

 TDC SPECIALTY INSURANCE COMPANY The Doctors Company Group	Underwritten by: <writingCompany> <streetAddress> <city>, <state> <zipCode> Servicing Address: 29 Mill Street Unionville, CT 06085
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CYBERGUARD PLUS PROGRAM FOR HEALTHCARE PROFESSIONALS

PORTIONS OF THIS POLICY APPLY ONLY TO CLAIMS FIRST MADE AGAINST YOU AND REPORTED TO US DURING THE POLICY PERIOD OR APPLICABLE EXTENDED REPORTING PERIOD. DEFENSE COSTS ARE PART OF THE LIMITS OF LIABILITY AND SHALL ERODE (AND MAY EXHAUST) SUCH LIMITS OF LIABILITY. WE WILL HAVE NO OBLIGATION TO PAY JUDGMENTS, SETTLEMENTS OR DEFENSE COSTS ONCE THE APPLICABLE LIMIT OF LIABILITY IS EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements and information furnished to **us**, and subject to all of the terms and conditions of this Policy (including all endorsements attached hereto), **we** and **you** agree as follows:

I. INSURING AGREEMENTS

(A) LIABILITY COVERAGES:

(1) Data Security and Privacy:

We will pay, up to the applicable Limit of Liability stated in ITEM 4 of the Declarations, on **your** behalf any **damages** that **you** are legally obligated to pay as a result of any covered **claim** for a **data security event** or for any violation of any **privacy regulation** happening on or after the **retroactive date**; provided, that the **claim** is first made against **you** during the **policy period** or applicable Extended Reporting Period and reported to **us** in accordance with GENERAL CONDITION (D) of this Policy.

(2) Regulatory:

We will pay, up to the applicable Limit of Liability stated in ITEM 4 of the Declarations, on **your** behalf any **damages** that **you** are legally obligated to pay as a result of any covered **regulatory claim** for a **privacy event** happening on or after the **retroactive date**; provided, that the **regulatory claim** is first made against **you** during the **policy period** or applicable Extended Reporting Period and reported to **us** in accordance with GENERAL CONDITION (D) of this Policy.

(3) Payment Card Industry ("PCI"):

We will pay, up to the applicable Limit of Liability stated in ITEM 4 of the Declarations, on **your** behalf any **damages** that **you** are legally obligated to pay as a result of any covered **payment card industry claim** for a **privacy event** happening on or after the **retroactive date**; provided, that the **payment card industry claim** is first made against **you** during the **policy period** or applicable Extended Reporting Period and reported to **us** in accordance with GENERAL CONDITION (D) of this Policy.

(4) **Media:**

We will pay, up to the applicable Limit of Liability stated in ITEM 4 of the Declarations, on **your** behalf any **damages** that **you** are legally obligated to pay as a result of any covered **claim** for a **media event** happening on or after the **retroactive date**; provided, that the **claim** is first made against **you** during the **policy period** or applicable Extended Reporting Period and reported to **us** in accordance with GENERAL CONDITION (D) of this Policy.

(5) **Bodily Injury Indemnification:**

We will pay, up to the applicable Limit of Liability stated in ITEM 4 of the Declarations, on **your** behalf any **damages**, other than **defense costs**, that **you** are legally obligated to pay as a result of any covered **claim** involving **bodily injury** directly resulting from a **data security event** happening on or after the **retroactive date**; provided, that:

- (a) no other policy of insurance available to any of **you** applies to such **claim**; and
- (b) the **claim** is first made against **you** during the **policy period** or applicable Extended Reporting Period and reported to **us** in accordance with GENERAL CONDITION (D) of this Policy.

(B) **FIRST PARTY COVERAGES:**

(1) **Data Breach Response:**

We will pay the **named insured**, up to the applicable Limit of Liability stated in ITEM 4 of the Declarations, for **data breach response expenses** that the **named insured** pays as a direct result of an actual or reasonably suspected **data security event** that first takes place on or after the **retroactive date** and before the end of the **policy period**, and is **discovered** by the **named insured** during the **policy period**; provided, that such **data security event** is reported to **us** in accordance with GENERAL CONDITION (D) of this Policy.

(2) **Data Recovery and Restoration:**

We will pay the **named insured**, up to the applicable Limit of Liability stated in ITEM 4 of the Declarations, for **data restoration expenses** that the **named insured** pays as a direct result of a **data security event** that first takes place on or after the **retroactive date** and before the end of the **policy period**, and is **discovered** by the **named insured** during the **policy period**; provided, that such **data security event** is reported to **us** in accordance with GENERAL CONDITION (D) of this Policy.

(3) **Business Interruption:**

We will pay the **named insured**, up to the applicable Limit of Liability stated in ITEM 4 of the Declarations, for **income loss** and **extra expense** sustained by the **named insured** during the **period of restoration** as a direct result of any **business interruption**, **contingent business interruption**, or **system failure business interruption** that first occurs during the **policy period** and is reported to **us** in accordance with GENERAL CONDITION (D) of this Policy.

(4) **Extortion Threat:**

We will pay the **named insured**, up to the applicable Limit of Liability stated in ITEM 4 of the Declarations, for **extortion loss** that the **named insured** pays as a direct result of an **extortion threat event** that first occurs during the **policy period**; provided, that such **extortion threat event** is reported to **us** in accordance with GENERAL CONDITION (D) of this Policy.

(5) **Cyber Crime:**

We will pay the **named insured**, up to the applicable Limit of Liability stated in ITEM 4 of the Declarations, for **cyber crime loss** sustained by the **named insured** as a direct result of any **cyber crime event** that first takes place on or after the **retroactive date** and before the end of the **policy period**, and is **discovered** during the **policy period**; provided, that such **cyber crime event** is reported to **us** in accordance with GENERAL CONDITION (D) of this Policy.

II. DEFINITIONS

(A) **Advertising** means the promotion and publication of the **named insured's** goods, products or services.

(B) **Application** means all applications **you** submit to **us** in connection with this Policy, or any policy of which this Policy is a direct renewal or replacement, together with any and all information, statements, representations, attachments, exhibits and other materials submitted therewith, all of which are deemed attached to and incorporated into this Policy.

(C) **Bodily injury** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time; mental anguish; and mental injury.

(D) **Breach counsel expenses** means costs and expenses **you** incur using a **designated service provider**, for services of an attorney to provide legal advice in connection with the investigation of or response to a **data security event** or **extortion threat event**. "**Breach counsel expenses**" shall not include attorneys' fees incurred in connection with the representation of any of **you** in an adversarial proceeding.

(E) **Business associate agreement** means a written contract between the **named insured** and a "business associate" (as such term is defined in the HIPAA Privacy Rule) relating to the safeguarding of **protected health information**.

(F) **Business interruption** means a total or partial disruption or deterioration in the **named insured's** business operations resulting directly from a **data security event** (other than a **privacy event**). "**Business interruption**" shall not include **contingent business interruption** or **system failure business interruption**.

(G) **Circumstance** means any act, error, omission, fact, situation, incident, event or transaction that is likely to result in a **claim** or **event** under this Policy.

(H) **Claim** means:

- (1) with respect to the coverage afforded under INSURING AGREEMENTS (A)(1), (A)(4) or (A)(5), a written demand for money, services, non-monetary or injunctive relief, including cease and desist letters and the service of a civil complaint or similar pleading, or a request for arbitration or mediation, indicating that any person or entity intends to hold **you** responsible for a **data security event** or **media event**;

- (2) with respect to the coverage afforded under INSURING AGREEMENT (A)(2), a **regulatory claim**;
- (3) with respect to the coverage afforded under INSURING AGREEMENT (A)(3), a **payment card industry claim**; and
- (4) a written request to toll or waive a statute of limitations relating to a potential **claim** as described in subparagraphs (1) through (3) above.

A **claim** shall be deemed to be made at the time a member of the **control group**, or any non-administrative personnel in the office of any member of the **control group**, first receives written notice of such **claim**.

- (I) **Cloud computing provider** means an **outsourced provider** with whom the **named insured** has contracted to provide hosted computing services, including infrastructure, platform, file storage and application level services.
- (J) **Computer system** means computer hardware, software, firmware and associated input and output devices (including wireless and mobile devices), data storage devices, networking equipment, and backup facilities.
- (K) **Confidential information** means any business information of a third party not insured under this Policy, which is not available to the general public and is provided to the **named insured** subject to a mutually executed written confidentiality agreement, or which the **named insured** is legally required to maintain in confidence. “**Confidential information**” shall not include **personally identifiable information**.
- (L) **Contingent business interruption** means total or partial disruption or deterioration in the **named insured’s** business operations resulting directly from a **data security event** (other than a **privacy event**) to an **outsourced provider’s computer system**. “**Contingent business interruption**” shall not include **business interruption** or **system failure business interruption**.
- (M) **Control group** means the **named insured’s** President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, General Counsel, Chief Information Officer, Chief Technology Officer, Chief Security Officer, Chief Privacy Officer, Partners (in the event the **named insured** is a partnership), and any person serving in a functionally equivalent role as those referenced above, or with substantially similar responsibilities as those referenced above.
- (N) **Crisis management and reward expenses** means any of the following incurred by the **named insured** using a **designated service provider**:
 - (1) costs and expenses for the services of a public relations or crisis management consultant for the purpose of mitigating a **data security event**;
 - (2) costs and expenses for media purchasing or for printing or mailing materials intended to inform the general public about a **data security event**; and
 - (3) the amount paid to a person or entity who provides information that is otherwise unavailable and which leads to the arrest and conviction of a person(s) responsible for a **data security event**.
- (O) **Cyber crime event** means:

- (1) any event in which a third party gains access to the **named insured's computer system** and obtains information that allows such third party to commit:
 - (a) any unauthorized electronic funds transfer;
 - (b) theft of **money** or other financial assets from the **named insured's** bank account or corporate credit cards by electronic means; or
 - (c) theft of the **named insured's data assets**; or
- (2) any event in which the **named insured** transfers or directs the transfer of its funds to an improper third party as a result of:
 - (a) any fraudulent manipulation of electronic documentation; or
 - (b) any phishing, vishing or other **social engineering** attack.
- (P) **Cyber crime loss** means the loss of **money** or **securities** of the **named insured** resulting directly from a **cyber crime event**. "**Cyber crime loss**" shall not include indirect or consequential losses.
- (Q) **Cyber terrorism** means an act by an individual or group of individuals directed against a **computer system** where it is reasonable to conclude that the actors are motivated by social, ideological, religious, economic or political objectives, or for the purpose of intimidating or coercing a government or the civilian population thereof, or disrupting any segment of the economy.
- (R) **Damages** means:
 - (1) with respect to the coverage afforded under INSURING AGREEMENTS (A)(1), (A)(4) or (A)(5) of this Policy:
 - (a) **defense costs**; and
 - (b) any monetary amount which **you** are legally obligated to pay as a result of a covered **claim**, including, but not limited to, monetary damages (including punitive and exemplary damages and the multiple portion of any multiplied damage award, to the extent such damages are insurable under the applicable law most favorable to the insurability thereof); settlements, and judgments (including pre-judgment and post-judgment interest);
 - (2) with respect to the coverage afforded under INSURING AGREEMENT (A)(2) of this Policy:
 - (a) **defense costs**;
 - (b) any monetary amount which **you** are legally obligated to pay for civil or administrative fines or penalties where insurable under the law pursuant to which this Policy is construed, including, but not limited to, any sums agreed to by **you** with the Office for Civil Rights of the Department of Health and Human Services ("OCR") or a State Attorney General under the terms of an official **resolution agreement** in order to mitigate or avoid a larger potential civil money penalty;
 - (c) any civil money penalty imposed by the OCR or a State Attorney General in accordance with the Health Insurance Portability and Accountability Act of

1996, including any amendments thereto or any regulations promulgated thereunder ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act of 2009, including any amendments thereto or any regulations promulgated thereunder ("HITECH"); and

- (d) the amount **you** become legally obligated to deposit into a fund as equitable relief for the payment of consumer redress claims resulting from an adverse judgment, ruling or settlement;
- (3) with respect to the coverage afforded under INSURING AGREEMENT (A)(3) of this Policy:
- (a) the initial monetary fine levied against the **named insured** and related assessments, including fraud recovery charges, card reissuance costs and service fees, each of which the **named insured** is legally obligated to pay under the terms of a **payment card services agreement**;
 - (b) **defense costs**; and
 - (c) "**damages**" shall not include subsequent fines arising out of continued noncompliance with the same **PCI data security standards**.

"**Damages**" shall not include:

- (i) any non-monetary or equitable relief or redress, including but not limited to any cost or expense to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief; provided, that this subparagraph (i) shall not apply to consumer redress claims;
- (ii) any loss, cost, or expense to update, upgrade, enhance, restore, reprint, recall, remove, dispose, withdraw, repair, replace, reproduce, correct, perform, complete, adjust, inspect, research or develop any product, service, property, data or information of any type, nature or kind;

provided, that **we** shall pay **defense costs** for any otherwise covered **claim** seeking non-monetary or injunctive relief;

- (iii) consideration charged by, paid by, or owed to **you**, including restitution, disgorgement, reduction, royalties or licensing fees, or return of any consideration, including the reprint, recall or removal of **media content**;
- (iv) loss of tax benefits or fines, taxes, penalties or sanctions imposed against **you**, other than provided above for punitive or exemplary damages, or the multiple portion of any multiplied damages award, or for a covered **regulatory claim** or **payment card industry claim**;
- (v) liquidated damages to the extent that such damages exceed the amount for which **you** would have been liable in the absence of the applicable liquidated damages agreement;
- (vi) **loss**; or
- (vii) any amount not insurable under the law pursuant to which this Policy is construed.

- (S) **Data asset** means any software or electronic data in the **named insured's computer system** or maintained in an **outsourced provider's computer system** on behalf of the **named insured**, including computer programs, applications, account information, customer information, private or personal information (including, but not limited to, electronic health records), marketing information and financial information.
- (T) **Data breach response expenses** means the following reasonable and necessary costs and expenses incurred by the **named insured** with **our** prior consent:
- (1) **breach counsel expenses;**
 - (2) **forensic expenses;**
 - (3) **notification and monitoring expenses;**
 - (4) **crisis management and reward expenses;**
 - (5) **post event mitigation expenses;** and
 - (6) any other costs and expenses to mitigate the effects of a **data security event**.
- (U) **Data restoration expenses** means, subject to subparagraph (U)(2) below, the reasonable and necessary costs and expenses incurred by the **named insured** with **our** prior consent to unencrypt, recover, restore, recreate or recollect a **data asset** which is altered, corrupted, destroyed, disrupted or deleted; provided, that:
- (1) such recovery, restoration, recreation or recollection is from a written or electronic backup of such **data asset**; or
 - (2) in the event such **data asset** cannot reasonably be unencrypted, recovered, restored, recreated or recollect, "**data restoration expenses**" means the actual, reasonable and necessary costs and expenses incurred by the **named insured** to reach such a determination.
- Data restoration expenses** does not include:
- (i) costs or expenses for creating or developing a **data asset**, including software and trade secrets;
 - (ii) costs or expenses to update, upgrade or enhance a **data asset**;
 - (iii) costs or expenses to replace, remediate or improve any **computer system**, to identify or remove software program errors, malware, computer viruses or vulnerabilities, or to establish, implement or improve network and data security practices, procedures or policies; or
 - (iv) indirect or consequential losses.
- (V) **Data security event** means:
- (1) a **privacy event**;
 - (2) unauthorized access to or use of the **named insured's computer system**;
 - (3) a denial of service attack upon or directed at the **named insured's computer system**;

- (4) malicious code or computer virus created or transmitted by, or introduced into, the **named insured's computer system**; or
 - (5) the **named insured's** failure to timely disclose any **data security event** set forth in subparagraphs (1)-(4) above.
- (W) **Defense costs** means:
- (1) the reasonable and necessary fees, costs and expenses incurred by **us** or by **you**, with **our** prior written consent, in the investigation, adjustment, defense or appeal of a **claim**, including the costs of electronic discovery and an electronic discovery consultant, and payment of premium on any bond to release attachments and premium on any appeal bond required in any defended suit; provided, that **we** shall not apply for or furnish any such bond; and
 - (2) reasonable costs associated with preparing a response to and defending an official investigation by any regulatory body, including but not limited to, the OCR, FTC or any State Attorney General in accordance with HIPAA or HITECH.
- "Defense costs"** shall not include remuneration, wages, salaries, overhead, fees or benefit expenses of any of **you**.
- (X) **Designated service provider** means each individual or entity designated as a service provider in Schedule A to this Policy, and any other service provider used by the **named insured** with **our** prior written consent.
- (Y) **Discover or discovered** means when a member of the **control group** first becomes aware of:
- (1) a **circumstance**; or
 - (2) any actual or potential **claim** or **event**, regardless of when the **circumstance** occurred.
- (Z) **Event** means a **data security event**, an **extortion threat event** or a **cyber crime event**.
- (AA) **Extortion loss** means the reasonable and necessary amounts surrendered by **you**, with **our** prior written consent, in the form of **money** or **securities** in order to prevent or terminate an **extortion threat event**. **Extortion loss** also includes the reasonable and necessary **forensic expenses** and **breach counsel expenses you** incur for security consultants retained to prevent, terminate or determine the credibility of, or respond to such threat.
- (BB) **Extortion threat event** means a credible threat, as determined by a **designated service provider**, to:
- (1) cause a **data security event**;
 - (2) alter, corrupt, destroy, disrupt, delete or prevent access to any **data asset** in the **named insured's computer system**; or
 - (3) prevent access to, or interrupt or suspend the operation of, the **named insured's computer system**;
- provided, that there is a demand for an extortion payment as a condition of mitigation or removal of such threat.

(CC) **Extra expenses** means reasonable and necessary costs incurred by the **named insured** in excess of its normal operating expenses to reduce or avoid **income loss**.

“**Extra expenses**” shall not include:

- (i) costs or expenses for creating, developing, recovering or restoring a **data asset**, including software and trade secrets;
- (ii) costs or expenses to update, upgrade or enhance a **data asset**;
- (iii) costs or expenses to replace, remediate or improve any **computer system**, to identify or remove software program errors, malware, computer viruses or vulnerabilities, or to establish, implement or improve network and data security practices, procedures or policies; or
- (iv) costs or expenses that exceed the amount of **income loss** that is thereby reduced or avoided.

(DD) **Forensic expenses** means costs and expenses incurred by the **named insured** using a **designated service provider** for services by computer security experts to investigate the existence, cause and scope of an actual or reasonably suspected **data security event**.

(EE) **Income loss** means the sum of:

- (1) the measurable net profit that would have been earned, before taxes, that the **named insured** does not realize; and
- (2) the continuing normal operating expenses of the **named insured**, including payroll expenses, necessary to resume operations.

(FF) **Insured person** means:

- (1) any member of the **control group**; and
- (2) any past, present or future officer, director, principal, partner, trustee, employee, leased worker, intern, volunteer or temporary employee of the **named insured**,

acting in his or her business capacity and in accordance with his or her duties as such.

(GG) **Loss** means **data breach response expenses, data restoration expenses, income loss** and **extra expense, extortion loss** and **cyber crime loss**.

“**Loss**” shall not include:

- (1) the costs or expenses to comply with any order for, grant of or agreement to provide non-monetary relief, including injunctive relief, or costs to remove electronic information from a website or social media site;
- (2) consideration charged by or owed to **you**, including restitution, disgorgement, reduction, royalties or licensing fees, or return of any consideration;
- (3) any costs, fees or expenses incurred or paid by **you** in establishing the existence of or amount of loss;
- (4) fines, taxes, penalties, loss or tax benefits or sanctions;

- (5) **damages**; or
- (6) any amount not insurable under the law pursuant to which this Policy is construed.
- (HH) **Media content** means any data, text, sounds, images, graphics, music, photographs, or advertisements, including 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**, or packaging thereof.
- (II) **Media event** means any error, misstatement, misleading statement, act, omission, neglect or breach of duty actually or allegedly committed or attempted by **you**, or by any person or entity for whom **you** are legally responsible, in the public display of:
 - (1) **media content** on **your** website or printed material; or
 - (2) **media content** posted by or on behalf of **you** on any social media site or anywhere on the Internet,

which results in the following:

- (i) libel, slander or defamation;
 - (ii) disparagement or harm to character or reputation, or infliction of emotional distress; product disparagement, trade libel, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
 - (iii) plagiarism, piracy, or misappropriation of ideas under implied contract;
 - (iv) invasion of, or interference with the right of privacy, including false light and public disclosure of private facts;
 - (v) invasion of, or interference with the right of publicity, including commercial appropriation of name, person, voice or likeness;
 - (vi) infringement of a collective mark, copyright, service mark or other trademarked name, slogan, symbol or title, or infringement of the name of a product, service or organization;
 - (vii) improper deep-linking or framing;
 - (viii) false arrest, detention or imprisonment;
 - (ix) invasion of or interference with any right to private occupancy, including trespass, wrongful entry or eviction; or
 - (x) unfair competition, but only when alleged in connection with any of the acts listed in subparagraph (vi) above;
- (JJ) **Medical services** means health care, medical care, or treatment provided to any individual, including without limitation any of the following: medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing, or other professional health care; the furnishing or dispensing of medications, drugs, blood, blood products, or medical, surgical, dental, or psychiatric supplies, equipment, or appliances in connection

with such care; the furnishing of food or beverages in connection with such care; the providing of counseling or other social services in connection with such care; and the handling of, or the performance of post-mortem examinations on, human bodies.

- (KK) **Money** means currency, coins or bank notes in current use and having a face value, and travelers' checks, register checks and money orders held for sale to the public. "**Money**" includes, but is not limited to, digital currency such as Bitcoin. "**Money**" shall not include **securities**.
- (LL) **Named insured** means the individual or entity identified in ITEM 1 of the Declarations (the "first **named insured**") and any **subsidiary** in existence prior to or as of the Inception Date of this Policy stated in ITEM 2(a) of the Declarations.
- (MM) **Named insured's computer system** means a **computer system** that is: (1) leased, owned or operated by the **named insured**; or (2) operated solely for the benefit of the **named insured** by a third party under written contract with the **named insured**.
- (NN) **Notification and Monitoring Expenses** means any of the following costs, expenses or services by a **designated service provider** resulting directly from a **data security event**:
- (1) costs and expenses to provide notification to individuals (including, but not limited to, and subject to **our** prior written consent, individuals for whom **you** have provided indemnification pursuant to a **business associate agreement**, but only to the extent of such indemnification) whose **personally identifiable information** was compromised or reasonably believed to have been compromised as a result of a **privacy event**; and
 - (2) the following services:
 - (a) credit monitoring services;
 - (b) identity monitoring services (including identity theft insurance);
 - (c) healthcare record restoration services; and
 - (d) call center services,provided to individuals whose **personally identifiable information** was compromised or reasonably believed to have been compromised as a result of a **data security event**.
- (OO) **Outsourced provider** means:
- (1) with respect to a **privacy event**, any entity, including a **cloud computing provider**, under written contract, including, but not limited to, a **business associate agreement**, with the **named insured** to process, store, maintain or host the **named insured's** electronic data in any form; and
 - (2) with respect to **contingent business interruption**, any entity listed on an endorsement attached to this Policy under written contract, including, but not limited to, a **business associate agreement**, with the **named insured** to process, store, maintain or host the **named insured's** electronic data in any form.
- (PP) **Outsourced provider's computer system** means a **computer system** that is operated for the benefit of the **named insured** by an **outsourced provider**. "**Outsourced provider's computer system**" shall not include the **named insured's computer system**.

- (QQ) **Payment card industry claim** means a notification of the **named insured's** failure to comply with **PCI data security standards** established by the PCI Security Standards Council, and brought by a party who has entered into a **payment card services agreement** with the **named insured**.
- (RR) **PCI data security standards** means the rules, regulations, standards or guidelines adopted or required by the Payment Card Brand or the Payment Card Industry Data Security Standards Council relating to data security and the safeguarding, disclosure and handling of **personally identifiable information**.
- (SS) **Payment card services agreement** means an agreement between the **named insured** and a financial institution, credit or debit card company or credit or debit card processor, enabling the **named insured** to accept credit card, debit card, prepaid card, or other payment cards for payments.

(TT) **Period of restoration** means:

- (1) the period that begins immediately after the disruption or deterioration in the **named insured's** business operations with respect to **extra expense**; and
- (2) the period that begins after the end of the **waiting period** with respect to **income loss**,

and which continues until the earlier of:

- (i) the date the **named insured's** business operations are restored to the condition that existed immediately prior to such disruption or deterioration;
- (ii) the date the **named insured's** business operations would have been restored had **you** or an **outsourced services provider**, if applicable, acted with due diligence or dispatch; or
- (iii) sixty (60) days after the **data security event** that initially caused the disruption or deterioration in the **named insured's** business operations.

The expiration of this Policy shall not affect the **period of restoration**.

(UU) **Personally identifiable information** means a natural person's name used in combination with one or more of the following:

- (1) "nonpublic personal information," as defined in the Gramm-Leach Bliley Act of 1999, as amended, and any rules or regulations promulgated thereunder;
- (2) **protected health information**;
- (3) social security, driver's license, or other state identification numbers, unpublished telephone numbers, an unpublished IP address, digital facial identity (not including photos and videos), digital fingerprint identity, or credit, debit or other financial account numbers with their related security and access codes, passwords or pin numbers that provide access to the natural person's financial account information; or
- (4) any other non-public personally identifiable information protected under any local, state, federal or foreign act, statute, rule, regulation, requirement, or other law.

- “Personally identifiable information”** does not include information that is lawfully available to the general public, including but not limited to information from any local, state, federal or foreign administrative, governmental or regulatory agency, body, entity or tribunal.
- (VV) **Policy period** means the period from the Inception Date of this Policy stated in ITEM 2(a) of the Declarations to the Expiration Date of this Policy stated in ITEM 2(b) of the Declarations or to any earlier cancellation date of this Policy.
- (WW) **Pollutant** means smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, medical waste, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed), or other irritants, pollutants or contaminants.
- (XX) **Post event mitigation expenses** means any costs and expenses incurred by the **named insured** using a **designated service provider** following a **data security event** for:
- (1) the completion of a single security risk assessment;
 - (2) the completion of a single information security gap analysis; and
 - (3) a single information security awareness training session.
- (YY) **Privacy event** means any actual or reasonably suspected:
- (1) theft, loss or unauthorized public disclosure of any **personally identifiable information** or **confidential information**;
 - (2) unauthorized access by a third party to **personally identifiable information** or **confidential information**; provided, that such **personally identifiable information** or **confidential information** is in the care, custody or control of **you**, an **outsourced provider** or a third party for whom the **named insured** is legally responsible; or
 - (3) failure to comply with **your** publicly stated privacy policy.
- (ZZ) **Privacy regulation** means any federal, state, foreign or local identity theft and privacy protection laws, legislation, statutes or regulations that require commercial entities that collect **personally identifiable information** to post privacy policies, adopt specific privacy or security controls, or notify individuals in the event that **personally identifiable information** has potentially been compromised.
- (AAA) **Protected health information** means health care or other medical information, including “protected health information,” as defined in HIPAA or in any other federal, state, foreign or local law, legislation, statute or regulation.
- (BBB) **Regulatory claim** means a written request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar pleading brought by or on behalf of the Federal Trade Commission, Federal Communications Commission, the Department of Health and Human Services (“HHS”) or the OCR, or any federal, state, foreign or local governmental entity in such entity’s regulatory or official capacity, alleging the failure to comply with any federal, state, foreign or local statutory law governing the protection of **personally identifiable information** in connection with a **privacy event**, including any matter commenced pursuant to HIPAA or HITECH.

- (CCC) **Related claims** means all **claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, in any way involving, or in any way having a common nexus of the same or related **circumstances**.
- (DDD) **Related events** means all **events** based upon, arising out of, directly or indirectly resulting from, in consequence of, in any way involving, or in any way having a common nexus of the same or related **circumstances**.
- (EEE) **Resolution agreement** means a contract signed between **you** and the HHS in which **you** agree to perform certain privacy obligations, including the payment of any resolution amount.
- (FFF) **Retroactive date** means the applicable date identified in ITEM 3 of the Declarations.
- (GGG) **Risk management services** means the data breach risk mitigation services and tools identified on **our** cyber platform, as may be amended from time to time, set forth in ITEM 8 of the Declarations.
- (HHH) **Securities** means negotiable and nonnegotiable instruments or contracts representing either **money** or property. "**Securities**" does not include **money**.
- (III) **Social engineering** means intentionally misleading an **insured person**, through the use of fraudulent information in an electronic, telegraphic, cable, teletype, telephone or written instruction:
- (1) into sending **money** or diverting a payment; or
 - (2) into revealing **personally identifiable information**, or granting an unauthorized third party access to **personally identifiable information**.
- (JJJ) **Subsidiary** means any entity in which the **named insured** owns, either beneficially or legally, fifty percent (50%) or more of the issued or outstanding voting securities.
- (KKK) **System failure business interruption** means an unintentional and unplanned interruption of the **named insured's computer system**. **System failure business interruption** shall not include: (i) **business interruption**; (ii) **contingent business interruption**; or (iii) any interruption arising out of a physical cause or natural peril, including, but not limited to, fire, wind, water, flood, subsidence or earthquake.
- (LLL) **Waiting period** means the period of time that begins on the date and time that the disruption or deterioration in the **named insured's** business operations first occurs, and expires after the elapse of the number of business hours stated in ITEM 6 of the Declarations.
- (MMM) **We, us** and **our** means the Underwriting Company as set forth in the Declarations.
- (NNN) **You** or **your** means the **named insured** and any **insured person**.

III. EXCLUSIONS

This Policy does not apply to, and no coverage will be available under this Policy for, any **claim, damages, defense costs, or loss** in connection with any **data security event, media event, business interruption, contingent business interruption, system failure business interruption, extortion threat event or cyber crime event**:

(A) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

(1) **Conduct:**

- (a) the gaining of any profit, remuneration, or advantage to which **you** are not entitled;
- (b) any actual or alleged dishonest, fraudulent, criminal, malicious or intentional act, error or omission, or intentional or knowing violation of the law, by any member of the **control group**;

provided, that this EXCLUSION (A)(1) shall not apply to **defense costs** or to **our** duty to defend any such **claim** until there is a final, non-appealable adjudication against, binding arbitration against, adverse admission by, or plea of *nolo contendere* or no contest by, **you** as to such conduct or violation. Provided further that:

- (i) no conduct of any of **you** who are natural persons shall be imputed to any other of **you** who are natural persons; and
- (ii) any conduct of any past, present, or future member of the **control group** shall be imputed to the **named insured**;

(2) **Bodily Injury or Property Damage:**

any actual or alleged bodily injury, mental anguish, humiliation, emotional distress, sickness, disease or death of any natural person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed; provided, that this EXCLUSION (A)(2) shall not apply to that part of any otherwise covered **claim** for mental anguish or mental injury; provided further, that this EXCLUSION (A)(2) shall not apply to that part of any otherwise covered **claim** involving **bodily injury** directly resulting from a **data security event** and for which coverage is afforded under INSURING AGREEMENT (A)(6) of this Policy;

(3) **Prior Knowledge:**

any fact, circumstance, situation, transaction, event, act, error or omission if any of **you**, prior to the Inception Date stated in ITEM 2(a) of the Declarations, knew or reasonably could have foreseen that such fact, circumstance, situation, transaction, event, act, error or omission might give rise to a **claim** or to an **event**.

If, however, this Policy is a renewal of one or more policies previously issued by **us** to the **named insured**, and the coverage provided by **us** to the **named insured** was in effect, without interruption, for the entire time between the inception date of the first such other policy and the Inception Date of this Policy, the reference in this EXCLUSION (A)(3) to the Inception Date will be deemed to refer instead to the inception date of the first policy under which **we** began to provide the **named insured** with the continuous and uninterrupted coverage of which this Policy is a renewal;

(4) **Prior Notice:**

any fact, circumstance, situation, transaction, event, act, error or omission that, before the Inception Date stated in ITEM 2(a) of the Declarations, was the subject to any notice given and accepted under any prior or concurrent policy;

(5) **Pending or Prior Litigation:**

any pending or prior litigation, **claim**, demand, arbitration, administrative or regulatory proceeding or administrative or regulatory investigation filed or commenced on or before the Pending or Prior Litigation Date stated in ITEM 7 of the Declarations, or any **circumstance** alleging or derived from the same or substantially the same facts, circumstances or situations underlying or alleged therein;

(6) **Contract:**

any actual or alleged contractual liability or obligations, or arising out of or resulting from breach of any contract or agreement, including any **business associate agreement**; provided, that this EXCLUSION (A)(6) shall not apply to that part of any otherwise covered **claim**:

- (a) for a **privacy event**, including a **payment card industry claim**;
- (b) solely with respect to the coverage afforded under INSURING AGREEMENTS (A)(1) and (B)(1), **your** contractual obligation to maintain the confidentiality or security of third party personal or corporate information;
- (c) to the extent **you** would have been liable in the absence of such contract or agreement;

(7) **Employment Practices:**

any actual or alleged wrongful employment practices or discrimination of any kind; provided, that this EXCLUSION (A)(7) shall not apply to that part of an otherwise covered **claim** brought by an employee and alleging a **privacy event** involving such employee's **personally identifiable information** or any **data breach response expenses** incurred in connection therewith;

(8) **ERISA or Securities Law Violation:**

any actual or alleged violation by any of **you** of any responsibility, duty or obligation imposed under:

- (a) the Employee Retirement Income Security Act of 1974, or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law, including but not limited to any amendment thereto or any regulation promulgated thereunder; provided, that this EXCLUSION (A)(8) shall not apply to that part of any otherwise covered **claim** brought by any person or entity alleging a **privacy event** in connection with such person's **personally identifiable information**, or with such entity's **confidential information**, and any **data breach response expenses** incurred in connection therewith; or
- (b) the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisors Act of 1940, any Blue Sky or other securities law, or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law, including but not limited to any amendment thereto or any regulation promulgated thereunder;

(9) **Antitrust or Unfair Trade Practices:**

any actual or alleged antitrust, monopolization, restraint of trade, price fixing, price discrimination, unfair, false or deceptive trade practice, unfair competition, or any violation of the Federal Trade Commission Act, the Sherman Antitrust Act, the Clayton Act, and the Fair Debt Collection Practices Act, and any amendments thereto or any rules or regulations promulgated thereunder, or any similar federal, state or common law; provided, that this EXCLUSION (A)(9) shall not apply to:

- (a) unfair, false or deceptive trade practices of any of **you** with respect to a **privacy event** in an otherwise covered **claim**; or
- (b) unfair competition with respect to a **media event** in an otherwise covered **claim** alleging infringement of a collective mark, copyright, service mark or other trademarked name, slogan, symbol or title, or infringement of the name of a product, service or organization;

(10) **Governmental or Regulatory Matters:**

any **claim** made by or on behalf of any governmental entity, regulatory, licensing or administrative agency or authority in such entity's or agency's official capacity; provided, that this EXCLUSION (A)(10) shall not apply to an otherwise covered **regulatory claim**;

(11) **Insured vs. Insured:**

any **claim** made by or for the benefit of, or in the name or right of, one current or former **named insured** or **insured person** against another current or former **named insured** or **insured person**; provided, that this EXCLUSION (A)(11) shall not apply to that part of an otherwise covered **claim** brought by an **insured person** alleging a **privacy event** involving his or her **personally identifiable information** or any **data breach response expenses** incurred in connection therewith;

(12) **Intellectual Property:**

- (a) any actual or alleged infringement, misappropriation, misuse, gaining or taking of, or any inducement to infringe, misappropriate, misuse, gain or take any intellectual property, including but not limited to, any process, idea, style of doing business, right of publicity or confidential or proprietary information, or other similar information or property of any type, nature or kind; provided, that this EXCLUSION (A)(12)(a) shall not apply to any **media event** for which coverage is afforded under INSURING AGREEMENT (A)(4); or
- (b) any actual or alleged misuse or infringement of any patent or trade secret, inducement to infringe any patent or trade secret, or any other misuse or violation in connection with patent rights or trade secrets, including any portion of any **claim** that would otherwise be covered under this Policy;

(13) **Mechanical Failure:**

any electrical or mechanical failure, including power interruption, surge, brownout or blackout, or faulty construction, error in design, latent defect, wear or tear, inherent vice, gradual deterioration, electrical disturbance, or defect of telephone, satellite, data transmission or similar telecommunications services, equipment, utilities or infrastructure; provided, that this EXCLUSION (A)(13) shall not apply:

- (a) if such services, equipment, utilities or infrastructure are under the exclusive control of the **named insured**; and
 - (b) the **claim** results directly from a **data security event**;
- (14) **Medical Services:**

any actual or alleged act, error or omission in the rendering of, or failure to render, **medical services**; provided, that this EXCLUSION (A)(14) shall not apply to that part of any otherwise covered **claim** involving **bodily injury** directly resulting from a **data security event** and for which coverage is provided under INSURING AGREEMENT (A)(5);
- (15) **Money or Property:**
 - (a) trading losses, trading liabilities or change in value of accounts;
 - (b) loss, transfer or theft of monies, securities or tangible property of others in **your** care, custody or control;
 - (c) transactions or electronic funds transfers which are lost, diminished or damaged during transfer, including via mail or any carrier for hire; or
 - (d) gambling, contest, game of chance or skill, lottery, or promotional game, including tickets or coupons or redemption related thereto;

provided, that subparagraph (b) of this EXCLUSION (A)(15) shall not apply to that part of an otherwise covered **cyber crime loss**;
- (16) **Nuclear:**

any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination or radioactive substance;
- (17) **Payment Card Services Agreement:**

any actual or alleged obligations under a **payment card services agreement**; provided, that this EXCLUSION (A)(17) shall not apply to an otherwise covered **payment card industry claim**;
- (18) **Pollution:**
 - (a) exposure to, or generation, storage, manifestation, transportation, discharge, emission, release, dispersal, seepage, migration, escape, appearance, presence, reproduction, growth of, treatment, removal or disposal of, any **pollutant**, including any threat thereof;
 - (b) fee, cost, expense or charge to test, monitor, clean up, remediate, mitigate, remove, contain, treat, detoxify, neutralize or rehabilitate any **pollutant**; or
 - (c) fee, cost, expense, charge, fine or penalty incurred, sustained or imposed by order, direction, request or agreement of any court, governmental agency, regulatory body or civil, public or military authority in connection with or in any way relating to any **pollutant**;
- (19) **Unsolicited Communication/Credit Reporting:**

- (a) any actual or alleged: (1) distribution, dissemination or transmission of any unsolicited facsimile, wireless or telephone communication, electronic mail, direct mail, voice mail or telemarketing, including but not limited to Short Message Service or Multimedia Message Service; or (2) act, error or omission that violates or allegedly violates the Telephone Consumer Protection Act or the CAN-SPAM Act of 2003; or
- (b) act, error or omission that violates or allegedly violates the Fair Credit Reporting Act or the Fair and Accurate Credit Transaction Act,

including any amendment of or addition to such laws or any other local, state, federal or foreign act, statute, rule or common law that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information, including any amendments thereto or any regulations promulgated thereunder;

(20) **War and Governmental Authority:**

- (a) strikes or similar labor action, war, invasion, acts of foreign enemies, terrorism, hijacking, hostilities or warlike operations, military action (whether war is declared or not), civil war, mutiny, popular or military uprising, insurrection, rebellion, revolution, military or nationalization or destruction of, or damage to, property under the order of government or other public authority; provided, that this EXCLUSION (A)(21)(a) shall not apply to that part of an otherwise covered **claim** or **loss** resulting from an act of **cyber terrorism** that results in a **data security event**; or
- (b) any action of a public or governmental authority in connection with the seizure, nationalization, confiscation, destruction, or deletion by or on behalf of or in the name or right of any local, state, federal or foreign administrative, governmental or regulatory agency, body, entity or tribunal of any computer, computer component, application, program, software, code, script or data of any type, nature or kind, or other property or information of any type, nature or kind; or

(21) **Information Collection:**

any actual or alleged unlawful use or collection of **personally identifiable information**, or the failure to provide adequate notice that such information is being collected or used, by any of **you**, with knowledge of any member of the **control group**.

- (B) For any **claim** made against a **subsidiary** or any **insured person** of any **subsidiary** for any act, error or omission committed or allegedly committed during any time when such entity was not a **subsidiary**.
- (C) Solely with respect to the coverage afforded under Section I INSURING AGREEMENTS (A)(4) of this Policy, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (1) any actual or alleged **data security event**;
 - (2) any false, misleading, deceptive or fraudulent statements in **advertising**, including inaccurate or incomplete description or depiction of goods, products or services or the price, quality or performance thereof, or unfair competition based thereon;

- (3) any **claim** brought by or on behalf of any independent contractor, third-party distributor, licensee, sub-licensee, joint venture, venture partner, any employee of the foregoing, or any employee or authorized representative of **yours** based upon or arising out of disputes over the (a) ownership or exercise of rights in **media content**; or (b) services supplied by such independent contractor, third party distributor, licensee, sub-licensee, joint venture, venture partner or employee or authorized representative;
 - (4) any publication of information by **you**, on behalf of **you**, or with **your** consent with knowledge of its falsity. For the purpose of determining the applicability of this EXCLUSION (C)(4), the acts, errors or omissions of, facts pertaining to, and knowledge possessed by any **insured person** shall not be imputed to any other **insured person**. The acts, errors or omission of, facts pertaining to, and knowledge possessed by a member of the **control group** shall be imputed to the **named insured**; or
 - (5) any action brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any other federal, state or local government agency or ASCAP, SESAC, BMI or other licensing or rights entities in such entity's regulatory, quasi-regulatory or official capacity, function or duty.
- (D) Solely with respect to the coverage afforded under Section I INSURING AGREEMENTS (B)(3) of this Policy, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the inability to use, or lack of performance of, software resulting from **your** modification of such software in violation of any software license agreement or against the developer's recommendations.
- (E) Solely with respect to the coverage afforded under Section I INSURING AGREEMENTS (B)(5) of this Policy, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (1) any fraudulent, dishonest or criminal act by any employee or authorized representative of the **named insured**, whether acting alone or in collusion with others;
 - (2) the establishment of any credit or similar promise to pay, or to any party's use of or acceptance of any credit card, debit card or similar instrument, whether or not genuine;
 - (3) any investment in **securities**, or ownership in any corporation, partnership, real property or similar instrument, whether or not such investment is genuine;
 - (4) any kidnap, ransom or other extortion payment surrendered as a result of a threat to do bodily harm to any natural person or a threat to harm, take or transfer property; or
 - (5) **money** or **securities** being transferred to or for the benefit of a natural person or entity with whom the **named insured** conducts its business, where there is a dispute between **you** and such person or entity with respect to goods provided or services performed.

IV. GENERAL CONDITIONS

(A) Limits of Liability:

(1) Liability Coverages:

- (a) **Data Security and Privacy.** The amount stated in ITEM 4(A)(1) of the Declarations shall be **our** maximum aggregate Limit of Liability for all **damages**, including **defense costs**, from all **claims** or **related claims** for which this Policy provides coverage under INSURING AGREEMENT (A)(1). Such Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations.
 - (b) **Regulatory.** The amount stated in ITEM 4(A)(2) of the Declarations shall be **our** maximum aggregate Limit of Liability for all **damages**, including **defense costs**, from all **regulatory claims** or **related claims** for which this Policy provides coverage under INSURING AGREEMENT (A)(2). Such Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations.
 - (c) **Payment Card Industry (“PCI”).** The amount stated in ITEM 4(A)(3) of the Declarations shall be **our** maximum aggregate Limit of Liability for all **damages**, including **defense costs**, from all **payment card industry claims** or **related claims** for which this Policy provides coverage under INSURING AGREEMENT (A)(3). Such Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations.
 - (d) **Media.** The amount stated in ITEM 4(A)(4) of the Declarations shall be **our** maximum aggregate Limit of Liability for all **damages**, including **defense costs**, from all **claims** or **related claims** for which this Policy provides coverage under INSURING AGREEMENT (A)(4). Such Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations.
 - (e) **Bodily Injury Indemnification.** The amount stated in ITEM 4(A)(5) of the Declarations shall be **our** maximum aggregate Limit of Liability for all **damages**, other than **defense costs**, from all **claims** or **related claims** for which this Policy provides coverage under INSURING AGREEMENT (A)(5). Such Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations.
- (2) **First Party Coverages:**
- (a) **Data Breach Response.** The amount stated in ITEM 4(B)(1) of the Declarations shall be **our** maximum aggregate Limit of Liability for all **data breach response expenses** from all **data security events** or **related events** for which this Policy provides coverage under INSURING AGREEMENT (B)(1). Such Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations.
 - (b) **Data Recovery and Restoration.** The amount stated in ITEM 4(B)(2) of the Declarations shall be **our** maximum aggregate Limit of Liability for all **data restoration expenses** from all **data security events** or **related events** for which this Policy provides coverage under INSURING AGREEMENT (B)(2). Such Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations.

- (c) **Business Interruption.** The amount stated in ITEM 4(B)(3) of the Declarations shall be **our** maximum aggregate Limit of Liability for all **income loss** and **extra expense** from all **business interruption**, **contingent business interruption**, or **system failure business interruption** for which this Policy provides coverage under INSURING AGREEMENT (B)(3). Such Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations.
 - (d) **Extortion Threat.** The amount stated in ITEM 4(B)(4) of the Declarations shall be **our** maximum aggregate Limit of Liability for all **extortion loss** from all **extortion threat events** or **related events** for which this Policy provides coverage under INSURING AGREEMENT (B)(4). Such Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations.
 - (e) **Cyber Crime.** The amount stated in ITEM 4(B)(5) of the Declarations shall be **our** maximum aggregate Limit of Liability for all **cyber crime loss** from all **cyber crime events** or **related events** for which this Policy provides coverage under INSURING AGREEMENT (B)(5). Such Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations.
- (3) **Policy Aggregate Limit of Liability.** The amount stated in ITEM 4 of the Declarations as the “POLICY AGGREGATE LIMIT OF LIABILITY” shall be **our** maximum aggregate Limit of Liability for:
- (a) all **damages**, including **defense costs**, from all **claims** and all **related claims** for which this Policy provides coverage; and
 - (b) all **loss** from all **events** and **related events** for which this Policy provides coverage.
- (4) Each Limit of Liability described in GENERAL CONDITION (A) of this Policy shall apply regardless of the time of the payment or service under this Policy, the number of persons or entities included within the definition of “**you** or **your**,” or the number of **claims** or **events** under this Policy.
- (5) In the event a **claim** or an **event** under this Policy involves more than one (1) Insuring Agreement hereunder, it is understood and agreed that only one (1) Limit of Liability will apply to such **claim** or **event**, which shall be the highest applicable Limit of Liability stated in ITEM 4 of the Declarations.
- (B) **Retention**
- (1) **You** shall be responsible for satisfaction or payment in full of the applicable Retention amount stated in ITEM 5 of the Declarations. **We** shall only be liable for the amount of **damages** arising from a **claim**, or for the amount of **loss** incurred in connection with an **event**, which is in excess of the applicable Retention amount stated in ITEM 5 of the Declarations.
 - (2) With respect to INSURING AGREEMENT (B)(3), **we** will pay the actual **income loss** and **extra expense** incurred by **you**: (a) once the **waiting period** stated in ITEM 6 of the Declarations has expired; and (b) which is in excess of the Retention amount stated in ITEM 5(B)(3) of the Declarations.

- (3) In the event a **claim** or an **event** under this Policy involves more than one (1) Insuring Agreement hereunder, it is understood and agreed that only one (1) Retention will apply to such **claim** or **event**, which shall be the highest applicable Retention amount stated in ITEM 5 of the Declarations.

(C) **Related Claims and Related Events**

- (1) All **related claims**, whenever made, shall be deemed to be a single **claim**, regardless of: the number of **related claims**; the number or identity of claimants; the number or identity of **you** involved or against whom **related claims** have been or could have been made; and the number and timing of the **related claims**, even if the **related claims** comprising such single **claim** were made in more than one **policy period**.

All **related claims** will be treated as 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 GENERAL CONDITION (D)(2) of this Policy, whichever is earlier.

- (2) All **related events**, whenever occurring, and all **claims** or **related claims** arising out of such **events**, shall be deemed to be a single loss under the policy in place when the first such **event** was **discovered**, and shall be subject to a single aggregate Limit of Liability, regardless of: the number of **related events**; the number or identity of **you** involved; and the number and timing of the **related events**, even if the **related events** comprising such single loss occurred in more than one **policy period**.

(D) **Reporting**

- (1) **You** shall, as a condition precedent to any right to coverage under this Policy, give **us** written notice, at the address stated in ITEM 11(A) of the Declarations, of any **event**, or of any **claim** as soon as practicable after any member of the **control group discovers** the **event** or becomes aware of such **claim**. If this Policy is not renewed with **us** or is cancelled for any reason other than non-payment of premium, written notice of such **claim** or of such **event** must be provided no later than:

- (a) thirty (30) days after the end of the **policy period**; or
- (b) the expiration of the Extended Reporting Period (if applicable) with respect to a **claim**;

provided, that if **we** send written notice to the **named insured** that this Policy is being cancelled for nonpayment of premium, **you** shall give **us** written notice of the event giving rise to such **loss** or of the **claim** prior to the effective date of such cancellation.

- (2) If, during the **policy period**, a member of the **control group** first becomes aware of a **circumstance**, and **you**:
- (a) give **us** written notice of such **circumstance** with full particulars as soon as practicable thereafter but in any event before the Expiration Date or earlier cancellation or termination of this Policy; and
 - (b) request coverage under this Policy for any covered claim subsequently arising from such **circumstance**,

then any covered **claim** subsequently made against **you** arising out of such **circumstance** and for which written notice is given to **us** as soon as practicable thereafter shall be deemed to have been first made at the time such written notice was received by **us**. Full particulars shall include but are not limited to: a description of the **circumstance**; the identity of all potential claimants and any of **you** involved; information on the time, place and nature of the **circumstance**; the manner in which **you** became aware of such **circumstance**; and the reasons **you** believe the **circumstance** is likely to result in a **claim**.

(3) Proof of Loss:

Solely with respect to the coverage afforded under Section I INSURING AGREEMENTS (B), "FIRST PARTY COVERAGES," as a condition precedent to coverage, **you** must prepare and submit to **us**, a written and detailed proof of loss sworn by an officer of **yours** after an **event** is **discovered**, but in no event later than six (6) months following the end of the **policy period** (unless such period has been extended by written agreement in advance by **us**). Such proof of loss shall include a narrative with full particulars of such **event**, including the time, place and cause of the **event**, a detailed calculation of any **loss**, and all other insurance thereon; and upon **our** request, **you** must submit to an examination under oath and provide copies of the underlying documents, data and materials that reasonably relate to or are part of the basis of the **event**. The costs and expenses of preparing and submitting a proof of loss, and establishing or proving the amount of a **loss** (other than as provided in the definition of "**extra expense**") shall be **your** obligation, and are not covered under this Policy.

(E) **Defense and Settlement**

- (1) With respect to **claims** made against **you** in the United States of America or its territories or possessions:
 - (a) **We** shall have the right and duty to defend any covered **claim**, even if the allegations of such **claim** are groundless, false or fraudulent. **You** may propose to **us** counsel to represent **you** in connection with a covered **claim**, but **we**, in **our** sole discretion, retain the right to select counsel and to make such investigation and defense of a **claim** as **we** deem necessary.
 - (b) **You** shall not settle any **claim**, incur any **defense costs** or otherwise assume any obligation or admit any liability with respect to any **claim** without **our** written consent, which shall not be unreasonably withheld.
 - (c) **We** shall not settle any **claim** without the consent of the **named insured**. If the **named insured** refuses to consent to a settlement recommended by **us** and acceptable to the claimant, then, subject to **our** applicable Limit of Liability stated in ITEM 4 of the Declarations, **our** liability under this Policy with respect to such **claim** will not exceed:
 - (i) the amount for which the **claim** could have been settled plus **defense costs** up to the date **you** refused to settle such **claim** (the "Settlement Amount"); plus
 - (ii) eighty percent (80%) of any **damages**, including **defense costs**, in excess of the Settlement Amount incurred in connection with the **claim**. The remaining twenty percent (20%) of **damages**, including **defense costs**, in excess of the Settlement Amount will be carried by **you** at **your** own risk and will be uninsured;

provided, that this subparagraph (c) shall not apply to any potential settlement that is within the applicable Retention amount stated in ITEM 5 of the Declarations.

- (d) **We** shall have no obligation to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle any **claim** after an applicable Limit of Liability has been exhausted by payment of **damages**, including **defense costs**, or by any combination thereof, or after **we** have deposited the remainder of any unexhausted applicable Limit of Liability into a court of competent jurisdiction. In either such case, **we** shall have the right to withdraw from the further investigation, defense, payment or settlement of such **claim** by tendering control of such **claim** to **you**.
 - (e) **You** shall cooperate with **us** and provide **us** all information and assistance which **we** reasonably request, including attending hearings, depositions and trials and assistance in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any **claim** covered by this Policy. **You** shall do nothing that may prejudice **our** position and shall immediately forward to **us**, at the address shown in ITEM 11(A) of the Declarations, every demand, notice, summons, or other process or pleading received by **you** or **your** representatives.
- (2) With respect to **claims** made against **you** outside of the United States of America or its territories or possessions:
- (a) It shall be **your** duty and not **our** duty to defend any **claim** covered by this Policy. **We** have the right to consent to **your** choice of defense counsel, which consent shall not be unreasonably withheld. **We** have the right to participate with **you** in the investigation, defense and settlement of any **claim**, including but not limited to the selection of appropriate defense counsel and the negotiation of a settlement of any **claim** that appears reasonably likely to be covered in whole or in part by this Policy.
 - (b) Upon written request, **we** will pay **defense costs** owed under this Policy on a current basis. Such advanced payments by **us** shall be repaid to **us** by **you** severally according to **your** respective interests in the event and to the extent that **you** shall not be entitled to payment of such **defense costs** under this Policy. As a condition to any payment of **defense costs** before the final disposition of a **claim**, **we** may require a written undertaking on terms and conditions satisfactory to **us** guaranteeing the repayment of any **defense costs** paid to **you** or on **your** behalf if it is finally determined that any such **claim** or portion of any **claim** is not covered under this Policy. Except for **defense costs** paid in accordance with this paragraph (E)(2), **we** will have no obligation to pay any **damages** before the final disposition of a **claim**.
 - (c) **You** may not admit any liability for any **claim**, settle or offer to settle any **claim** or incur any **defense costs** without **our** prior consent, such consent not to be unreasonably withheld.
 - (d) **We** will have no obligation to pay **damages**, including **defense costs**, after the applicable Limit of Liability set forth in ITEM 4 of the Declarations has been exhausted by the payment of **damages**, including **defense costs**.
 - (e) If both **damages** (including **defense costs**) covered by this Policy and damages not covered by this Policy are incurred, either because a **claim**

made against **you** includes both covered and uncovered matters, or because a **claim** is made against both **you** and others not included within the definition of "**you**," **we** and **you** agree to use our best efforts to determine a fair and proper allocation of all such amounts. **Our** obligation to pay **damages** (including **defense costs**) under this Policy shall relate only to those sums allocated to **you**. In making such determination, the parties shall take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **claim** by **you** and others. In the event **we** and **you** do not reach an agreement with respect to an allocation, then **we** shall be obligated to make an interim payment of the amount of **damages** (including **defense costs**) which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to provisions of this Policy and applicable law.

- (3) If any amounts for **damages**, including **defense costs**, or **loss** are sustained or incurred in currency other than United States dollars, the amounts will be converted into United States dollars according to the prevailing rate of exchange on the date the amounts are sustained or incurred.

- (4) First Party Coverages:

You may select any **designated service provider** from our list of approved **designated service providers** as set forth on Schedule A to this Policy. Any such **designated service provider** shall have a direct relationship with **you** and any services provided by any **designated service provider** are for **you**.

- (F) **Coverage Territory:**

This Policy applies to **claims** and **events** taking place anywhere in the world.

- (G) **Changes in Risk:**

- (1) If, during the **policy period**, the first **named insured** acquires or creates another entity in which the first **named insured** holds directly or indirectly a fifty percent (50%) or greater beneficial or legal interest, or if the first **named insured** merges or consolidates with another entity such that the first **named insured** is the surviving entity (any such acquired, created, merged or consolidated entity an "Acquired Entity"), then for a period of ninety (90) days after the effective date of such transaction, such Acquired Entity shall be included within the term "**named insured**," but only with respect to: **data security events** or **media events** first happening after the effective date of the transaction; or **business interruption, contingent business interruption, system failure business interruption, extortion threat events** or **cyber crime events** that first occur after the effective date of such transaction. Upon the expiration of the ninety (90) day period, there will be no coverage available under this Policy for any **claim** or **event** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the Acquired Entity unless within such ninety (90) day period:

- (a) the first **named insured** gives **us** such information regarding the transaction as **we** request; and
- (b) **we** specifically agree by written endorsement to this Policy to provide coverage with respect to such Acquired Entity, and the first **named insured** accepts any terms, conditions, exclusions or limitations, including payment of additional premium, as **we**, in **our** sole discretion, impose in connection with the transaction.

(2) If, during the **policy period**, any of the following events occur:

- (a) the first **named insured** is dissolved, sold, acquired by, merged into, or consolidated with another entity such that the first **named insured** is not the surviving entity; or
- (b) a third party receiver, conservator, trustee, liquidator, rehabilitator or any similar official is appointed for or with respect to the first **named insured**;

coverage under this Policy shall continue in full force and effect until the Expiration Date or any earlier cancellation date, but this Policy shall only apply to: **data security events** or **media events** first happening before the effective date of such event; or **business interruption, contingent business interruption, system failure business interruption, extortion threat events** or **cyber crime events** that first occur before the effective date of such event. There will be no coverage available under this Policy for any **data security event** or **media event** happening on or after the effective date of such event; or any **business interruption, contingent business interruption, system failure business interruption, extortion threat event** or **cyber crime event** that first occurs on or after the effective date of such event.

(3) If, during the **policy period**, any of the following events occur:

- (a) any **named insured**, other than the first **named insured**, is dissolved, sold, acquired by, merged into, or consolidated with another entity such that such **named insured** is not the surviving entity; or
- (b) a third party receiver, conservator, trustee, liquidator, rehabilitator or any similar official is appointed for or with respect to any **named insured**, other than the first **named insured**;

coverage under this Policy shall continue in full force and effect with respect to such **named insured** and its **insured persons** until the Expiration Date or any earlier cancellation date, but this Policy shall only apply to: **data security events** or **media events** first committed or allegedly committed by such **named insured** and its **insured persons** before the effective date of such event; or **business interruption, contingent business interruption, system failure business interruption, extortion threat events** or **cyber crime events** involving such **named insured** and its **insured persons** before the effective date of such event. There will be no coverage available under this Policy for any **data security event** or **media event** committed or allegedly committed by such **named insured** and its **insured persons** on or after the effective date of such event; or any **business interruption, contingent business interruption, system failure business interruption, extortion threat event** or **cyber crime event** involving such **named insured** and its **insured persons** on or after the effective date of such event.

(H) **Extended Reporting Period:**

Solely with respect to the coverage afforded under Section I INSURING AGREEMENTS (A), LIABILITY COVERAGES, if this Policy is cancelled for any reason, other than fraud, misrepresentation or non-payment of premium, or if this Policy is not renewed by **us** or the first **named insured**, an additional period of time during which **claims** made under this Policy may be reported (an "Extended Reporting Period") shall be made available, but any such Extended Reporting Period shall apply only to **claims** for **data security events** or **media events** happening before the effective date of such cancellation or non-renewal (the "Termination Date") or the effective date of any event described in GENERAL CONDITION

(G) of this Policy (as applicable), whichever is earlier. No Extended Reporting Period shall in any way increase **our** Limits of Liability as stated in ITEM 4 of the Declarations, and **our** Limit of Liability for **claims** made during any Extended Reporting Period shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations. The first **named insured** may purchase an Extended Reporting Period for one of the periods of time stated in ITEM 10 of the Declarations by notifying **us** in writing of its intention to do so no later than thirty (30) days after the Termination Date. The additional premium for this Extended Reporting Period shall be equal to the applicable amount stated in ITEM 10 of the Declarations and must be paid no later than thirty (30) days after the Termination Date. Such additional premium shall be deemed fully earned upon inception of such Extended Reporting Period.

If no election to purchase an Extended Reporting Period is made as described above, or if the additional premium for any such Extended Reporting Period is not paid within thirty (30) days after the Termination Date, there will be no right to purchase an Extended Reporting Period at any later time.

(I) **Cancellation; Non-Renewal:**

- (1) **We** may not cancel this Policy, except for non-payment of premium, in which case twenty (20) days advance written notice (or such longer period of time as required by applicable law) shall be delivered to the first **named insured** at the last known address shown on the Declarations. Notwithstanding the foregoing, if **we** receive no premium whatsoever by the premium due date and no premium whatsoever is received by the last day of such twenty (20) day notice period (or such longer period of time as required by applicable law), **we** may cancel this Policy as of the Inception Date set forth in ITEM 2(a) of the Declarations. If **we** cancel this Policy, earned premium will be computed *pro rata*.
- (2) The first **named insured** may cancel this Policy by providing **us** written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
- (3) **We** will not be required to renew this Policy upon its expiration. If **we** elect not to renew this Policy, **we** will send advanced written notice of nonrenewal to the first **named insured** at least sixty (60) days before the expiration date of this Policy. Any offer of renewal on terms involving a change of retention, premium, limit of liability, or other term or condition will not constitute, nor be construed as, a failure or refusal to renew this Policy.

(J) **Assistance and Cooperation:**

You are obligated to provide **us** with all information, assistance and cooperation that **we** reasonably request, including but not limited to information, assistance, and cooperation in the investigation, defense, settlement, or other resolution of a **claim**; the pursuit or enforcement of any right of subrogation, contribution, indemnity, or other obligation from another; or conduct with respect to any action, suit, appeal, or other proceeding.

(K) **Subrogation:**

In the event of any payment under this Policy, **we** shall be subrogated to the extent of the payment to all of **your** rights of recovery from any person or entity other than one of **you**.

You must do everything necessary to secure these rights, including but not limited to executing any documents necessary to allow **us** to effectively bring suit in **your** name. **You** also must do nothing that may prejudice **our** position or **our** potential or actual rights of recovery. **Your** obligations under this GENERAL CONDITION (K) shall survive the expiration or termination of this Policy.

(L) **Other Insurance:**

The coverage provided under this Policy:

- (1) shall apply as primary insurance with respect to any coverage that may also be available to **you** under a “CYBERGUARD AND MEDIGUARD COVERAGE” endorsement attached to and made a part of any professional liability insurance policy issued to the **first named insured** by The Doctors Company or by any insurance company subsidiary of The Doctors Company;
- (2) shall apply as primary insurance solely with respect to the coverage afforded under Section I INSURING AGREEMENTS (A)(1), (A)(2), (A)(3), (B)(1), (B)(2) and (B)(4) of this Policy; and
- (3) shall, except as provided in subparagraph (L)(1) and (L)(2) above, be specifically excess of, and will not contribute with: (a) any other valid and collectible insurance or self-insurance, whether the other insurance or self-insurance is stated to be primary, *pro-rata*, contributory, excess, contingent or otherwise, unless such other insurance is specifically written as excess of this Policy; or (b) any defense, hold harmless, or indemnification that **you** are entitled to from any person or entity other than one of **you**.

(M) **Exhaustion:**

If **our** Policy Aggregate Limit of Liability, as set forth in ITEM 4 of the Declarations, is exhausted by the payment of **damages, defense costs or loss**, as applicable, the premium will be fully earned, all of **our** obligations under this Policy will be completely fulfilled and exhausted, including any obligation to pay **defense costs** or to continue to direct the defense of any of **you**, and **we** will have no further obligations of any kind or nature whatsoever under this Policy.

(N) **Risk Management:**

Risk management services will be available to the **named insured** during the **policy period**, regardless of whether there has been a **data security event**.

(O) **Authorization and Notices:**

The first **named insured** will act on behalf of all of **you** with respect to: the giving or receiving of any notice under this Policy; the payment of premiums to, or the receiving of return premiums from, **us**; the receiving and acceptance of any endorsements issued to form a part of this Policy; and the exercising, or declining to exercise, any Extended Reporting Period. Any communication by **us** to the first **named insured** shall constitute a communication to all of **you**.

(P) **Conformance:**

Any terms of this Policy that are in conflict with the laws or regulations of the state in which this Policy is issued are amended to conform with such laws or regulations.

(Q) **Representation; Incorporation of Application; Entire Agreement:**

You represent that the particulars and statements contained in the **application** are true, accurate and complete and agree that:

- (1) this Policy is issued and continued in force by **us** in reliance upon the truth of such representation;
- (2) those particulars and statements are the basis of this Policy; and
- (3) the **application** and those particulars and statements are incorporated in and form a part of this Policy.

No knowledge or information possessed by any of **you** shall be imputed to any other of **you**, except for material facts or information known to the person or persons who signed the **application**. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **application**, this Policy shall be void with respect to any of **you** who knew of such untruth, misrepresentation or omission or to whom such knowledge is imputed.

(R) **No Action Against Us:**

- (1) No action shall be taken against **us** by any of **you** unless, as conditions precedent thereto, **you** have fully complied with all of the terms of this Policy and the amount of **your** obligation to pay has been finally determined either by judgment against **you** after adjudicatory proceedings or by written agreement between **you**, the claimant and **us**.
- (2) No individual or entity shall have any right under this Policy to join **us** as a party to any **claim**, nor shall **we** be impleaded by **you**, or any legal representative of **you** in any such **claim**.

(S) **Notice:**

- (1) Notice to **you** shall be sent to the first **named insured** at the address designated in ITEM 1 of the Declarations.
- (2) Notice to **us** relating to the reporting any **claim** or **event** required under GENERAL CONDITION (D) of this Policy shall be sent to the address designated in ITEM 11(A) of the Declarations.
- (3) Notice to **us** unrelated to the reporting of any **claim** or **event** required under GENERAL CONDITION (D) of this Policy shall be sent to the address designated in ITEM 11(B) of the Declarations.

(T) **Changes:**

Notice to or knowledge possessed by any agent or other person acting on behalf of **us** shall not effect a waiver or change in any part of this Policy or prevent or estop **us** from asserting any right(s) under this Policy. This Policy can only be altered, waived, or changed by written endorsement issued to form a part of this Policy.

(U) **Bankruptcy; Insolvency:**

We will not be relieved of any of **our** obligations under this Policy by **your** bankruptcy or insolvency.

(V) **Examination of Books and Records:**

We may examine and audit **your** books and records as they relate to this Policy.

(W) **Economic and Trade Sanctions or Violations of Law:**

Any **claim** or matter or transaction uninsurable under any act, statute, rule, regulation, requirement, ordinance, common law, or other law of the United States of America concerning trade or economic sanctions or export control laws is not covered under this Policy.

(X) **Assignment:**

No assignment of interest under this Policy shall bind **us** without **our** written consent issued as a written endorsement to form a part of this Policy.

(Y) **Entire Agreement:**

You agree that this Policy, including the **application** and any endorsements, constitutes the entire agreement between **you** and **us**.

(Z) **Headings:**

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.