

# AXIS PRO PrivaSure™ Insurance Policy

## IMPORTANT NOTICE

**CLAIM EXPENSE** IS INCLUDED IN THE LIMIT OF INSURANCE AND THE RETENTION. ALL BOLD-FACED WORDS OR PHRASES, OTHER THAN CAPTIONS, ARE DEFINED IN THE POLICY. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT INSURED.

**CLAIMS MADE POLICY:** THE INSURANCE COVERAGES PROVIDED UNDER SECTIONS I.A. & C. ARE ON A CLAIMS MADE BASIS. COVERAGE UNDER THESE PROVISIONS APPLIES ONLY TO **CLAIMS** THAT ARE FIRST MADE DURING THE **POLICY PERIOD** AND ANY EXTENDED REPORTING PERIOD, IF APPLICABLE, AS THOSE TERMS ARE DESCRIBED IN THIS POLICY. COVERAGE DOES NOT APPLY TO ANY **WRONGFUL ACTS** COMMITTED BEFORE THE **RETROACTIVE DATE** STATED ON THE DECLARATIONS PAGE.

In consideration of the payment of the premium and in reliance on the statements in the Application and subject to all other terms of this Policy, the **Company** designated in the Declarations agrees with the **Insured** to the following:

### Section I. INSURING AGREEMENT – What the Company Insures

#### A. Enterprise Security and Privacy Liability Insurance

The **Company** will pay on behalf of the **Insured** all **Damages** and **Claim Expense**, in excess of the Retention and within the Limit of Insurance, that the **Insured** becomes legally obligated to pay because of liability imposed by law as a result of one or more **Claims** arising from an actual or alleged **Enterprise Security Event**, when the **Claim** is first made against any **Insured** during the **Policy Period** or any Extended Reporting Period.

#### B. Enterprise Security Event Crisis Management Expense

The **Company** will pay on behalf of the **Insured** all **Enterprise Security Event Crisis Management Expense**, in excess of the Retention and within the Enterprise Security Event Crisis Management Expense Sub-limit of this Policy, incurred by the **Insured** as the result of an **Enterprise Security Event** that first occurs during the **Policy Period** and that is reported to the **Company** during the **Policy Period** or within thirty (30) days of expiration of this **Policy**.

#### C. Regulatory Action Coverage

The **Company** will pay on behalf of the **Insured** all **Claim Expense**, in excess of the Retention and within the Regulatory Action Sub-limit of this Policy, that the **Insured** becomes legally obligated to pay because of a **Regulatory Action**, when the **Claim** is first made against any **Insured** during the **Policy Period** or any Extended Reporting Period.

#### D. Computer System Extortion Expense and Loss Coverage

The **Company** will pay on behalf of the **Insured** all **Extortion Expense** and/or **Extortion Loss**, within the Extortion Sub-limit of this Policy, incurred by the **Insured** as the result of an **Extortion Threat** that first occurs during the **Policy Period** and that is reported to the **Company** during the **Policy Period** or within thirty (30) days of the expiration of this **Policy**. No retention or deductible applies to this coverage.

### Section II. DEFINITIONS

- A. **“Bodily Injury”** means physical injury, sickness or disease sustained by a person, including death resulting from any of these at any time. **Bodily Injury** also includes disability, mental anguish, mental injury, shock or fright resulting in or from **Bodily Injury**.
- B. **“Claim”** means a demand or assertion of a legal right made against any **Insured**, even if any of the allegations of the **Claim** are groundless, false or fraudulent.

C. "**Claim Expense**" means, when authorized and approved by the **Company**:

1. fees charged by an attorney in defense of a **Claim**, including such fees necessitated by a demand for a retraction or correction;
2. all other fees, costs and expenses which result from the investigation, discovery, adjustment, defense, negotiation, arbitration, mediation, settlement or appeal of a **Claim**;
3. interest on any part of a judgment not exceeding the Limit of Insurance that accrues after the entry of the judgment and before the **Company** has paid or tendered or deposited the applicable judgment amount in court; and
4. premiums on appeal bonds required as a result of a **Claim** and premiums on bonds to release attachments for a bond amount not exceeding the Limit of Insurance, but the **Company** has no obligation to apply for or furnish any such bonds.

**Claim Expense** does not include salary charges or expenses of regular employees of the **Insured**; civil or criminal fines or penalties; royalties, return of or disputed royalties, fees, deposits, commissions or charges for content, goods or services; or loss or disgorgement of profits by an **Insured**.

D. "**Company**" means the insurance company stated at the top of the Declarations.

E. "**Damages**" means monetary judgment, award or settlement, including those that are actual, statutory, punitive, multiplied or exemplary, except when applicable law prohibits insurance for punitive, multiplied or exemplary damages, and legal expense or other costs included as part of a judgment, award or settlement.

**Damages** does not include civil or criminal fines or penalties; royalties, return of or disputed royalties, fees, deposits, commissions or charges for content, goods or services; or loss or disgorgement of profits by an **Insured**.

For purposes of insuring punitive damages under this Policy, the law of the jurisdiction most favorable to the insurability of punitive damages shall control, provided such jurisdiction is where;

1. the punitive damages were awarded or imposed; or
2. any **Insured** is incorporated or otherwise organized or has a place of business; or
3. the **Company** is incorporated or has its principle place of business.

F. "**Data**" means any private, non-public or public information of any kind maintained by the **Insured** or by a party for whom the **Insured** is responsible regardless of the nature or form of such information, including but not limited to any of the information referenced in items 1. or 2. below:

1. With respect to a natural person, any information from which an individual may be uniquely and reliably identified or contacted, including but not limited to:
  - a. Social Security Number;
  - b. medical services or healthcare **Data**, or other protected health information;
  - c. driver's license or state identification number;
  - d. the equivalents of any of the information listed in a. to c. above;
  - e. account, credit card, or debit card number alone or in combination with any required security or access code or password that permits access to an individual's financial account; and
  - f. other non-public information and/or protected health information as defined in **Privacy Regulations**; or
2. With respect to an organization, any information of the organization, including but not limited to any information that is subject to any form of confidentiality agreement or confidentiality provision in a contract or agreement between the organization and any **Insured** or party for whom the **Insured** is responsible.

**G. “Enterprise Security Event”** means:

1. any accidental release or unauthorized disclosure of **Data**;
2. unauthorized access to, use of, tampering with or theft of **Data** on the **Insured’s** computer or network systems and any such systems maintained by the **Insured**, or the failure to prevent such unauthorized access, use, tampering or theft;
3. failure to prevent a party from accessing a computer or network system under the control of an **Insured** and any such systems maintained by the **Insured**, when the party has the intent:
  - a. to deny or disrupt access to or services from that system or network or any other system or network, or
  - b. to cause such system or network’s functionality to fail;
4. denial or disruption of access of authorized parties to online services or computer systems, where such denial or disruption is caused by the **Insured’s** computer networks or systems; or
5. transmitting or receiving **Malicious Code** via the **Insured’s** computer system or network.

**H. “Enterprise Security Event Crisis Management Expense”** means the following reasonable expenses incurred by the **Insured**, in excess of the **Insured’s** normal operating expenses, to protect the reputation of the **Insured**, or to investigate and take corrective action to mitigate an **Enterprise Security Event**:

1. the cost of placing advertisements and press releases in the appropriate forums explaining the nature of the **Enterprise Security Event** and any corrective action taken;
2. the cost of preparing and sending individual notification required by any state, federal, local or other law or regulation, by reasonable means to customers and clients of the **Insured** and to any other person or party whose private, personal information may have been improperly accessed, lost or stolen;
3. the cost to provide credit monitoring, credit-related remediation, and other identity theft financial recovery services to customers and clients of the **Insured** and to any other person or party whose **Data** may have been improperly accessed, lost or stolen;
4. the cost to hire a public relations consultant, approved by the **Company**, to prepare any of the items described in 1. and 2. above; and
5. the cost of a **System Investigation**.

**I. “Extortion Expense”** means the following reasonable expenses, in excess of normal operating expenses of the **Insured’s** business incurred by the **Insured** in response to a covered **Extortion Threat**:

1. the retention of a negotiator approved by the **Company**; and
2. the actual costs of a **System Investigation**.

**J. “Extortion Loss”** means any funds paid in order to prevent a **System Failure** to the party or parties that have made an **Extortion Threat**; except **Extortion Loss** shall not include any amounts involving or connected with disputed royalties, fees, deposits, commissions or charges for content, goods or services;

**K. “Extortion Threat”** means a threat or series of related threats, demanding payment of funds to avoid an **Enterprise Security Event**.

**L. “First Inception Date”** is the Inception Date of the earliest PrivaSure™ Insurance Policy the **Company** issued to the **First Named Insured**, provided that there has been uninterrupted coverage by the **Company** for the **First Named Insured** from that earliest policy to this Policy.

**M. “First Named Insured”** means the **Named Insured** first listed in Item 1. of the Declarations.

- N. "Insured"** means, individually and collectively:
1. a **Named Insured**; and
  2. the **Individual Insureds**.
- O. "Individual Insured"** means, individually and collectively:
1. any **Named Insured** that is an individual person;
  2. any **Named Insured's** stockholders for their liability as stockholders;
  3. any **Named Insured's** and **Subsidiaries'** partners, officers, directors and employees, but only with respect to their activities within the scope of their duties in such capacity;
  4. any **Named Insured's** and **Subsidiaries'** former partners, officers, directors and employees, but only with respect to their activities within the scope of their duties in such capacity;
  5. any legal representatives of an **Insured** in the event of death, incompetence, insolvency or bankruptcy of the **Insured**, but only with respect to their activities within the scope of their duties in such capacity; and
  6. any spouse of an **Individual Insured**, but only with respect to their status as such. For the purposes of this definition, "spouse" shall be any natural person qualifying as a domestic partner of an **Individual Insured** under the provisions of any applicable federal, state or local law in the United States of America.
- P. "Malicious Code"** means any computer virus, Trojan Horse, worm, or other code, script, or software program that is intentionally designed to damage, harm or infect any or all parts of a computer system or network and/or **Data** on such a system or network.
- Q. "Named Insured"** means the person(s) or entity(ies) listed in Item 1. of the Declarations of this Policy and their **Subsidiaries**.
- R. "Policy Period"** means the period of time stated in Item 2. of the Declarations or any shorter period resulting from cancellation of this Policy.
- S. "Pollutant"** means any solid, liquid, gaseous or thermal irritant or containment, including but not limited to:
1. smoke, vapor, soot, fumes, acids, alkalis, chemicals, lead, silica, mold or asbestos;
  2. hazardous, toxic or radioactive matter or nuclear radiation;
  3. waste, which includes material to be recycled, reconditioned or reclaimed; or
  4. any other **Pollutant** as defined by applicable federal, state or local statutes, regulations, rulings or ordinances.
- T. "Property Damage"** means physical injury to tangible property and any resulting loss or corruption of data or information, including all resulting loss of use of that property, data or information. **Property Damage** does not mean the loss, corruption or destruction of data or information when the tangible property on which the data or information resides or resided is not physically injured.
- U. "Privacy Regulations"** means statutes and regulations associated with the control and use of **Data**, including but not limited to:
1. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191);
  2. Gramm-Leach-Bliley Act of 1999; or
  3. Other similar state, federal and foreign identity theft and privacy protection legislation that requires commercial entities that collect or store **Data** to post privacy policies, adopt specific privacy controls, or notify natural persons and/or organizations in the event that **Data** has been comprised.

V. **“Regulatory Action”** means any **Claim** or potential **Claim**, including a request for information or civil investigation, brought against an **Insured** by any regulatory authority, or any federal, state or local governmental agency, related to an actual or alleged breach or violation of any **Privacy Regulation**.

W. **“Retroactive Date”** means the date, if any, stated in Item 3. of the Declarations.

X. **“Subsidiary(ies)”** means any entity in which, and so long as, the **Named Insured** either directly or indirectly:

1. owns more than fifty percent (50%) of the issued and outstanding voting equity securities, or
2. controls voting rights representing the present right to vote for election or to appoint more than fifty percent (50%) of the directors or trustees.

If, however, any entity becomes a **Subsidiary** after the effective date of this Policy, and if that entity’s gross revenues exceed ten percent (10%) of **Insured’s** annual gross revenues at the Inception Date of this Policy, then the entity shall only be deemed a **Subsidiary** under this Policy for a period of ninety (90) days from the date it became a **Subsidiary**.

If the **Named Insured** gives written notice, within ninety (90) days of the creation or acquisition of the **Subsidiary**, including the necessary underwriting information as the **Company** may require, and pays any additional premium as the **Company** may require, then the **Company** will issue an endorsement including such entity in the definition of **Subsidiary** for the duration of the **Policy Period**.

In all events there is no coverage for **Wrongful Acts** by any **Subsidiary**, or **Insured** thereof, occurring prior to the time such entity became a **Subsidiary**.

Y. **“System Failure”** means any of the following:

1. the complete inability to access, or transact business on the **Insured’s** website;
2. the complete inability to access or use the **Insured’s** internal computer system or programs; or
3. the complete inability to enter, retrieve, view or otherwise manipulate **Data** stored on the **Insured’s** computer system.

Z. **“System Investigation”** means conducting a forensic or other appropriate system investigation to determine the cause or perpetrator of an **Enterprise Security Event**.

AA. **“Wrongful Act”** means an actual or alleged act by the **Insured** or any person or organization for whom the **Insured** is legally liable that leads to:

1. any actual or alleged **Enterprise Security Event**; or
2. any actual or alleged act, error or omission giving rise to a **Regulatory Action**.

All **Wrongful Acts** that:

1. take place between the **Retroactive Date** and the end of the **Policy Period** of the current PrivaSure™ Insurance Policy issued by the **Company** to the **Insured**; and
2. involve the same or related subject, person, class of person or have common facts or circumstances or involved common transactions, events or decisions, regardless of the number of repetitions, alterations, actions forms of communication;

will be treated under this Policy as one **Wrongful Act**.

### Section III. WHERE AND WHEN WE INSURE

#### A. Where We Insure

The territory and jurisdiction of this Policy is universal. Coverage applies to **Wrongful Acts** and **Extortion Threats** committed anywhere and to **Claims** made in any jurisdiction. If **Damages, Claim Expense, Enterprise Security Event Crisis Management Expense, Extortion Expense** or **Extortion Loss** are paid in a currency other than United States of America dollars, then the payment under this Policy will be considered to have been made in United States dollars at the conversion rate, which is in effect at the time of the payment.

#### B. When We Insure

The insurance provided under **Sections I.A. & C.** applies to **Claims** under the following conditions set forth in items 1. through 5. immediately below:

##### 1. Claims First Made

The insurance applies when a written **Claim** is first made against an **Insured** during the **Policy Period**. To be covered under these Sections, the **Claim** must also arise from a **Wrongful Act** committed during the **Policy Period**.

The **Company** will consider a **Claim** to be first made against an **Insured** when a written **Claim** is first received by any **Insured**.

##### 2. Prior Wrongful Acts

The **Company** will cover a written **Claim** first made against any **Insured** arising from **Wrongful Acts** committed between the **Retroactive Date** and the Inception Date of this Policy, but only if all of the following conditions are met:

- a. the written **Claim** is first made against any **Insured** during the **Policy Period**. The **Company** will consider a **Claim** to be first made against the **Insured** when a written **Claim** is first received by any **Insured**;
- b. no **Insured** knew prior to the **First Inception Date** of a circumstance that could reasonably be expected to lead to the **Claim**; and
- c. there is no other valid and collectible insurance for the **Claim**.

##### 3. Reported Wrongful Acts

The **Company** will cover a written **Claim** first made against any **Insured** after the end of the **Policy Period**, but only if all the following conditions are met:

- a. the **Wrongful Act** is committed between the **Retroactive Date** and the end of the **Policy Period**;
- b. the **Company** receives written notice from the **Insured** during the **Policy Period** of the **Wrongful Act**;

The notice must include all of the following information:

- (1) the names of those persons or organizations involved in the **Wrongful Act**;
  - (2) the specific person or organization likely to make the **Claim**;
  - (3) a description of the time, place and nature of the **Wrongful Act**; and
  - (4) a description of the potential **Damages**;
- c. no **Insured** knew prior to the **First Inception Date**, of a circumstance that could reasonably be expected to lead to the **Claim**; and
  - d. there is no other valid and collectible insurance for the **Claim**.

A **Claim** first made after the end of the **Policy Period** and arising from a reported **Wrongful Act** will be covered under the provisions of this Policy in effect on the date the **Company** receives the notice of the **Wrongful Act**.

#### 4. Extended Reporting Period

This section describes the provisions and conditions that apply to **Claims** first made after the end of the **Policy Period** when the **Insured** has not reported a **Wrongful Act** during the **Policy Period** in accordance with **Section III.B.3.** above. Such **Claims** are not automatically covered. To cover them, the **First Named Insured** must purchase an Extended Reporting Period from the **Company**.

If the **First Named Insured** purchases an Extended Reporting Period, the **Company** will cover a **Claim** first made against any **Insured** during the Extended Reporting Period, but only if all of the following conditions are met:

- a. the **Wrongful Act** is committed between the **Retroactive Date** and the end of the **Policy Period**;
- b. no **Insured** knew prior to the **First Inception Date**, of a circumstance that could reasonably be expected to lead to the **Claim**; and
- c. there is no other valid and collectible insurance for the **Claim**.

The **Company** will consider a **Claim** to be made during the Extended Reporting Period only if such written **Claim** is first received by any **Insured** after the Expiration Date of the **Policy Period** and prior to the Expiration Date stated in the Extended Reporting Period Endorsement.

The following provisions and conditions also apply to the Extended Reporting Period:

- d. If the **Company** or **First Named Insured** cancels or non-renews this Policy, and upon request by the **First Named Insured**, the **Company** will offer an Extended Reporting Period, unless the **Company** cancels or non-renews the policy because:
  - (1) any **Insured** failed to pay the premium or Retention; or
  - (2) any **Insured** failed to comply with policy provisions.

The Extended Reporting Period options and the respective percentages of the premium that the **First Named Insured** must pay to purchase an Extended Reporting Period are:

One Year = 100% of the annual premium  
Two Years = 150%

Changes or proposed changes in premium or policy provisions shall not be construed as cancellation or nonrenewal of this Policy by the **Company**.

- e. The **Company** must receive the **First Named Insured's** request for the Extended Reporting Period in writing within thirty (30) days after the end of the **Policy Period**. On receipt and acceptance of the request, the **Company** will issue an endorsement showing the Extended Reporting Period in accordance with the option requested by the **First Named Insured**. At the same time, the **Company** will bill the additional premium and the **Company** must receive payment within thirty (30) days after the billing date for the endorsement to be effective.
- f. The endorsement shall also include the provisions and conditions applicable to the Extended Reporting Period. Once in effect, the Extended Reporting Period may not be canceled.
- g. A **Claim** that is first made during the Extended Reporting Period will be deemed to have been made on the last day of this **Policy Period**. The provisions of the Policy in effect on the last day of this **Policy Period** will apply.
- h. The Extended Reporting Period does not reinstate or increase the Limit of Insurance.

- i. The Extended Reporting Period does not extend the **Policy Period** or change the scope of coverage provided.

## 5. Multiple Claims

All **Claims** arising from the same **Wrongful Act** will be deemed to have been made on the earlier of the following dates:

- a. the date the first of those **Claims** is made against any **Insured**; or
- b. the first date the **Company** receives the **Insured's** written notice of the **Wrongful Act**.

The provisions of this Policy in effect on that date will apply.

## 6. Occurrence of **Enterprise Security Events** and **Extortion Threats**

The insurance provided under **Section I.B.** applies when an **Enterprise Security Event** first occurs during the **Policy Period** and the insurance provided under **Section I.D.** applies when an **Extortion Threat** first occurs during the **Policy Period**. To be covered, the **Enterprise Security Event** or **Extortion Threat** must be reported to the **Company** during the **Policy Period** or within thirty (30) days of the expiration of this **Policy**.

## Section IV. POLICY LIMIT AND RETENTION

### A. Limit of Insurance

#### 1. Enterprise Security and Privacy Liability

The Enterprise Security and Privacy Liability Limit of Insurance stated in Item 3.a. on the Declarations is the maximum the **Company** will pay for **Damages** and **Claim Expense** combined for the total of all **Claims** made during the **Policy Period** and any Extended Reporting Period arising from each **Enterprise Security Event**, no matter how many:

- a. **Insureds** this Policy covers;
- b. **Claims** are made; or
- c. persons or organizations make **Claims**.

#### 2. Total Limit of Insurance

The Total Limit of Insurance stated in Item 4. of the Declarations is the maximum the **Company** will pay for all **Damages, Claim Expense, Enterprise Security Event Crisis Management Expense, Extortion Expense** or **Extortion Loss** combined for the total of all **Claims** made and/or **Wrongful Acts** or **Extortion Threats** that occur during the **Policy Period** and any Extended Reporting Period, no matter how many:

- a. **Insureds** this Policy covers;
- b. **Claims** are made;
- c. persons or organizations make **Claims**; or
- d. **Wrongful Acts, Enterprise Security Events, Regulatory Actions** or **Extortion Threats** occur;

#### 3. Sub-limits

- a. The Sub-limit in Item 3.b. of the Declarations is the most the **Company** will pay for **Enterprise Security Event Crisis Management Expense** for the total of all **Enterprise Security Events** occurring during the **Policy Period** no matter how many:

- (1) **Insureds** this Policy covers;

- (2) **Enterprise Security Events** occur;
  - (3) **Claims** are made; or
  - (4) Persons or organizations are involved in the **Enterprise Security Events**.
- b. The Sub-limit in Item 3.c. of the Declarations is the most the **Company** will pay for **Claim Expense** for the total of all **Regulatory Actions** made during the **Policy Period** no matter how many:
- (1) **Insureds** this Policy covers;
  - (2) **Wrongful Acts** occur;
  - (3) **Regulatory Actions** are made; or
  - (4) Persons or organizations are involved in **Wrongful Acts**.
- c. The Sub-limit in Item 3.d. of the Declarations is the most the **Company** will pay for **Extortion Expense** or **Extortion Loss** for the total of all **Extortion Threats** occurring during the **Policy Period** no matter how many:
- (1) **Insureds** this Policy covers;
  - (2) **Extortion Threats** occur;
  - (3) **Claims** are made; or
  - (4) Persons or organizations are involved in the **Extortion Threats**.
- d. The Sub-limits are part of, and count toward, the Total Limit of Insurance stated in Item 4. on the Declarations and do not increase the Total Limit of Insurance.

## B. Retention

1. A separate Retention applies to each actual or alleged **Wrongful Act**.
2. For purposes of this provision, a series of related **Wrongful Acts** will be considered a single **Wrongful Act**.
3. The Enterprise Security and Privacy Liability Retention applies to all **Damages** and **Claim Expense** combined incurred as a result of **Claims** covered by **Section I.A.** of the Policy, and the **Company's** obligation to pay such **Damages** and **Claim Expense** applies only to the amount of **Damages** and **Claim Expense** in excess of this Retention.
4. The **Enterprise Security Event Crisis Management Expense** Retention applies to all **Enterprise Security Event Crisis Management Expense** incurred as a result of an **Enterprise Security Event** covered by **Section I.B.** of the Policy and the **Company's** obligation to pay **Enterprise Security Event Crisis Management Expense** applies only to the amount of such expense in excess of this Retention.
5. The **Regulatory Action** Retention applies to all **Claim Expense** incurred as a result of a **Regulatory Action** covered by **Section I.C.** of the Policy, and the **Company's** obligation to pay such **Claim Expense** applies only to the amount of **Claim Expense** in excess of this Retention.
6. The amounts of the **Insured's** Retentions are stated in the Retention column of Item 3. of the Declarations.
7. The Retentions do not deplete the applicable Limit of Insurance and do not apply to **Extortion Expense** or **Extortion Loss**.

## Section V. EXCLUSIONS

- A. The **Company** will not be obligated to pay **Damages, Claim Expense, Enterprise Security Event Crisis Management Expense, Extortion Expense** or **Extortion Loss**, or defend **Claims**, or respond to **Enterprise Security Events** or **Extortion Threats** for or arising out of actual or alleged:

1. **Bodily Injury or Property Damage;**
2. performance of services or activities, which by law can only be performed by a licensed, registered or certified physician, nurse, health care provider or health care practitioner;
3. medical malpractice, or allegations of such, including the giving or receiving of professionally qualified medical opinions, or the administration of or failure to administer or summon medical care or first aid;
4. harassment, misconduct or discrimination because of or relating to:
  - a. race, creed, color or age;
  - b. sex, sexual preference, national origin or religion; or
  - c. handicap, disability or marital status;

but only if the harassment, misconduct or discrimination was knowingly committed. The **Company** will defend such a **Claim** until a judgment or other final adjudication by a jury, court or arbitrator establishes such conduct. The **Company** will have the right to seek reimbursement from any **Insured** for any **Claim Expense** paid to defend any **Claim** that such a judgment or final adjudication finds to have involved harassment, misconduct or discrimination as described above, which was knowingly committed;

5. infringement or contributing to the infringement of patent, copyright, or trademark;
6. misappropriation or theft of trade secrets; except this Exclusion does not apply to:
  - a. the misappropriation or theft of trade secrets arising from the unauthorized access to, use of, or tampering with **Data** or the **Insured's** computer or network systems and any such systems maintained by the **Insured**, or the failure to prevent such unauthorized access, use or tampering; or
  - b. the unintentional disclosure by the **Insured** of a client's trade secrets stored or maintained in the **Insured's** computer or network systems and any such systems maintained by the **Insured**;
7. malfunction or defect of any hardware, equipment or component; except this Exclusion does not apply when the malfunction or defect is solely the result of the **Insured's** actual or alleged negligence;
8. electrical failure including electrical power interruption, surge, brownout or blackout;
9. breach of contract, warranty or guarantee; however, with respect to allegations of breach of contract this Exclusion shall not apply to any liability that would have attached in the absence of such contract or liability;
10. antitrust, restraint of trade or unfair or deceptive trade practices;
11. acts of the **Insured** related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974, or any amendment to the Act or any violation of any regulation, ruling or order issued pursuant to the Act;
12. violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisor's Act of 1940, any state blue sky or securities law, any similar state or federal law, or any amendment to the above laws or any violation of any order, ruling or regulation issued pursuant to the above laws;
13. the actual or threatened discharge, dispersal or release of any **Pollutant**; or the creation of an injurious condition involving any **Pollutant**; or the existence of any **Pollutant** on any property; or the clean up, removal, testing, monitoring, containment, treatment, detoxification or neutralization of any **Pollutant**. This Exclusion, **V.A.13.**, is effective whether or not the pollution was sudden, accidental, gradual, intended, expected or preventable or whether or not any **Insured** caused or contributed to the pollution.

**B.** The **Company** will not be obligated to pay **Damages, Claim Expense, Enterprise Security Event Crisis Management Expense, Extortion Expense or Extortion Loss**, or defend **Claims**, or respond to **Enterprise Security Events or Extortion Threats** for or arising out of:

1. an act, error or omission that a jury, court or arbitrator finds dishonest, fraudulent, criminal, malicious or intentionally committed while knowing it was wrongful; or
2. intentional unauthorized access to, unauthorized use of, tampering with or introduction of **Malicious Code** into data or systems by any **Insured** or person who would qualify as an **Insured** but for their acts being outside the scope of their duties as a partner, officer, director or employee of an **Insured**.

However, these Exclusions **V.B.1.** and **2.** shall not apply to any **Insured**, except those who are current or former partners, officers, and directors of any **Named Insured** or **Subsidiary**, who did not knowingly commit, acquiesce or participate in the actions that gave rise to the **Claim, Enterprise Security Event** or **Extortion Threat**.

These Exclusions **V.B.1.** and **2.** shall not apply to any **Insured** unless and until there is a final judgment, adjudication or binding arbitration ruling against such **Insured** with respect to the **Claim, Enterprise Security Event** or **Extortion Threat** by a court of law, regulatory authority or arbitration panel at which time the **Insured** shall also reimburse the **Company** for any **Damages, Claim Expense, Enterprise Security Event Crisis Management Expense, Extortion Expense** or **Extortion Loss** already paid by the **Company** with respect to such **Claim, Enterprise Security Event** or **Extortion Threat**.

**C.** The **Company** will not be obligated to pay **Damages** or **Claim Expense** for **Claims** made by:

1. any **Insured**; except this Exclusion does not apply to **Claims** brought by an employee for actual or alleged **Wrongful Acts** in maintaining and safekeeping of employee **Data** in electronic and physical format;
2. any entity which is a parent, affiliate, **Subsidiary**, joint venturer or co-venturer; or other entity in which any **Insured** is a partner;
3. any entity directly or indirectly controlled, operated or managed by an entity described in **Section V.C.1.** or **2.** above;
4. any regulatory authority, or any federal, state or local governmental agency; except this Exclusion does not apply to:
  - a. a **Claim** brought by any of these entities, if such entity is also a client, and if the **Claim** arises from actual or alleged **Wrongful Acts**; or
  - b. **Claim Expense** incurred in excess of the Retention and up to the Sub-limit set forth on **Item 5.d.** of the Declarations for a covered **Regulatory Action**.
5. any present, former, or prospective employee, provided the **Claim** is based on or results from workplace or employment torts.

## Section VI. CONDITIONS

### A. Time of Inception; Policy Period

This Policy will begin at 12:01 A.M. on the Inception Date shown in the Declaration. This Policy will continue to apply until 12:01 A.M. on the Expiration Date also shown in the Declarations unless terminated at an earlier date.

### B. Premium

The **Named Insured** will pay to the **Company** the amount of premium stated in Item 5. of the Declarations. The premium may be adjusted at any time during the **Policy Period** or any extensions of the **Policy Period** or provisions of this Policy as may be agreed upon by the **Named Insured** and the **Company**.

### C. Change of Operations

This Policy applies only to the Insuring Agreements purchased at the Inception Date of this Policy in the policy form. This Policy will not apply to any other activities or entities unless, with the **Company's** consent, such activities or entities are added to this Policy by endorsement. The **Named Insured** will promptly pay any additional premium that may become due as a result of such addition.

#### D. Insured's Duties in the Event of Claim, Enterprise Security Event or Extortion Threat

1. If there is a **Claim, Enterprise Security Event or Extortion Threat**, the **Insured** must do the following after the **Named Insured** has knowledge of the **Claim, Enterprise Security Event or Extortion Threat**:
  - a. Notify the **Company** in writing immediately; this notice must:
    - (1) Be sent to the **Company**, in care of the **Company's** Media/Professional Insurance business unit as follows:  
Claims Department  
AXIS PRO  
Two Pershing Square, Suite 800, 2300 Main Street  
Kansas City, Missouri 64108-2404  
Email: USclaimnoticekc@AXISCapital.com  
Fax: (816) 471-6119
    - (2) Contain details that identify the **Insured**, the claimant and also reasonably obtainable information concerning the time, place and other details of the **Claim, Enterprise Security Event or Extortion Threat**;
    - (3) in the case of **Enterprise Security Events or Extortion Threats**, be received by the **Company** during the **Policy Period** or within thirty (30) days of the expiration thereof.
  - b. Immediately send the **Company** copies of all demands, notices, summonses or legal papers received in connection with the **Claim, Enterprise Security Event or Extortion Threat**;
  - c. Authorize the **Company** to obtain records and other information;
  - d. Cooperate with and assist the **Company** in the investigation, settlement or defense of the **Claim, Enterprise Security Event or Extortion Threat**; and
  - e. Assist the **Company**, upon the **Company's** request, in enforcing any rights of contribution or indemnity against another who may be liable to any **Insured**.
2. No **Insured** will, except at the **Insured's** own cost, voluntarily make a payment, admit liability, retain attorneys, consultants, or related vendors, assume any other obligation or incur any other expense without the **Company's** prior written consent.

#### E. Defense of a Claim

The **Company** will have the right and duty to appoint an attorney and defend a covered **Claim**, even if the allegations are groundless, false or fraudulent, provided that:

1. The **Company** may, at the **Company's** discretion, investigate and settle a covered **Claim**.
2. No offer to settle any **Claim** will be made or accepted by the **Insured** without prior written agreement by the **Company**. Notwithstanding the foregoing, it is understood that the **Insured** may settle any **Claim** for which the total cost of **Damages** and **Claim Expense** associated therewith is less than the amount of the remaining Retention.
3. If the **Company** is willing to accept the judgment of the trial or appellate court or any negotiated settlement or settlement offer and the **Insured** is not willing to accept such judgment or settlement, the **Company's** liability for any **Claim Expense** and/or **Damages** incurred after the **Company** indicated its willingness to accept such judgment or settlement, shall be limited to the amount for which the **Company** could have resolved the **Claim** plus an additional fifty percent (50%) of that amount. Nothing in this provision will cause the **Company's** liability to exceed the applicable Limits of Insurance set forth on the Declarations.
4. All **Claim Expense** incurred and **Damages** awarded prior to the judgment or settlement offer that triggers **Section VI.E.3.** above, will be paid in accordance with all other applicable Policy provisions and the coverage granted therein.

5. The **Company's** right and duty to defend and pay on the **Insured's** behalf ends when the **Company** has used up the applicable Limit of Insurance in payment of **Damages** or **Claim Expense**; except where specifically noted otherwise in this Policy.
6. Nothing in this Section will relieve the **Insured** from any notice or cooperation requirements contained in **Section VI.D.** or within any other part of this Policy.

#### F. Other Insurance

The insurance afforded by this Policy is excess over any other valid and collectible insurance available to the **Insured**, except insurance specifically arranged by the **Named Insured** to apply in excess of this insurance.

#### G. Subrogation and Recovery of Claim Expense

In the event of any payment under this Policy, the **Company** will be subrogated to all the **Insured's** rights of recovery therefore against any person or organization, and the **Insured** will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** will do nothing to prejudice such rights. The **Company** will have no rights of subrogation against any **Insured** hereunder. Any recoveries shall be applied as follows:

1. First, to the **Company** up to the amount the **Company** has paid for **Damages, Claim Expense, Enterprise Security Event Crisis Management Expense, Extortion Expense** or **Extortion Loss**.
2. Then, to the **First Named Insured** as recovery of Retention amounts paid as **Damages, Claim Expense** and **Enterprise Security Event Crisis Management Expense**. The **Company** will have the right to seek recovery from any **Insured** of any **Damages, Claim Expense, Enterprise Security Event Crisis Management Expense, Extortion Expense** or **Extortion Loss** incurred as a result of any portion of a **Claim, Enterprise Security Event** or **Extortion Threat** that is not covered by this Policy.

#### H. Changes

Notice or knowledge possessed by any person will not effect a waiver or a change in any part of this Policy or estop the **Company** from asserting any rights under the terms of this Policy; nor will the terms of this Policy be waived or changed except by written endorsement issued to form a part of this Policy.

#### I. Assignment

Assignment of any interest under this Policy will not bind the **Company** unless and until its written consent is endorsed hereon.

#### J. Action Against the Company

1. No action will lie against the **Company** unless, as a condition precedent thereto, there will have been full compliance with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay will have been fully determined either by judgment or award against the **Insured** after actual trial or arbitration or by written agreement among the **Insured**, the claimant and the **Company**.
2. Any person or organization, or the legal representative thereof, who has secured such judgment or written agreement, will thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy.
3. No person or organization will have any right under this Policy to join the **Company** as a party to any action against the **Insured** to determine the **Insured's** liability, nor will the **Company** be impleaded by the **Insured** or the **Insured's** legal representative. Bankruptcy or insolvency of the **Insured** or the **Insured's** estate will not relieve the **Company** of any of its obligations hereunder.

## K. Cancellation and Nonrenewal

### 1. Cancellation

This Policy may be canceled by the **First Named Insured** by mailing to the **Company** written notice stating when thereafter the cancellation will be effective. This Policy may be canceled by the **Company** by mailing to the **First Named Insured**, at the address shown in this Policy, written notice stating when, not less than sixty (60) days thereafter, such cancellation will be effective. If cancellation is as a result of nonpayment of premium or Retention, the **Company** will give written notice stating when, not less than ten (10) days thereafter, such cancellation will be effective.

If this Policy is canceled prior to the Expiration Date, the premium due the **First Named Insured** will be:

a. the pro rata unearned amount of the annual premium subject to a factor of .90, if such cancellation is by the **First Named Insured**; or

b. the pro rata unearned amount of the annual premium if such cancellation is by the **Company**;

but the return of such premium to the **First Named Insured** is not a condition of cancellation.

### 2. Nonrenewal

The **Company** may elect not to renew this Policy by mailing or delivering written notice of nonrenewal to the **First Named Insured's** last mailing address known to the **Company**. The **Company** will mail or deliver the notice at least sixty (60) days before the expiration of the Policy.

If notice of cancellation or nonrenewal is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

## L. Authorization

The **First Named Insured** is responsible for assurance of all premiums and Retentions. The **First Named Insured** will have exclusive authority to act on behalf of all other **Insureds** with respect to providing and receiving notices of cancellation or nonrenewal, receiving any return premium, and purchasing an Extended Reporting Period. In the event of a disagreement between any **Insureds**, the **First Named Insured** will have exclusive authority to act on behalf of all other **Insureds** with respect to negotiation of settlements and the decision to appeal or not to appeal any judgment.

## M. Representations

By accepting this Policy, the **Named Insured** agrees:

1. the statements in the Application or Renewal Application for this insurance furnished to the **Company** are accurate and complete;
2. those statements furnished to the **Company** are representations the **Named Insured** made to the **Company** on behalf of all **Insureds**;
3. those representations are a material inducement to the **Company** to issue this Policy;
4. the **Company** has issued this Policy in reliance upon those representations;
5. this Policy embodies all agreements existing between the **Insured** and the **Company** or any of its agents relating to this insurance; and
6. the Application or Renewal Application, including any attachments, and all other information and materials submitted by or on behalf of the **Insureds** to the **Company** in connection with the **Company** underwriting this Policy, will be kept on file by the **Company** and deemed attached to this Policy as if physically attached to it.

## N. Severability

With regard to the information provided on any insurance Application, only facts pertaining to and knowledge possessed by any of the **First Named Insured's** Chairperson of the Board of Directors, President, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Risk Manager, in-house counsel or any person whose signature appears on the Application, shall be imputed to **Insured**.

In Witness Whereof, the **Company** has caused this Policy to be executed and attested, but this Policy will not be valid unless countersigned by a duly authorized representative of the **Company**.

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