event**; or

7. procure credit monitoring or identity restoration services for the individuals affected by the **Privacy Event** in responding to such **Privacy Event**.

Privacy Breach Costs do not include:

1. regular or overtime wages, salaries, fees or other compensation of the **Insured's** directors, officers or employees;
2. the cost to comply with any injunctive or other non-monetary relief;
3. principal, interest or other monies paid or due as the result of any loan, lease or extension of credit; or
4. taxes, fines, sanctions or penalties, except **Regulatory Fines** with respect to Insuring Agreement B.

Z. **Privacy Event** means:

1. an unauthorized disclosure, loss or theft 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 protected under a written nondisclosure or other confidentiality agreement or other similar contract;
2. a violation of any **Privacy Regulation**; or
3. an unintentional violation of the **Insured's** privacy policy that results in the violation of any **Privacy Regulations**.

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

1. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and Health Information Technology for Economic and Clinical Health Act;
2. Gramm-Leach-Bliley Act of 1999;
3. the California Security Breach Notification Act (CA SB 1386) and Massachusetts 201 CMR 17;
4. Identity Theft Red Flags under the Fair and Accurate Credit Transactions Act of 2003;
5. Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), but solely for alleged violations of unfair or deceptive acts or practices in or affecting commerce; and
6. other similar state, federal or foreign identity theft and privacy protection legislation that requires commercial entities that collect **Personal Information** to post privacy policies, adopt specific privacy or security controls, or notify individuals in the event that **Personal Information** has potentially been compromised.

BB. **Privacy Wrongful Act** means any actual or alleged act, error, omission, neglect or breach of duty by an **Insured** or by a **Service Provider** for services performed for or on behalf of the **Insured** that results in a **Privacy Event**.

CC. **Professional Services** means those services stated in Item 7. of the Declarations which are provided by the **Insured** to others for a fee.

DD. **Professional Services Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect, breach of duty, or **Personal Injury** offense actually or allegedly committed or attempted by any **Insured** in rendering or failure to render **Professional Services**.

EE. **Property Damage** means:

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

However, **Property Damage** does not mean injury to, loss or destruction of, or loss of use of intangible property, including data.

FF. **Regulatory Fines** means any civil monetary fine or penalty imposed by a federal, state or local governmental entity in such entity's administrative, regulatory or other similar official capacity pursuant to its order under a **Regulatory Proceeding**. **Regulatory Fines** shall not include any criminal fines, disgorgement of profits, multiple, punitive or exemplary damages or civil monetary fines or penalties that are not insurable by law.

GG. **Regulatory Proceeding** means:

1. a formal investigation of an **Insured** by a U.S. administrative or regulatory agency or similar U.S. governmental body concerning a **Privacy Event**; or
2. an administrative adjudicative proceeding against an **Insured** by a U.S. administrative or regulatory agency or similar U.S. governmental body for a **Privacy Wrongful Act** or **Network Security Wrongful Act**, including an appeal thereof, commenced by the **Insured's** receipt of a subpoena, investigative demand, complaint or similar document.

Regulatory Proceeding shall include associated **Regulatory Fines**.

HH. **Retroactive Date** means the date stated in Item 4. of the Declarations.

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

1. maintaining, managing, or controlling the **Insured's Computer Systems**;
2. hosting or facilitating the **Insured's** Internet website; or
3. providing other **Technology Services** to the **Insured**.

JJ. **Subsidiary** means:

1. any entity of which the **Named Insured** owns, either legally or beneficially, more than a fifty percent (50%) interest on or before the inception date of this Policy; or
2. any **Newly Acquired Subsidiary**.

The **Insurer** will only provide coverage for a **Subsidiary** with respect to a **Claim** arising out of a **Wrongful Act** committed on or after the date such **Subsidiary** became a **Subsidiary** and prior to the date such **Subsidiary** ceased to be a **Subsidiary**. An entity ceases to be a **Subsidiary** under this Policy on the date during the **Policy Period** that the **Named Insured's** legal or beneficial interest in such entity becomes less than 50%. No coverage will be afforded under this Policy with respect to a **Claim** made against any **Insured** based on any **Wrongful Act** that was committed on or subsequent to such date.

KK. **Technology Products** means computer or telecommunications hardware, software, firmware, or related electronic equipment, including the design, development, manufacturing, assembly, distribution, licensing, leasing, sale, installation, repair or maintenance thereof.

LL. **Technology Services** means any electronic or computer-based network services, including:

1. analysis, design, development, integration, installation, programming, conversion, service, **Network Security**, support, maintenance, repair, sale, or resale of **Computer Systems**, computer networks, electronic systems, computer software, computer hardware, or computer firmware;
2. database design and the collection, compilation, processing, warehousing, mining, storage, management, or analysis of electronic data;
3. information technology consulting, management, education, or training;
4. **Telecommunications Services**; or
5. Internet services, including:
 - a. Internet access provision, application service provision, domain name registration, or the provision of search engine, web browser, or electronic mail services;
 - b. website design, programming, hosting, managing, or maintenance;
 - c. e-commerce transaction services, electronic exchange services, auction services, managed and **Network Security** services, web portal services; and
 - d. the development, design, and maintenance of chat rooms, blogs, e-mail services or bulletin boards.

MM. **Technology Wrongful Act** means any act, error, omission, misstatement, misleading statement, neglect, or breach of duty actually or allegedly committed or attempted by an **Insured** in connection with the **Insured's** rendering or failure to render **Technology Services** or **Telecommunications Services** to others, or the failure of the **Insured's Technology Products** to perform the function or serve the purpose for which they are intended.

NN. **Telecommunication Services** means local, regional and long distance wireline and wireless dial tone access and switching services, toll free services, voice mail, call forwarding, call waiting and caller ID; ground based satellite communication services; DSL, ISDN and VoIP services; video conferencing services; paging services; basic wire maintenance; 911 emergency services; directory services and operator assistance; analysis, design, integration and conversion of telecommunication systems; directory publishing; or project management or consulting services related to any matter described in this definition.

OO. **Unauthorized Access** means the gaining of access to the **Insured's Computer System** by an unauthorized person or persons, or by an authorized person or persons in an unauthorized manner.

- PP. **Unauthorized Use** means the use of the **Insured's Computer System** by a person unauthorized by the **Insured** or a person authorized by the **Insured** who uses the **Insured's Computer System** for a purpose which is not intended by the **Insured**.
- QQ. **Volunteer** means a person who is not an employee, and who donates his or her work and acts at the direction of and within the scope of duties determined by the **Insured**, and is not paid a fee, salary or other compensation.
- RR. **Wrongful Act** means:
1. with respect only to Insuring Agreement A., a **Professional Services Wrongful Act**, a **Technology Wrongful Act** or a **Media Wrongful Act**.
 2. with respect only to Insuring Agreement B., a **Network Security Wrongful Act** or a **Privacy Wrongful Act**.

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

III. EXCLUSIONS

This Policy shall not apply to any **Damages** or **Claim Expense** based upon, arising out of, attributable to or involving directly or indirectly:

- A. any actual or alleged dishonest, criminal, intentional, malicious or fraudulent act, error or omission or any willful violation of any statute, rule or law by any **Insured**, if a final and non-appealable judgment or adjudication adverse to such **Insured** establishes such conduct. For the purposes of this exclusion, it is understood and agreed that the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person** to determine if coverage is available;
- B. (1) **Bodily Injury**; or (2) **Property Damage**;
- C. the actual or alleged performance of or failure to perform **Professional Services** or **Technology Services** for or by any entity other than the **Insured** if on or after the date or time of the **Wrongful Act** giving rise to the **Claim**:
1. any **Insured** and/or members of the immediate family of the **Insured** owned or controlled 10% or more of the issued and outstanding shares, units or other portions of the capital of such entity; and/or
 2. any **Insured** was a principal, partner, managing member, officer, director or employee of such entity;
- D. any written demand, litigation, proceeding, administrative action or hearing brought prior to or pending as of the Prior and Pending Litigation Date as stated in Item 5. of the Declarations as well as any future litigation, proceeding, administrative action or hearing based upon any such pending or prior litigation, proceeding, administrative action or hearing or derived from the same or similar essential facts or circumstances underlying or alleged in any such pending or prior litigation, proceeding, administrative action or hearing;
- E. any circumstance, fact or situation if written notice of such circumstance, fact or situation has been given under any policy prior to the effective date of this Policy;

- F. the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any watercourse or body of water, including an aquifer or groundwater;
- G. any actual or alleged species of fungi, including mold, mildew and any mycotoxins, mold allergens, spores, scents or byproducts produced or released by fungi;
- H. any actual or alleged electric, magnetic or electromagnetic fields;
- I. any actual or alleged violation of the Employee Retirement Income Security Act of 1974, and amendments thereto, or similar provisions of any federal, state or local statute or common law;
- J. any **Insured** actually or allegedly gaining in fact any profit, remuneration or advantage to which such **Insured** was not legally entitled, if a final and non-appealable judgment or adjudication adverse to such **Insured** establishes such conduct. For the purposes of this exclusion, it is understood and agreed that the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person** to determine if coverage is available;
- K. any actual or alleged false, deceptive or unfair business practices or any violation of consumer protection laws. However, with respect to a **Wrongful Act** expressly covered under Insuring Agreement B., this exclusion shall not apply to a **Regulatory Proceeding** or **Consumer Redress Fund** for that portion of **Damages** or **Claim Expenses** allocated to numbered paragraphs 4. and 5. of the definition of **Privacy Regulations**.
- L. breach of contract or any actual or alleged liability assumed by the **Insured** in any express, implied, actual, constructive, oral or written contract, warranty, guarantee or promise, but this exclusion shall not apply to:
1. liability of the **Insured** which would exist in the absence of such contract or agreement;
 2. liability assumed by the **Insured** under a written hold harmless or indemnity agreement regarding the content of **Media Material** used in **Media Communications**; or
 3. breach of client confidentiality following a **Privacy Event**;
- M. any actual or alleged violation of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or any state Blue Sky or securities law or similar state or federal statute and any regulation or order issued pursuant to any of the foregoing statutes, unless endorsed hereon;
- N. any actual or alleged:
1. refusal to employ;
 2. termination of a person's employment, including constructive dismissal;
 3. violations of employment-related practices, policies, acts, or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, malicious prosecution;
 4. obligations under any workers' compensation act, employers' liability law, unemployment compensation law, disability benefits law; or
 5. other wrongful employment-related practices, regardless of:

- a. whether such conduct occurs before employment, during employment or after employment of that person; or
- b. whether the **Insured** may be liable as an employer or in any other capacity.

This exclusion shall not apply to any **Claim** by an employee of the **Insured** for a **Privacy Event** relating to the unauthorized disclosure of such employee's **Personal Information**;

- O. any actual or alleged validity, invalidity, infringement, violation or misappropriation of any patent or trade secret by or on behalf of the **Insured**;
- P. any actual or alleged publicity or promotion of lotteries, sweepstakes, contests or games of chance, or any misstatements or misrepresentations that appear in any promotional materials, including, but not limited to, any **Claim** based upon or arising out of price discounts, gift cards, store debits or credit cards, prizes, awards, or other valuable consideration given in excess of the total contracted or expected amount in connection with any lotteries, sweepstakes, contests or games of chance, including any misstatements or misrepresentations that appear in any of the foregoing materials;
- Q. any actual or alleged unfair competition, 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, or common law or rules or regulations involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade, or otherwise protecting competition. However, this exclusion shall not apply to a **Regulatory Proceeding** that may constitute 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 **Regulatory Proceeding**;
- R. any actual or alleged:
 1. failure or malfunction of electrical, telecommunications or any other infrastructure or services, unless under the operational control of the **Insured**;
 2. natural property perils including but not limited to fire, flood, volcanic eruption, tornados, explosion, lightning, wind, hail, tidal wave, landslide, act of God; or
 3. other physical event based upon, arising out of, attributable to, or involving directly or indirectly any actual or alleged failure, interruption, or outage to Internet access or service provided by the **Service Provider** that hosts the **Insured's** website, unless such telecommunications infrastructure is under the **Insured's** operational control.
- S. any actual or alleged fees, expenses or costs paid to or charged by the **Insured**;
- T. any actual or alleged:
 1. inaccurate, inadequate, or incomplete description of the price of goods, products or services;
 2. cost guarantees, cost representations, or contract price estimates of probable costs or cost estimates actually or allegedly being exceeded;
 3. performance delays or the inability to meet deadlines;
 4. failure of goods, products, or services to conform with any represented quality or performance contained in advertising; and/or

5. false, deceptive or unfair business practices, violation of consumer protection laws, or false or deceptive **Advertisements**. However this exclusion shall not apply to a **Privacy Event**;
- U. any actual or alleged breach of any express warranty or representation, except for an agreement to perform within a reasonable standard of care or skill consistent with applicable industry standards, or the breach of any other contractual obligation which goes beyond an express or implied duty to exercise a degree of care or skill as is consistent with applicable industry standards;
- V. any actual or alleged unsolicited electronic dissemination of faxes, e-mails, text messages or other communications to multiple actual or prospective customers of the **Insured** or any other third party, including but not limited to actions brought under the Telephone Consumer Protection Act or any similar state statute, law or regulation, any federal or state anti-spam statutes, and/or any federal or state statute, law or regulation relating to a person's or entity's right of seclusion;
- W. a cease and desist order or the insolvency, bankruptcy, licensing, receivership or liquidation of any entity or individual;
- X. war, including undeclared or civil war; 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 insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these;
- Y. the actual or alleged unauthorized or surreptitious collection of **Personal Information** by the **Insured** or the actual or alleged failure to provide adequate notice that such information is being collected. Solely with respect to the applicability of this exclusion under Insuring Agreement B., only facts pertaining to and knowledge possessed by any principal, partner, executive officer, director or organizational equivalent of an **Insured** shall be imputed to other **Insureds**;
- Z. the **Insured's** actual or alleged intentional failure to disclose the loss of **Personal Information** in violation of any law or regulation. Solely with respect to the applicability of this exclusion under Insuring Agreement B., only facts pertaining to and knowledge possessed by any principal, partner, executive officer, director or organizational equivalent of an **Insured** shall be imputed to other **Insureds**;
- AA. the actual or alleged recall, repair, replacement, upgrade, supplement or removal of the **Insured's** products, including products which incorporate the **Insured's** products or services, from the marketplace;
- BB. a **Wrongful Act** actually or allegedly committed prior to the **Policy Period** if, on or before the earlier of the effective date of this Policy or the effective date of any Policy issued by the **Insurer** of which this Policy is a continuous renewal or replacement, the **Insured** knew, or reasonably could have foreseen, that the **Wrongful Act** did or could lead to a **Claim**;
- CC. any services that can only be legally performed by any individual specially licensed to perform that service, including:
1. architecture or engineering services;
 2. legal services;

3. accounting services;
4. medical services, including any service provided by a physician or a nurse;
5. actuarial services;
6. insurance agency or brokerage services;
7. real estate agency or brokerage services;
8. securities broker/dealer or investment advisory services; and
9. financial planning services.

This Policy also shall not apply to any **Damages** or **Claim Expense** concerning any **Claim**:

DD. by, on behalf of, or in the right of any **Insured**;

EE. brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, any state, federal, or local government agency, American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and/or Society of European Stage Authors and Composers (SESAC) or other music licensing organization. However, this exclusion shall not apply to any **Network Security Wrongful Act** or **Privacy Wrongful Act**;

FF. that would otherwise be covered by any other Insuring Agreement available under this Policy if not for the **Insured's** failure or refusal to purchase such Insuring Agreement.

IV. TERRITORY

This Policy applies to any **Wrongful Act** committed by the **Insured** anywhere in the world.

All monetary terms of this Policy are in United States of America dollars. If judgment is rendered, settlement is denominated or another element of **Damages** or **Claim Expenses** is stated in a currency other than United States of America dollars, payment under this Policy shall be made in United States of America dollars at the rate of exchange published in The Wall Street Journal on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of **Damages** or **Claim Expenses** is due, respectively.

No coverage will be available under this Policy for any **Claim** brought against the **Insured** in any country with which the United States of America does not have active diplomatic relations at the time such **Claim** is made.

V. LIMITS OF LIABILITY

The liability of the **Insurer** for all **Claim Expenses**, **Damages** and **Privacy Breach Costs** for each **Claim** first made against the **Insured** or each **Privacy Event** which happens during the **Policy Period** and is reported in writing to the **Insurer** during the **Policy Period** or under any applicable Extended Reporting Period shall not exceed the amount stated in Item 4. of the Declarations for each **Claim**.

A. The total liability of the **Insurer** for all **Claim Expenses**, **Damages** and **Privacy Breach Costs** for all **Claims** first made against the **Insured** and all **Privacy Events** that happen during the **Policy Period** and are reported in writing to the **Insurer** during the **Policy Period** or under any

applicable Extended Reporting Period shall not exceed the amount stated in Item 4. of the Declarations as the Maximum Total **Policy Period** Aggregate Limit of Liability.

- B. The liability of the **Insurer** under Insuring Agreement B. for all **Claim Expenses** and **Damages** on account of all **Regulatory Proceedings** covered under such Insuring Agreement shall not exceed the amount stated in Item 4. of the Declarations as the **Regulatory Proceeding** Sublimit under Insuring Agreement B.
- C. The Each **Claim** Limit of Liability and the **Regulatory Proceeding** Sublimit as shown in Item 4. of the Declarations are part of and not in addition to the respective Total **Policy Period** Aggregate Limit of Liability for each purchased Insuring Agreement as shown in Item 4. of the Declarations.
- D. The Limit of Liability for **Claims** first made against the **Insured** during the **Policy Period** and reported in writing to the **Insurer** during any applicable Extended Reporting Period shall be part of and not in addition to the Limits of Liability as stated in Item 4. of the Declarations and as stated above. If any **Insured** has purchased or does purchase other insurance covering **Claims** first made against the **Insured** during the **Policy Period** and reported in writing to the **Insurer** during the **Policy Period** or any applicable Extended Reporting Period the coverage provided under this Policy for such **Claims** shall apply in excess of such other insurance.
- E. **Claim Expenses** are part of and not in addition to any applicable Limit of Liability or Sublimit, and the payment by the **Insurer** of **Claim Expenses** reduces such applicable Limits of Liability or Sublimit.

If any Limit of Liability or Sublimit applicable to any **Claim** is exhausted prior to settlement or final judgment of such **Claim**, the **Insurer's** obligations under the respective Insuring Agreement shall be immediately terminated, and the **Insurer** shall have the right to cease from any further investigation or defense of any **Claim** which is subject to such exhausted Limit of Liability or Sublimit by tendering control of such investigation or defense to the **Insured**, and the **Insured** agrees, as a condition precedent to the issuance of this Policy, to accept such tender.

- F. **Self-Insured Retention.** The self-insured retention amount stated in Item 4. of the Declarations shall be applicable to all **Claim Expenses**, **Damages** and **Privacy Breach Costs** for each and every **Claim** or **Privacy Event**. A single self-insured retention shall apply to **Claims** or **Privacy Events** arising from the same or related **Wrongful Act(s)**. The self-insured retention amount shall be paid by the **Insured** as a condition precedent to payment of any **Claim Expenses**, **Damages**, or **Privacy Breach Costs** hereunder. Such amount shall be paid by the **Insured** within thirty (30) days of written demand by the **Insurer**.

If different parts of a single **Claim** or **Privacy Event** are subject to different self-insured retentions, the applicable self-insured retention shall be applied separately to each part of the **Damages**, **Claim Expenses** and **Privacy Breach Costs**, but the sum of such self insured retentions shall not exceed the largest applicable self-insured retention.

- G. **Multiple Insureds, Claims and Claimants.** The inclusion herein of more than one **Insured** shall not operate to increase the **Insurer's** Limits of Liability, including any Sublimit(s). **Claims** or **Privacy Events** based upon, arising out of or attributable to the actual or alleged same or related **Wrongful Act(s)** shall be treated as a single **Claim** or **Privacy Event**, respectively, regardless of whether made against one or more than one **Insured**. All such **Claims** or **Privacy Events**, whenever made, shall be considered first made during the **Policy Period** in which the earliest **Claim** or **Privacy Event**, respectively, arising out of such **Wrongful Act(s)** was first

made, and all such **Claims** and **Privacy Events** shall be subject to the Limits of Liability, any applicable Sublimit, and the self-insured retention as set forth in the Declarations of said Policy.

- H. **Supplementary Payments.** The **Insurer** will reimburse the **Insured** up to the Sublimit stated in Item 4. of the Declarations for reasonable attorney fees, costs and expenses resulting from the investigation or defense of each **Regulatory Proceeding** as a result of a notice of each such **Regulatory Proceeding** both first received by the **Insured** and reported in writing to the **Insurer** during the **Policy Period**, and arising out of a **Wrongful Act**. The maximum amount payable by the **Insurer** hereunder shall not exceed the amount stated in Item 4. of the Declarations as Total **Policy Period** Aggregate regardless of the number of **Insureds** or the number of **Regulatory Proceedings**. Supplementary payments are not subject to the self-insured retention. **Damages** and **Claim Expenses** incurred by the **Insured** for **Regulatory Proceedings** shall be allocated between covered and uncovered loss based on the relative legal and financial exposures of the parties and loss at issue.

VI. DEFENSE AND SETTLEMENT

- A. **Defense.** As part of and subject to the applicable Limits of Liability, the **Insurer** shall have the right and duty to defend any **Claim**, other than a **Regulatory Proceeding**, against the **Insured**, to which this Policy applies, even if any of the allegations of the **Claim** are groundless, false, or fraudulent. However, the **Insurer** shall have no duty to defend any **Claim**, and may withdraw from the defense of any **Claim** after the applicable Limits of Liability have been exhausted by **Damages** and/or **Claim Expenses**. The **Insurer** shall have the right to appoint counsel of its selection to defend the **Insured** and will pay **Claim Expenses** in excess of the self-insured retention.

Notwithstanding the foregoing, the **Insurer** shall have the right, but not the duty, to defend any **Regulatory Proceeding**. The **Insurer** reserves the right to associate in the defense of such **Regulatory Proceeding**.

- B. **Consent to Settle.** The **Insurer** shall have the right to make any investigation it deems necessary and, with the written consent of the **Insured**, make any settlement of a **Claim** covered by this Policy. If the **Insurer** recommends settlement or compromise of a **Claim**, and the **Insured** refuses to give written consent to settlement as recommended by the **Insurer**, then the **Insured** thereafter shall negotiate or defend such **Claim** independently of the **Insurer** and on the **Insured's** own behalf. In such event, the **Insured** shall be solely responsible for fifty percent (50%) of all **Claim Expenses** incurred or paid by the **Insured** after the date the **Insured** refused to consent to settlement as recommended by the **Insurer**, and the **Insured** shall also be solely responsible for fifty percent (50%) of all **Damages** in excess of the amount for which settlement could have been made as recommended by the **Insurer**; provided that the **Insurer's** liability under this Policy for such **Claim** shall not exceed the remaining portion of the applicable Limit of Liability.
- C. The **Insured** has the right to incur **Privacy Breach Costs** without the **Insurer's** prior consent. However, the **Insurer** shall, at its sole and absolute discretion and in good faith, reimburse the **Insured** only for such **Privacy Breach Costs** that the **Insurer** deems to be reasonable and necessary.

VII. CLAIMS

- A. **Notice of Claims.** As a condition precedent to coverage under this Policy, the **Insured** shall provide the **Insurer** written notice of any **Claim** made against any **Insured** as soon as practicable, but in no event later than: (1) the expiration date of this Policy; (2) the expiration date of the Automatic Extended Reporting Period; or (3) the expiration date of the Optional Extended Reporting Period, if purchased.

In the event a **Claim** is brought against any **Insured**, the **Insured** shall forward to the **Insurer** every demand, notice, summons, complaint or other process or any threat of an intention to hold the **Insured** responsible for any **Wrongful Act** received directly by the **Insured** or by the **Insured's** representatives. Written notice of any **Claim** against any **Insured**, as well as of each demand on or suit against the **Insured**, shall be delivered to the **Insurer** at the address stated in Item 7. of the Declarations.

- B. **Notice of a Privacy Event.** As a condition precedent to coverage under this Policy for a **Privacy Event**, the **Insured** shall provide the **Insurer** written notice of a **Privacy Event** as soon as practicable, but in no event later than the expiration of the **Policy Period** or the expiration of any applicable Extended Reporting Period. The **Insurer** and its representatives shall maintain as confidential and shall not disclose such information or otherwise use such information except as required in the ordinary course of business of the **Insurer**.

Any notice to the **Insurer** of a **Privacy Event** shall not constitute notice to the **Insurer** of a **Claim** or potential **Claim** which could give rise to a **Claim**, unless such notice expressly states it also is a notice of a **Claim** or a potential **Claim**.

- C. **Knowledge of Wrongful Act or Privacy Event.** If during the **Policy Period** any **Insured** first becomes aware or has reasonable grounds to suspect that an **Insured** has committed or may have committed a specific **Wrongful Act** or that a **Privacy Event** has happened for which coverage is otherwise provided hereunder, and provided that the **Insured** during the **Policy Period** gives written notice to the **Insurer** of:

1. the specific **Wrongful Act** or **Privacy Event**;
2. the injury or damage which has resulted or may result from such **Wrongful Act** or **Privacy Event**; and
3. the circumstances by which the **Insured** first became aware of or suspected such **Wrongful Act** or **Privacy Event**;

then any **Claim** that may subsequently be made against any **Insured** arising out of such **Wrongful Act** or **Privacy Event** shall be deemed for the purposes of this Policy to have been made during the **Policy Period**.

- D. **Assistance and Cooperation of the Insured.** The **Insured** shall cooperate with the **Insurer** and upon the **Insurer's** request shall:

1. provide to the **Insurer** copies of documents and such other things held by or available to the **Insured** which relate to any **Claim** or to the **Wrongful Act**, transactions or other events which shall have given rise to such **Claim**;
2. submit to examination and interview by a representative of the **Insurer**, under oath if required;

3. attend hearings, depositions and trials;
4. assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and other proceedings, as well as in the giving of a written statement or statements to the **Insurer** and its representatives and meeting with the **Insurer** and its representatives for the purpose of investigation and/or defense; and
5. render written status reports regarding each **Claim** no less frequently than every three months or otherwise as may be necessary in order to keep the **Insurer** currently informed as to fees, costs and expenses being incurred in connection with such **Claim** and as to all material developments or anticipated developments in connection with such **Claim**, including but not limited to such subjects as settlement, potentially dispositive motions as to the **Claim** in its entirety or any aspect thereof and the deposition of any **Insured**, all without charge to the **Insurer**.

The **Insured** shall further cooperate with the **Insurer** and do whatever is necessary to secure and affect any rights of indemnity, contribution or apportionment which any **Insured** may have. The **Insured** shall exercise the right either to reject or demand the arbitration of any **Claim** made against the **Insured** in accordance with the written instructions of the **Insurer**. The **Insured** shall not, except at the **Insured's** own cost, make any payment, admit any liability, settle any **Claims**, or assume any obligation; provided however, the **Insured** shall have the right to make any settlement of any **Claim** covered by the terms of this Policy subject to the condition that the aggregate amount of such settlement and of the **Claim Expenses** incurred in connection with such **Claim** shall not exceed the self-insured retention amount stated in Item 4. of the Declarations.

- E. **False or Fraudulent Claims.** If any **Insured** shall knowingly submit a false **Claim** or commit fraud in proffering any **Claim** under this Policy, whether with regard to amount or otherwise as to any material fact, this Policy shall become void as to such **Insured** from the date such false or fraudulent **Claim** is proffered, without regard to whether the **Insurer** has actually relied upon or been damaged by such **Claim**.

VIII. EXTENDED REPORTING PERIODS

- A. **Automatic Extended Reporting Period.** If the **Insurer** or the **Named Insured** cancels or refuses to renew this Policy, the **Insured** shall have a period of sixty (60) days after the expiration of the **Policy Period** to report to the **Insurer** any **Claim** which is first made during the **Policy Period** and arises out of a **Wrongful Act** committed on or after the **Retroactive Date** and prior to the end of the **Policy Period**.
- B. **Optional Extended Reporting Period.** If the **Insurer** or the **Named Insured** shall cancel or refuse to renew this Policy, then the **Named Insured**, upon agreement by the **Insurer** and **Named Insured** on the length of the additional period and payment of an additional agreed to premium, shall have the option to extend this Policy, subject otherwise to its terms, Limits of Liability, exclusions and conditions, to apply to **Claims** first made against the **Insured**, for any **Wrongful Act** committed before the effective date of such nonrenewal or cancellation and on or after the **Retroactive Date**, and otherwise covered by this Policy. The Optional Extended Reporting Period shall not be available for purchase for Insuring Agreement I.C., **Privacy Breach Costs**.
- C. The **Named Insured's** option to elect the Optional Extended Reporting Period must be exercised by notice in writing to the **Insurer** not later than thirty (30) days after the effective date of the

nonrenewal or cancellation of this Policy. If the premium for the Optional Extended Reporting Period is not paid within thirty (30) days of the effective date of the nonrenewal or cancellation of this Policy, the option to elect the Optional Extended Reported Period shall be void.

- D. At the commencement of the Optional Extended Reporting Period, the entire premium shall be deemed fully earned, and in the event the **Named Insured** terminates the Optional Extended Reporting Period for any reason, the **Insurer** shall not be liable to return to the **Named Insured** any portion of the premium received for the Optional Extended Reporting Period.
- E. As a condition precedent to the **Named Insured's** option to elect the Optional Extended Reporting Period, any and all premiums and self-insured retentions that are due must have been paid and the **Named Insured** must have complied with all other terms and conditions of this Policy. If such conditions precedent are not satisfied or if the notice required under this Section VIII. C. is not timely given to the **Insurer**, the **Named Insured** shall not at a later date be able to exercise such option.
- F. If this Policy is cancelled or nonrenewed due to the nonpayment of premium, the Automatic Extended Reporting Period or Optional Extended Reporting Period shall not be available to any **Insured**. The Automatic Extended Reporting Period or Optional Extended Reporting Period shall not be available to any **Insured**: (1) whose fraud causes this Policy to be cancelled or nonrenewed; or (2) whose license, right to practice, or right to conduct business has been revoked, suspended by, or surrendered at the request of, any regulating authority.
- G. The fact that the period during which **Claims** must first be made against the **Insured** and reported to the **Insurer** under this Policy is extended by virtue of any Automatic Extended Reporting Period or Optional Extended Reporting Period shall not in any way reinstate or increase the Limits of Liability of this Policy.
- H. The first sixty (60) days of the Optional Extended Reporting Period, if purchased, shall run concurrently with the Automatic Extended Reporting Period.

IX. MATERIAL CHANGES IN CONDITIONS

- A. **Acquisition of the Named Insured.** If, during the **Policy Period**, any of the following events occurs:
 - 1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
 - 2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors of the **Named Insured**;

then coverage under this Policy will continue in full force and effect until termination of this Policy, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this Policy will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event. This Policy may not be cancelled after the effective time of the event, and the entire premium for this Policy shall be deemed earned as of such time.

- B. **Termination of a Subsidiary.** If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its **Insured Persons** shall continue

until termination of this Policy. Such coverage continuation shall apply only with respect to **Claims for Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

X. CONDITIONS

- A. **Subrogation.** In the event of any payment under this Policy, the **Insurer** shall be subrogated to all the **Insured's** rights of recovery therefor against any person, organization or other third party. The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights and the **Insured** shall do nothing to prejudice such rights.

Any amount recovered upon the exercise of such rights of subrogation shall be applied as follows: first, to the repayment of expenses incurred toward subrogation; second, to **Damages** and/or **Claim Expenses** paid by the **Insured** in excess of the Limits of Liability hereunder; third, to **Damages** and/or **Claim Expenses** paid by the **Insurer**; fourth, to **Damages** and/or **Claim Expenses** paid by the **Insured** in excess of the self-insured retention; and last, to repayment of the self-insured retention.

- B. **Action Against the Insurer and Bankruptcy.** No action shall lie against the **Insurer** unless, as a condition precedent thereto, the **Insured** shall have fully complied with all the terms of this Policy, nor until the amount of the liability of the **Insured** to pay shall have been fully and finally determined either by an award or final non-appealable judgment against the **Insured** after an actual hearing or trial or by written agreement of the **Insured**, the claimant and the **Insurer**. Nothing contained in this Policy shall give any person or organization the right to join the **Insurer** as a party in any action against any **Insured** to determine the **Insured's** liability. Bankruptcy or insolvency of any **Insured** or of the **Insured's** estate shall not relieve the **Insurer** of any of its obligations hereunder.
- C. **Representations and Severability.** In issuing this Policy, the **Insurer** has relied upon the statements, representations and information contained in the **Application**. Each **Insured** acknowledges and agrees that all such statements, representations and information: (i) are true and accurate, (ii) were made or provided in order to induce the **Insurer** to issue this Policy, and (iii) are material to the **Insurer's** acceptance of the risk to which this Policy applies. If any of the statements, representations or information in the **Application** are not true and accurate, there shall be no coverage for any **Claim** made pursuant to this Policy.
- D. **Other Insurance.** This Policy shall be in excess of the amount of the applicable self-insured retention of this Policy and any other insurance or indemnification available to the **Insured**, whether such insurance or indemnification is collectible or uncollectible, whether such insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the Limits of Liability provided in this Policy.
- E. **Changes.** Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Insurer** shall not affect a waiver or a change in any part of this Policy or estop the **Insurer** from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed, except by written endorsement issued to form a part of this Policy.
- F. **Assignment.** Assignment of interest under this Policy shall not bind the **Insurer** unless its consent is endorsed in writing hereon.

- G. **Cancellation.** This Policy may be canceled by the **Named Insured** by mailing or delivering prior written notice to the **Insurer** or by surrender of this Policy to the **Insurer**. If this Policy is canceled by the **Named Insured**, the **Insurer** shall retain the greater of the customary short rate proportion of the premium hereon or the Earned Minimum Premium set forth in Item 4. of the Declarations. This Policy may also be canceled by or on behalf of the **Insurer** by delivering to the **Named Insured** by registered, certified or other first class mail, or by electronic means, written notice stating when not less than ninety (90) days after the date of such notice the cancellation shall be effective. Proof of delivery of such notice shall be sufficient proof of notice. If this Policy is canceled by or on behalf of the **Insurer**, the **Insurer** shall retain the pro rata proportion of the premium hereon. The **Insurer** may cancel this Policy on ten (10) days notice for nonpayment of premium due.
- H. **Conformity to Statute.** Any terms of this Policy which are in conflict with the terms of any applicable laws governing this Policy are hereby amended to conform to such laws.
- I. **Named Insured Authorization.** By acceptance of this Policy, the **Named Insured** agrees to act on behalf of each **Insured** with respect to the payment or return of premium, the receipt and acceptance of any endorsements, the cancellation of the Policy, the negotiation of renewal, and the giving and receiving of any notice provided for by the terms and conditions of this Policy.