

**PRIVATE COMPANY
MANAGEMENT LIABILITY POLICY**

**Information Risk and Recovery Coverage
Section**



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

(A) Liability Coverages:

(1) Information Risk Liability Coverage:

The Underwriter shall pay, on behalf of the **Insureds**, **Loss** from any **Claim** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period for an **Information Risk Wrongful Act** committed or allegedly committed on or after the Retroactive Date stated in ITEM 6 of the Declarations; provided, that such **Claim** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(2) Communication Liability Coverage:

The Underwriter shall pay, on behalf of the **Insureds**, **Loss** from any **Claim** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period for a **Communication Incident Wrongful Act** committed or allegedly committed on or after the Retroactive Date stated in ITEM 6 of the Declarations; provided, that such **Claim** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(3) Privacy Administrative Proceeding, Fines and Consumer Redress Liability Coverage:

The Underwriter shall pay, on behalf of the **Insureds**, **Defense Expenses**, **Privacy Administrative Fines** and **Consumer Redress Fund Costs** from any **Privacy Administrative Proceeding** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period for a **Privacy Violation Wrongful Act** committed or allegedly committed on or after the Retroactive Date stated in ITEM 6 of the Declarations; provided, that such **Privacy Administrative Proceeding** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(B) First-Party Coverages:

(1) Breach Consultation Services Coverage:

The Underwriter will provide the **Insured** with **Breach Consultation Services** because of an **Information Risk Incident** that is first discovered by a member of the **Control Group** during the **Policy Period**; provided, that such **Information Risk Incident** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(2) **Incident Management Expense Coverage:**

The Underwriter will pay **Incident Management Expenses** incurred by or on behalf of the **Insured** because of an **Information Risk Incident** or **Extortion** that is first discovered by a member of the **Control Group** during the **Policy Period**; provided, that such **Information Risk Incident** or **Extortion** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(3) **Information Restoration Expense Coverage:**

The Underwriter will pay **Information Restoration Expenses** to the **Insured** because of an **Information Risk Incident** that is first discovered by a member of the **Control Group** during the **Policy Period**; provided, that such **Information Risk Incident** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(4) **Hardware Replacement Expense Coverage:**

The Underwriter will pay **Hardware Replacement Expenses** to the **Insured** for seizure or destruction of hardware by a civil authority of the federal or state government because of an **Information Risk Incident** that is first discovered by a member of the **Control Group** during the **Policy Period**; provided, that such **Information Risk Incident** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(5) **Extortion Payments and Rewards Coverage:**

The Underwriter will pay **Extortion Payments and Rewards** incurred by or on behalf of the **Insured** because of an **Extortion** that is first discovered by a member of the **Control Group** during the **Policy Period**; provided, that such **Extortion** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(6) **Forensic Expense Coverage:**

The Underwriter will pay **Forensic Expenses** incurred by or on behalf of the **Insured** because of an **Information Risk Incident** that is first discovered by a member of the **Control Group** during the **Policy Period**; provided, that such **Information Risk Incident** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

II. DEFINITIONS

- (A) **"Bodily Injury"** means any bodily or physical injury, sickness or disease sustained by any person, including but not limited to death resulting from any of these at any time. **Bodily Injury** shall include pain and suffering, shock, and mental or emotional distress, anguish or injury.
- (B) **"Breach Consultation Services"** means reasonable fees and costs for the following consulting services provided by a **Designated Vendor**, with the Underwriter's written consent, for assistance in:
- (1) determining the severity of an **Information Risk Incident**;
 - (2) preparing an initial press release or similar public relations response in connection with a media or other inquiry, when requested in writing by the **Insured**;
 - (3) preparing any notification required by a **Privacy Regulation** to any applicable:

- (a) state department of consumer affairs;
 - (b) state attorneys general; or
 - (c) federal or state governmental authority or entity; or
 - (4) developing a customized incident response plan.
- (C) **"Claim"** means:
- (1) for the purposes of coverage under Insuring Agreements (A)(1) and (A)(2) of this Coverage Section:
 - (a) a written demand for monetary or non-monetary relief (including any request to toll or waive any statute of limitations); or
 - (b) a civil or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by the service of a complaint or similar pleading;
 - (2) for the purposes of coverage under Insuring Agreement (A)(3) of this Coverage Section: any **Privacy Administrative Proceeding**.
- (D) **"Communication Incident Wrongful Act"** means an actual or alleged act, error or omission by an **Insured** in the public display of:
- (1) **Media Content** on an **Organization's** website or printed material; or
 - (2) **Media Content** posted by or on behalf of the **Organization** on any social media site or anywhere on the Internet,
- which directly results in:
- (a) libel, slander, defamation or product disparagement;
 - (b) false arrest, detention or imprisonment;
 - (c) invasion of, or interference with, the right of privacy;
 - (d) plagiarism, piracy or misappropriation of name or idea;
 - (e) trespass or wrongful entry or eviction; or
 - (f) infringement or dilution of any copyright, trademark, trade name, service mark, service name, trade dress, title, slogan or logo.
- (E) **"Consumer Redress Fund Costs"** means amounts, other than **Privacy Administrative Fines**, forfeitures, sanctions, taxes or fees, that the **Insured** is legally obligated to pay into a fund as equitable relief for consumers as a result of a **Privacy Administrative Proceeding**.
- (F) **"Control Group"** means the **Organization's** chief executive officer, chief financial officer, chief security officer, chief technology officer, chief information officer, risk manager or general counsel (or equivalent positions thereof).

- (G) **“Corporate Information”** means confidential and proprietary information of others in the **Organization’s** or **Service Provider’s** care, custody or control.
- (H) **“Credit Monitoring Services”** means services for monitoring credit, including related remediation services or identity restoration services, provided by a **Designated Vendor** to any individual who is, or is reasonably believed to be, a victim of an **Information Loss**. **Credit Monitoring Services** does not include any services for:
- (1) any individual who does not have a Social Security Number; or
 - (2) any individual notified under any foreign law, statute, ordinance or regulation.
- (I) **“Data Breach Expenses”** means reasonable fees and costs for:
- (1) public relations efforts within the first six (6) months following an **Extortion** or discovery of an **Information Risk Incident** that are provided by a **Designated Vendor** for the purpose of restoring the **Insured’s** reputation to the extent it has been harmed by such **Extortion** or **Information Risk Incident**; and
 - (2) legal counsel regarding how to respond to the **Information Risk Incident**, other than remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.

Data Breach Expenses does not include **Forensic Expenses**.

- (J) **“Defense Expenses”** means reasonable costs, charges, fees (including but not limited to attorneys’ fees and experts’ fees) and expenses incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds. **Defense Expenses** does not include any: (1) remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**; or (2) **First-Party Loss**.
- (K) **“Denial of Service Attack”** means any unauthorized attack on the **Organization’s** operating system or the **Organization’s** website that successfully corrupts, damages, destroys, deletes, or impairs the **Organization’s Network**.
- (L) **“Designated Vendor”** means a vendor selected and approved in writing by the Underwriter to provide services to the **Insured**.
- (M) **“Employee”** means:
- (1) any employee of the **Organization**, including any full-time and part-time employee and intern; and
 - (2) any leased and temporary worker provided by an employment contractor or agency under an agreement with the **Organization** to perform work related to the **Organization’s** business;
- but only for acts, errors or omissions within the scope and capacity of their employment by the **Organization**.
- (N) **“Executive”** means any natural person who was, now is or becomes:
- (1) a duly elected or appointed director, officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee member, in-house general counsel or risk manager of any **Organization** chartered in the United States of America; or

- (2) a holder of a position equivalent to any position described in (1) above in any **Organization** that is chartered in a **Foreign Jurisdiction**;

but only for acts, errors or omissions within the scope and capacity as their duties as such for the **Organization**.

- (O) "**Extortion**" means the actual or attempted obtaining of money or other property from an **Organization** or **Service Provider** through an actual or threatened **Information Risk Incident**.

- (P) "**Extortion Payments and Rewards**" means payment:

- (1) to someone who commits **Extortion** if:

- (a) the **Insured** previously reported the **Extortion** to applicable law enforcement or regulatory agencies;
- (b) the **Insured** did not notify any person or entity of the existence of the coverage for **Extortion**; and
- (c) the person who commits the **Extortion** is not an **Insured**; or

- (2) as a reward, to someone who provides information that leads to the identification and arrest of one who commits **Extortion** if:

- (a) the reward is not paid to an **Insured** or anyone engaged by the **Insured** in connection with the **Extortion**; and
- (b) the amount of the reward does not exceed the demand by, or the amount paid to, the person who commits the **Extortion**.

- (Q) "**First-Party Incident**" means:

- (1) an **Information Risk Incident** for which the following are available under this Coverage Section:

- (a) **Breach Consultation Services**;
- (b) **Incident Management Expense**;
- (c) **Information Restoration Expense**;
- (d) **Hardware Replacement Expense**;
- (e) **Forensic Expense**; or

- (2) an **Extortion** for which **Extortion Payments and Rewards** are available under this Coverage Section.

- (R) "**First-Party Loss**" means the following losses, expenses or payments:

- (1) **Breach Consultation Services** for an **Information Risk Incident** under Insuring Agreement (B)(1) of this Coverage Section;

- (2) **Incident Management Expense** for an **Extortion** or an **Information Risk Incident** under Insuring Agreement (B)(2) of this Coverage Section;
 - (3) **Information Restoration Expense** for an **Information Risk Incident** under Insuring Agreement (B)(3) of this Coverage Section;
 - (4) **Hardware Replacement Expense** for seizure or destruction of hardware by a civil authority of the federal or state government for an **Information Risk Incident** under Insuring Agreement (B)(4) of this Coverage Section;
 - (5) **Extortion Payments and Rewards** for an **Extortion** under Insuring Agreement (B)(5) of this Coverage Section; and
 - (6) **Forensic Expense** for an **Information Risk Incident** under Insuring Agreement (B)(6) of this Coverage Section.
- (S) **"Forensic Expenses"** means reasonable expenses for forensic analysis of the nature, extent and severity of an **Information Risk Incident** and the number and identities of persons affected. **Forensic Expenses** does not include **Defense Expenses** or any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- (T) **"Hardware Replacement Expenses"** means reasonable expenses to replace computer hardware with available property that most closely duplicates the function of the seized or destroyed computer hardware at the time of loss. **Hardware Replacement Expenses** does not include media or data of any type.
- (U) **"Impaired Property"** means tangible property, other than **Insured Product** or **Insured Services**, that cannot be used or is less useful because:
- (1) it incorporates **Insured Product** that is, or **Insured Services** that are, known or thought to be defective, deficient, inadequate or dangerous; or
 - (2) the **Insured** has failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by the repair, replacement, adjustment or removal of **Insured Product** or **Insured Services** or the **Insured** fulfilling the terms of the contract or agreement.
- (V) **"Incident Management Expenses"** means the following expenses incurred by the Underwriter to pay professionals it chooses and directs or, in the Underwriter's sole discretion, expenses it authorizes in advance:
- (1) **Data Breach Expenses**;
 - (2) **Information Risk Expenses**; and
 - (3) **Notification Expenses**.
- Incident Management Expenses** does not include **Defense Expenses** or any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- (W) **"Information Loss"** means an unauthorized or accidental disclosure or loss of:
- (1) **Corporate Information**; or

(2) **Personally Identifiable Information,**

in the **Organization's** or a **Service Provider's** care, custody or control.

(X) **"Information Restoration Expenses"** means:

- (1) reasonable expenses to replace, restore, repair, reproduce, correct, research, complete, adjust, functionally replace, re-collect or re-create data; or
- (2) reasonable expenses incurred to determine that data cannot reasonably be replaced, restored, repaired, reproduced, corrected, researched, completed, adjusted, functionally replaced, re-collected or re-created.

Information Restoration Expenses does not include:

- (a) the expense of computer hardware, applications, programs or software;
- (b) the cost of updating, upgrading, enhancing, replacing or otherwise improving the **Organization's** data, computer system or any other system to a level beyond that which existed prior to the **Information Risk Incident**;
- (c) the cost of identifying, removing or remediating computer program errors or vulnerabilities;
- (d) any economic, monetary or market value or any diminution in value of any data, including any trade secret, patent, copyright, trademark, trade dress or other intellectual property;
- (e) the expense of researching or developing any intellectual property; or
- (f) the cost of funds, currency, securities, accounts, bills, evidences of debt, money, valuable papers, records, abstracts, deeds, manuscripts or other financial, debt, credit, bond or equity instruments or documents.

(Y) **"Information Risk Expenses"** means:

- (1) **Credit Monitoring Services** provided with the Underwriter's consent, but only for one (1) year after the discovery of an **Information Loss**; and
- (2) when a **Designated Vendor** reasonably recommends, reasonable expenses for the creation of a toll-free response line for persons notified of an **Information Loss**.

(Z) **"Information Risk Incident"** means:

- (1) an **Information Loss**; or
- (2) a **Network Security Incident**.

(AA) **"Information Risk Wrongful Act"** means an actual or alleged act, error or omission by an **Insured** that directly results in:

- (1) an **Information Loss**; or
- (2) a **Network Security Incident**.

- (BB) “**Insured**” means the **Organization** and any **Insured Person**.
- (CC) “**Insured Person**” means any natural person who was, now is or becomes:
- (1) an **Executive**; or
 - (2) an **Employee**.
- (DD) “**Insured Product**” means:
- (1) any goods or products, including technology products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) the **Organization**;
 - (b) others trading under the **Organization’s** name; or
 - (c) a person or organization whose business or assets the **Organization** has acquired; and
 - (2) containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

Insured Product includes:

- (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **Insured Product**; and
- (ii) the providing of or failure to provide warnings or instructions for the use of **Insured Product**.

(EE) “**Insured Services**” means:

- (1) services or activities performed by the **Organization** or on its behalf; and
- (2) materials, parts or equipment furnished in connection with such work or operations.

Insured Services includes:

- (a) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **Insured Services**; and
- (b) the providing of or failure to provide warnings or instructions for the use of **Insured Services**.

(FF) “**Loss**” means:

- (1) for purposes of coverage under Insuring Agreements (A)(1) and (A)(2) of this Coverage Section, **Defense Expenses** and any monetary amount which an **Insured** is legally obligated to pay as a result of a covered **Claim**, including but not limited to:
 - (a) monetary damages (including punitive or exemplary damages to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the

Insureds, this Policy or the **Claim** giving rise to such damages and which is most favorable to the insurability of such damages);

- (b) judgments;
 - (c) settlements; and
 - (d) pre- and post-judgment interest;
- (2) for purposes of coverage under Insuring Agreement (A)(3) of this Coverage Section, **Defense Expenses, Privacy Administrative Fines and Consumer Redress Fund Costs**;
- (3) for the purposes of coverage under Insuring Agreements (B)(2), (B)(3), (B)(4), (B)(5) and (B)(6), **First-Party Loss**.

Loss does not include:

- (i) **Breach Consultation Services**;
- (ii) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided in paragraph (1)(a) above with respect to punitive or exemplary damages;
- (iii) civil or criminal fines or penalties or the multiple portion of any multiplied damage award, except as provided in paragraph (1)(a) above with respect to punitive or exemplary damages and as provided in paragraph (2) above with respect to **Privacy Administrative Fines and Consumer Redress Fund Costs**;
- (iv) taxes or tax penalties (whether imposed by a federal, state, local or other governmental authority);
- (v) any costs incurred by the **Organization** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- (vi) any amounts awarded as liquidated damages under a contract or agreement that exceeds the amount of **Loss** for which the **Insured** would have liability in the absence of such contract or agreement;
- (vii) any amounts owed to the **Organization** by a customer;
- (viii) any amounts paid to the **Organization** by a customer in exchange for **Insured Product** or **Insured Services**;
- (ix) license, fees or royalties of any kind;
- (x) loss, cost, or expense incurred by or on behalf of the **Insured** or others to provide, correct, perform, re-perform, reproduce or complete for **Insured Products, Insured Services or Media Content**;
- (xi) an **Insured's** economic loss, including loss of purchase or sale price, income, profits, share value, good will or damage to reputation; or
- (xii) payment, restitution, return or disgorgement of any fees, profits, commissions, charges, or any funds allegedly wrongfully or unjustly held or obtained.

- (GG) **"Media Content"** means any data, text, sounds, images, graphics, music, photographs or advertisements, and shall include video, streaming content, webcasts, podcasts, blogs, online forums and chat rooms. **Media Content** shall not include computer software, software technology, or the actual goods, products or services described, illustrated or displayed in such **Media Content**.
- (HH) **"Network Security Incident"** means:
- (1) the inability of authorized persons or organizations to access or use the **Organization's Network**, including a **Denial of Service Attack**;
 - (2) access or use of the **Organization's Network** by unauthorized persons, including access or use by persons in a manner that exceeds their authority; or
 - (3) transmission of a virus or malware by the **Insured** or a **Service Provider**.
- (II) **"Notification Expenses"** means reasonable and necessary costs or expenses of notification to those whose **Personally Identifiable Information** was affected by an **Information Loss**.
- (JJ) **"Organization's Network"** means any network of computers owned, leased or operated by the **Organization** in support of **Insured Product** or **Insured Services** or any network of computers owned, leased or operated by a **Service Provider**.
- (KK) **"Personally Identifiable Information"** means:
- (1) an individual's first name or first initial and last name in combination with one or more of the following data elements for such individual, but only when neither the name nor data element is encrypted:
 - (a) Social Security Number;
 - (b) driver's license number or non-driver identification card number;
 - (c) account number, credit card number or debit card number in combination with any required security code, access code or password that would permit access to the individual's financial account;
 - (d) information regarding medical history, mental or physical condition, medical treatment or diagnosis by a health care professional;
 - (e) health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual or any information in the individual's application and claims history, including any appeals records; or
 - (f) biometric identifiers, including finger prints or retina scan;
 - (2) a user name or email address in combination with a password or security question and answer that would permit access to an online account; or
 - (3) any other non-public personally identifiable information protected under any federal, state, local or foreign law, statute, ordinance or regulation.

Personally Identifiable Information does not include publicly available information that is lawfully made available to the general public from federal, state, local or foreign government records.

- (LL) **"Pollutant"** means (1) 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 any state, county, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.
- (MM) **Privacy Administrative Fines** means civil fines or penalties imposed by a governmental agency or governmental authority in a **Privacy Administrative Proceeding**.
- (NN) **Privacy Administrative Proceeding** means any civil investigative demand or administrative or regulatory proceeding by a governmental agency or governmental authority for a **Privacy Regulation Wrongful Act**.
- (OO) **"Privacy Regulation"** means any law, statute, ordinance or regulation applying to an **Information Loss** involving **Personally Identifiable Information**, including the following:
- (1) Gramm-Leach Bliley Act;
 - (2) Health Information Technology for Economic and Clinical Health Act (HITECH);
 - (3) Health Insurance Portability and Accountability Act (HIPAA);
 - (4) state security breach notification laws; and
 - (5) Section 5(a) of the Federal Trade Commission Act, but solely for alleged unfair or deceptive acts or practices in or affecting commerce in the use of **Personally Identifiable Information**.
- (PP) **"Privacy Regulation Wrongful Act"** means an actual or alleged violation by the **Insured** of a **Privacy Regulation**.
- (QQ) **"Service Provider"** means any entity approved by the Underwriter with whom the **Organization** has entered into a written contract or agreement to provide a service to support **Insured Product** or **Insured Services**, but only for activities within the scope of that contract or agreement that are performed on the **Organization's** behalf. **Service Provider** does not include any entity that provides power, communication services, water or other utility services.
- (RR) **"Wrongful Act"** means:
- (1) with respect to Insuring Agreement (A)(1) of this Coverage Section, any **Information Risk Wrongful Act**;
 - (2) with respect to Insuring Agreement (A)(2) of this Coverage Section, any **Communication Incident Wrongful Act**;
 - (3) with respect to Insuring Agreement (A)(3) of this Coverage Section, any **Privacy Regulation Wrongful Act**.

III. EXCLUSIONS

This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, any **Claim, Loss, First-Party Incident** or **First-Party Loss**:

- (A) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, was the subject of any notice given and accepted under any policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;
- (B) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any prior and/or pending litigation or administrative, regulatory or arbitration proceeding against any **Insured** as of the applicable Pending or Prior Date stated in ITEM 3 of the Declarations, or the same or substantially the same fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;
- (C) for any **Bodily Injury**, or physical injury to tangible property, including all resulting loss of use of that property. Tangible property does not include data or other information that is in electronic form. Provided, that this EXCLUSION (C) shall not apply to allegations of mental or emotional distress, anguish or injury sustained by a natural person to the extent such allegations are made as part of an otherwise-covered **Claim** for (1) an **Information Risk Wrongful Act** that directly resulted in an **Information Loss**, or (2) a **Communication Incident Wrongful Act** that directly resulted in an offense described in subparagraphs (a), (b) or (c) of the definition of **Communication Incident Wrongful Act**;
- (D) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged liability assumed by the **Organization** under any contract or agreement; provided, that this EXCLUSION (D) shall not apply to liability which would have attached in the absence of the contract or agreement;
- (E) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any loss, cost or expense incurred by the **Insured** or others:
 - (1) to comply with any warranty for **Insured Product** or **Insured Services**;
 - (2) to correct, repair, replace, reproduce, reprint, restore, upgrade, supplement or otherwise improve **Insured Product**, **Insured Services** or **Impaired Property**, or to perform or complete **Insured Services**;
 - (3) for the recall, removal or withdrawal of **Insured Product**, **Insured Services** or **Impaired Property** from the market or from use by any person or organization for any reason; or
 - (4) for the adjustment, inspection or disposal of **Insured Product**, **Insured Services** or **Impaired Property**;
- (F) brought by or on behalf of any securityholder of the **Organization**, including any derivative action. This EXCLUSION (F) applies regardless of whether any part a **Claim** would otherwise be covered by this Coverage Section;
- (G) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of the responsibilities, duties or obligations imposed under the Employee Retirement Income Security Act of 1974, or any amendments thereto or regulations

promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law;

- (H) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail or act of God;
- (I) brought by or on behalf of any governmental agency or governmental authority for any administrative, judicial or regulatory action or order; provided, that this EXCLUSION (I) shall not apply to: (1) any **Claim** brought by or on behalf of a federal, state, local or foreign government, agency or entity in its capacity as a customer of the **Organization**; (2) any **Privacy Administrative Proceeding**; or (3) covered **Hardware Replacement Expenses**;
- (J) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged misuse, infringement, inducement to infringe or other misuse or violation of:
 - (1) any patent or trade secret, including any part of a **Claim** that would otherwise be covered by this Coverage Section;
 - (2) any of the following rights or laws:
 - (a) copyright;
 - (b) trademark;
 - (c) trade name;
 - (d) service mark;
 - (e) service name;
 - (f) trade dress;
 - (g) likeness; or
 - (h) other intellectual property rights or laws; or
 - (3) any intellectual property rights in computer software, including its source code or any other content of a software program;

provided, that paragraph (2) of this EXCLUSION (J) shall not apply to any **Claim** for a **Communication Incident Wrongful Act**;

- (K) brought by or on behalf of:
 - (1) any **Insured**;
 - (2) any business entity or venture at any time owned, controlled, managed or operated by any **Insured**; or
 - (3) any parent, affiliate, subsidiary, predecessor, successor or assign of any:

- (a) **Insured**; or
- (b) business entity or venture at any time owned, controlled, managed or operated by any **Insured**;

provided, that this EXCLUSION (K) shall not apply to any **Claim** for an **Information Risk Wrongful Act** involving the **Personally Identifiable Information** of an **Employee**, former **Employee** or any member of a current or former **Employee's** immediate family;

- (L) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any intentional, dishonest, fraudulent, malicious or criminal act or omission by any **Insured**; provided, that this EXCLUSION (L) shall not apply:
 - (1) unless an admission, final adjudication, arbitration, finding of fact, judgment or plea, including a plea of no contest or *nolo contendere*, establishes that such intentional, dishonest, fraudulent, malicious or criminal act or omission was committed by the **Insured**; or
 - (2) to an **Insured** that did not participate in or know about the intentional, dishonest, fraudulent, malicious or criminal act or omission unless such act or omission was committed with the **Organization's** consent or knowledge or the consent or knowledge of any member of the **Control Group**;
- (M) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the furnishing by an **Insured** of services, products, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility;
- (N) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the hazardous properties of nuclear, biological or chemical material, electromagnetic field or radiation, electromagnetism, or radio frequency;
- (O) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged obligation to make or pay any fee, profit, royalty, commission, charge, cost or expense incurred to obtain a license or right to use or promote the use of any good, product, service, property, data or information of any type, nature or kind, including any electronic data or **Media Content**;
- (P) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any adjustment, inspection, repair, correction, completion, development, performance, replacement, reproduction, reprinting, restoration, withdrawal, recall, removal, disposal, updating, upgrading, enhancing or researching **Media Content**;
- (Q) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving: (1) any actual, alleged, or threatened exposure to, generation, storage, transportation, discharge, emission, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any **Pollutants**; or (2) any order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**;
- (R) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged power interruption, surge, brownout, blackout or other failure, including any failure, malfunction, or defect of telephone, telecommunications, wireless communications or data transmission lines, equipment, facilities, infrastructure, systems or services; provided, that this EXCLUSION (R) shall not apply to a failure if the infrastructure responsible for such failure was under the **Organization's** operational control at the time of such failure;

- (S) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of the responsibilities, duties or obligations imposed under:
- (1) the Telephone Consumer Protection Act (TCPA), the CAN-SPAM Act of 2003, the Fair Credit Reporting Act (FCRA), the Fair and Accurate Credit Transaction Act (FACTA), or any amendments thereto or regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law;
 - (2) any other federal, state or local statute, ordinance or regulation that addresses, prohibits or limits the printing, dissemination, disposal, collection, recording, sending, transmitting, communication or distribution of material or information; or
 - (3) any federal, state or local statute, ordinance or regulation providing a right to, or requiring the ability to allow, any person or organization to assent, consent, opt-in, opt-out or withhold or withdraw assent or consent to gather, collect, acquire, use, obtain or take any information, including **Personally Identifiable Information**;
- (T) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of any right held by any trade or licensing association, entity or society, including the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers, the Recording Industry Association of America or Broadcast Music, Inc.;
- (U) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:
- (1) violation of the responsibilities, duties or obligations imposed under any unfair competition statutory or common law, including antitrust statutes;
 - (2) tortious or intentional interference with contract, business relations or prospective economic advantage;
 - (3) violation of the responsibilities, duties or obligations imposed under any law addressing consumer protection, other than a violation of a **Privacy Regulation**; or
 - (4) violation of the responsibilities, duties or obligations imposed under of any law addressing trade practices or anti-deceptive practices, statutes prohibiting false advertising, the Lanham Act, 15 U.S.C. § 1051, et seq. or any state statutes prohibiting unfair business practices;
- (V) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation or breach of any law relating to the offer, sale, purchase, trading or valuation of securities;
- (W) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any:
- (1) war, including undeclared war 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 or usurped power;

- (X) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or attempted redemption or over-redemption of tickets, coupons, prizes or other goods or property in any contest, lottery, sweepstakes, promotion or game of chance, or actual or alleged violation of any laws regulating these activities; or
- (Y) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged employment practice, discrimination, humiliation, harassment or misconduct, including but not limited to discrimination, humiliation or harassment of a sexual nature or based upon an individual's race, creed, color, age, gender, national origin, religion, physical or mental disability or condition, marital status, sexual preference or other classification of any type, nature or kind.

IV. COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY AND RETENTIONS

- (A) Privacy Administrative Proceeding Aggregate Sublimit:

The Underwriter's maximum limit of liability for all **Defense Expenses, Privacy Administrative Fines** and **Consumer Redress Fund Costs** resulting from all **Privacy Administrative Proceedings** shall be the amount stated in ITEM 4 of the Declarations as the Privacy Administrative Proceeding Aggregate Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

- (B) Privacy Administrative Fines and Consumer Redress Fund Costs Sublimit:

The Underwriter's maximum limit of liability for all **Privacy Administrative Fines** and **Consumer Redress Fund Costs** resulting from all **Privacy Administrative Proceedings** shall be the amount stated in ITEM 4 of the Declarations as the Privacy Administrative Fines and Consumer Redress Fund Costs Sublimit, which amount shall be part of, and not in addition to, the Privacy Administrative Proceeding Aggregate Sublimit stated in ITEM 4 of the Declarations.

- (C) Combined First-Party Loss Limit:

The Underwriter's maximum limit of liability for all **First-Party Loss** for all **First-Party Incidents**, other than **Breach Consultation Services** for **Information Risk Incidents**, shall be the amount stated in ITEM 4 of the Declarations as the Combined First-Party Loss Limit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

- (D) Individual First-Party Coverage Limits:

- (1) Breach Consultation Services Limit:

The Underwriter's maximum limit of liability for all **Breach Consultation Services** for all **Information Risk Incidents** shall be the amount stated in ITEM 4 of the Declarations as the Breach Consultation Services Limit.

- (2) Incident Management Expenses Limit:

The Underwriter's maximum limit of liability for all **Incident Management Expenses** for all **Information Risk Incidents** and **Extortions** shall be the amount stated in ITEM 4 of the

Declarations as the Incident Management Expenses Limit, which amount shall be part of, and not in addition to, the Combined First-Party Loss Limit stated in ITEM 4 of the Declarations.

(3) Information Restoration Expenses Limit:

The Underwriter's maximum limit of liability for all **Information Restoration Expenses** for all **Information Risk Incidents** shall be the amount stated in ITEM 4 of the Declarations as the Information Restoration Expenses Limit, which amount shall be part of, and not in addition to, the Combined First-Party Loss Limit stated in ITEM 4 of the Declarations.

(4) Hardware Replacement Expenses Limit:

The Underwriter's maximum limit of liability for all **Hardware Replacement Expenses** for all seizures or destructions of hardware by a civil authority of the federal or state government for all **Information Risk Incidents** shall be the amount stated in ITEM 4 of the Declarations as the Hardware Replacement Expenses Limit, which amount shall be part of, and not in addition to, the Combined First-Party Loss Limit stated in ITEM 4 of the Declarations.

(5) Extortion Payments and Rewards Limit:

The Underwriter's maximum limit of liability for all **Extortion Payments and Rewards** for all **Extortions** shall be the amount stated in ITEM 4 of the Declarations as the Extortion Payments and Rewards Limit, which amount shall be part of, and not in addition to, the Combined First-Party Loss Limit stated in ITEM 4 of the Declarations.

(6) Forensic Expenses Limit:

The Underwriter's maximum limit of liability for all **Forensic Expenses** for all **Information Risk Incidents** shall be the amount stated in ITEM 4 of the Declarations as the Forensic Expenses Limit, which amount shall be part of, and not in addition to, the Combined First-Party Loss Limit stated in ITEM 4 of the Declarations.

(E) Retentions:

The following provisions shall apply in addition to the provisions of Section IV of the General Terms and Conditions Section:

(1) The Underwriter's obligation to pay **Loss** under Insuring Agreements (A)(1), (A)(2) or (A)(3) of this Coverage Section shall only be in excess of the applicable Retention stated in ITEM 5 of the Declarations. Such Retention shall only be eroded (or exhausted) by the **Insured's** payment of **Loss** otherwise covered under this Coverage Section, and shall be borne by the **Insureds** uninsured and at their own risk. The Underwriter shall have no obligation whatsoever, either to the **Insureds** or any other person or entity, to pay all or any portion of the applicable Retention on behalf of any **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** will repay the Underwriter any amounts so paid.

(2) The Underwriter's obligation to pay **First-Party Loss** under Insuring Agreements (B)(1), (B)(2), (B)(3), (B)(4), (B)(5) or (B)(6) of this Coverage Section shall only be excess of the applicable Retention stated in ITEM 5 of the Declarations. Such Retention shall only be eroded (or exhausted) by the **Insured's** payment of **First-Party Loss** otherwise covered under this Coverage Section, and shall be borne by the **Insureds** uninsured and at their own risk. Each such Retention applies to all **First-Party Loss** caused by the same **First-Party Incident**. If

more than one Retention applies to any **First-Party Loss**, then the largest applicable Retention shall apply to such **First-Party Loss**. The Underwriter shall have no obligation whatsoever, either to the **Insureds** or any other person or entity, to pay all or any portion of the applicable Retention on behalf of any **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** will repay the Underwriter any amounts so paid.

V. CLAIM SETTLEMENT

No **Insured** may admit any liability for any **Claim**, settle or offer to settle any **Claim** or incur any **Defense Expenses** without the Underwriter's prior written consent, which consent shall not be unreasonably withheld. The Underwriter will have the right to make investigations and conduct negotiations and, with the consent of the **Insureds**, enter into such settlement of any **Claim** as the Underwriter deems appropriate. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the Underwriter's recommendation, then, subject to the Underwriter's applicable Limits of Liability stated in ITEM 4 of the Declarations, the Underwriter's liability for such **Claim** will not exceed:

- (A) the amount for which the **Claim** could have been settled plus **Defense Expenses** incurred up to the date the **Insureds** refused to settle such **Claim** (the "Settlement Amount"); plus
- (B) eighty percent (80%) of any **Loss** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining twenty percent (20%) of **Loss** in excess of the Settlement Amount will be carried by the **Insureds** at their own risk and will be uninsured.

VI. REPORTING OF CLAIMS, CIRCUMSTANCES AND FIRST-PARTY INCIDENTS

- (A) If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against an **Insured**, the **Insureds** must, as a condition precedent to any right to coverage under this Coverage Section, give the Underwriter written notice of such **Claim** as soon as practicable after any member of the **Control Group** first becomes aware of such **Claim**, and in no event later than:
 - (1) with respect to any **Claim** first made during the **Policy Period**, ninety (90) days after the end of the **Policy Period**; or
 - (2) with respect to any **Claim** first made during any applicable Extended Reporting Period, ninety (90) days after the end of the Extended Reporting Period.

Timely and sufficient notice by one **Insured** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim**. Such notice shall give full particulars of the **Claim**, including, but not limited to: a description of the **Claim** and **Wrongful Act**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or damages that resulted from such **Wrongful Act**; information on the time, place and nature of the **Wrongful Act**; and the manner in which the **Insureds** first became aware of such **Wrongful Act**.

- (B) If, during the **Policy Period**, any member of the **Control Group** first becomes aware of a specific **Wrongful Act** which may subsequently give rise to a **Claim**, and the **Insured**:
 - (1) gives the Underwriter written notice of such **Wrongful Act** with full particulars as soon as practicable thereafter but in any event before the end of the **Policy Period**; and
 - (2) requests coverage under this Coverage Section for any **Claim** subsequently arising from such **Wrongful Act**;

then any **Claim** subsequently made against an **Insured** arising out of such **Wrongful Act** shall, subject to paragraph (D) below, be treated as if it had been first made during the **Policy Period**. The full particulars required in any notice given under paragraph (B)(1) above must include, without limitation, a description of the **Wrongful Act**, the identities of the potential claimants and involved **Insureds**, the injury or damages which have resulted and/or may result from such **Wrongful Act**, the manner in which the **Insureds** first became aware of such **Wrongful Act**, and the reasons why the **Insureds** believe the **Wrongful Act** is likely to result in a **Claim** being made.

It is understood and agreed that written notice of any **First-Party Incident** provided to the Underwriter in accordance with paragraph (C) below shall constitute notice of a specific **Wrongful Act** which may subsequently give rise to a **Claim** pursuant to this paragraph (B).

- (C) As a condition precedent to any right to coverage under Insuring Agreements (B)(1), (B)(2), (B)(3), (B)(4), (B)(5) and (B)(6) of this Coverage Section, the **Insureds** must give the Underwriter written notice of any **First-Party Incident** as soon as practicable, and in no event later than thirty (30) days after any member of the **Control Group** first discovers or is made aware of such **First-Party Incident**. The **Insureds** must also:
- (1) notify the police if the **First-Party Incident** involves a violation or possible violation of the law;
 - (2) submit to examination under oath at the Underwriter's request, while not in the presence of any other **Insured**;
 - (3) as often as reasonably requested, permit the Underwriter to inspect the **Organization's Network** and examine and make copies of the **Organization's** books and records;
 - (4) send the Underwriter a detailed, signed sworn proof of loss as soon as reasonably practicable after the Underwriter's request; and
 - (5) cooperate with the Underwriter in the investigation and settlement of the **First-Party Incident**.
- (D) All **Related Claims**, whenever made, shall be deemed a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with paragraph (B) above, whichever is earlier.

VII. OTHER INSURANCE

This Coverage Section is specifically excess of and will not contribute with any other valid and collectible insurance available to any **Insured**, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is written specifically in excess of this Policy. This Coverage Section will not be subject to the terms of any other insurance.

VIII. REPRESENTATIONS AND SEVERABILITY; INCORPORATION OF APPLICATION

- (A) The **Insureds** represent that the particulars and statements contained in the **Application** attached to this Policy are true, accurate and complete, and agree that:
- (1) this Coverage Section is issued and continued in force by the Underwriter in reliance upon the truth of such representation;

- (2) those particulars and statements are the basis of the coverage granted by this Coverage Section; and
 - (3) the **Application** and those particulars and statements are incorporated in and form a part of this Policy.
- (B) The **Insureds** agree that in the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Coverage Section shall be void *ab initio* with respect to any **Insured** who knew, as of the Inception Date stated in ITEM 2(a) of the Declarations, of such facts that were not accurately and completely disclosed in the **Application** (whether or not such **Insured** knew that such facts were not accurately and completely disclosed in the **Application**). Solely for the purposes of determining whether this Coverage Section shall be void *ab initio* with respect to an **Insured**:
- (1) no knowledge possessed by any **Insured Person** will be imputed to any other **Insured Person**; and
 - (2) the knowledge of any past or present chief executive officer or chief financial officer (or an equivalent position thereof) of the **Organization** shall be imputed to such **Organization**.