

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DATA BREACH LIABILITY COVERAGE**

Various provisions in this coverage form restrict coverage. Read the entire coverage form carefully to determine rights, duties, and what is and is not covered.

Throughout this coverage form the words "you" and "your" refer to the "Named Insured" shown in the Declarations. The words "we", "us", and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section VIII – Definitions.

### **SECTION I – INSURING AGREEMENT**

1. "We" will pay those sums that the insured becomes legally obligated to pay as damages because of a "personal data breach" to which this insurance applies. "We" will have the right and duty to defend the insured against any "personal data breach suit" seeking those damages. However, "we" will have no duty to defend the insured against any "personal data breach suit" seeking damages for a "personal data breach" to which this insurance does not apply. "We" may, at "our" discretion, investigate any "personal data breach" and settle any claim or "personal data breach suit" that may result, but:
  - a. The amount "we" will pay for damages is limited as described in Section V – Limits of Insurance; and
  - b. "Our" right and duty to defend ends when "we" have used up the applicable limit of insurance in the payment of judgments or settlements under this Data Breach Liability Coverage.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for in this Data Breach Liability Coverage.

2. This insurance applies to "personal data breach suits" only if:
  - a. The "personal data breach" takes place in the "coverage territory";
  - b. "You" report the "personal data breach suit" to "us" as soon as practicable after notice is received by "you"; and
  - c. The "personal data breach suit" arose out of a "personal data breach" covered under "our" Data Breach Expenses Coverage where Notification to Affected Individuals and Services to Affected Individuals were paid for by "us" and provided by service providers approved by "us".

3. A "personal data breach" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section IV – Who Is An Insured receives notice of a "personal data breach" or "personal data breach suit":
  - a. Reports all, or any part, of the "personal data breach" to "us" or any other insurer;
  - b. Receives a written or verbal demand or claim for damages because of a "personal data breach";
  - c. Becomes aware by any other means that a "personal data breach" has occurred or begun to occur; or
  - d. All "personal data breach suits" arising out of one "personal data breach" shall be deemed to be made on the date that the first "personal data breach suit" is brought. All "personal data breach suits" asserted in a class action suit will be treated as arising out of a single "personal data breach".

### **SECTION II – EXCLUSIONS**

This insurance does not apply to:

1. "Your" intentional or willful complicity in a "personal data breach".
2. Any criminal; fraudulent; dishonest act, error, or omission; or any intentional or knowing violation of the law by "you".
3. Any "personal data breach" occurring prior to the first inception date of this Data Breach Liability Coverage regardless of when the first "personal data breach" was discovered by "you".
4. Costs to correct any deficiency in "your" systems, procedures, or physical security that may have contributed to a "personal data breach".
5. Any fines or penalties including, but not limited to, fees or surcharges from affected financial institutions.
6. Any costs arising out of criminal investigations or proceedings.
7. Any threat, extortion, or blackmail including, but not limited to, ransom payments and private security assistance.
8. Any virus or other "malicious code" that is or becomes named and recognized by the CERT Coordination Center, McAfee, Secunia, Symantec, or other comparable third party monitors of malicious code activity.

9. "Your" reckless disregard for the security of "personally identifying information" in "your" care, custody, or control.
10. "Your" purposeful off-shoring of the processing, storage, or other use of data containing "personally identifying information" to a jurisdiction outside of the "coverage territory".
11. Seizure or destruction by order of governmental authority.
12. War:
  - a. War including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
13. Nuclear reaction or radiation, or radioactive contamination.
14. Any "personal data breach suit" made against "you" by a subsidiary or entity owned whole or in part by "you".
15. Any rendering of, or failure to render any professional services for others.
16. Any property damage directly relating to a "personal data breach".

### **SECTION III – SUPPLEMENTARY PAYMENTS**

"We" will pay, with respect to any claim "we" investigate or settle, or any "personal data breach suit" "we" defend against an insured:

1. All expenses "we" incur.
2. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. "We" do not have to furnish these bonds.
3. All reasonable expenses for lodging and meals incurred by an insured for deposition appearances and court proceedings (at "our" request to assist "us" in the investigation or defense of the claim or "personal data breach suit", including actual loss of earnings up to \$250 per day because of time off from work).
4. All court costs assessed against an insured in the "personal data breach suit".
5. Prejudgment interest awarded against an insured on that part of the judgment "we" pay. If "we" make an offer to pay the applicable limit of insurance, "we" will not pay any prejudgment interest based on that period of time after the offer.
6. All interest on the full amount of any judgment that accrues after entry of the judgment and before "we" have

paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

### **SECTION IV – WHO IS AN INSURED**

If you are designated in the Declarations as:

1. An individual, "you" and "your" spouse are insureds, but only with respect to the conduct of a business of which "you" are the sole owner.
2. A partnership or joint venture, "you" are an insured. "Your" members, "your" partners, and their spouses are also insureds, but only with respect to the conduct of "your" business.
3. A limited liability company, "you" are an insured. "Your" members are also insureds, but only with respect to the conduct of "your" business. "Your" managers are insureds, but only with respect to their duties as "your" managers.
4. An organization other than a partnership, joint venture, or limited liability company, "you" are an insured. "Your" executive officers and directors are insureds, but only with respect to their duties as "your" officers or directors.
5. A trust, "you" are an insured. "Your" trustees are also insureds, but only with respect to their duties as trustees.

### **SECTION V – LIMITS OF INSURANCE**

1. The Limits of Insurance shown in the Declarations for this Data Breach Liability Coverage and the rules below fix the most "we" will pay regardless of the number of:
  - a. Persons insured under this coverage;
  - b. Claims made or "personal data breach suits" brought; or
  - c. Persons or organizations making claims or bringing "personal data breach suits".
2. The Data Breach Liability Coverage Limit of Insurance is the most "we" will pay for the sum of all damages to one or more persons or organizations as a result of all "personal data breaches" occurring during the policy period.

### **SECTION VI – DEDUCTIBLE**

No deductible applies to this Data Breach Liability Coverage.

### **SECTION VII – CONDITIONS**

#### **1. BANKRUPTCY OR INSOLVENCY**

Bankruptcy or insolvency of "you" or "your" estate will not relieve "us" of "our" obligations under this Data Breach Liability Coverage.

#### **2. DUE DILIGENCE**

"You" agree to use due diligence to prevent and mitigate costs covered under this Data Breach Liability Coverage.

This includes, but is not limited to, complying with reasonable and industry accepted protocols for:

- a. Providing and maintaining appropriate physical security for "your" premises, computer systems, and hard copy files, electronic media, handheld devices, and storage devices;
- b. Providing and maintaining appropriate computer, network, and Internet security;
- c. Maintaining and updating at appropriate intervals backups of computer data;
- d. Protecting transactions, such as processing credit card, debit card, and check payments;
- e. Appropriate disposal of files containing "personally identifying information", including shredding hard copy files and destroying physical media used to store "electronic data";
- f. Providing appropriate security awareness training on "your" physical, electronic, and procedural security measures; and
- g. Providing reasonable and necessary notification monitoring and other services.

### 3. **NO BENEFIT TO BAILEE**

No bailee, having custody of "personally identifying information", shall benefit, directly or indirectly, from this insurance.

### 4. **OTHER INSURANCE**

If other valid and collectible insurance is available to "you" for a loss "we" cover under this coverage, "our" obligations are limited as follows:

#### a. **Primary Insurance**

This insurance is primary except when **b.** – Excess Insurance below applies. If this insurance is primary, "our" obligations are not affected unless any of the other insurance is also primary. Then, "we" will share with all that other insurance by the method described in **c.** – Method of Sharing below.

#### b. **Excess Insurance**

When this insurance is excess over any other Data Breach Liability coverage, "we" will have no duty under this "Data Breach Liability Coverage to defend "you" against any "personal data breach suit" if any other insurer has a duty to defend "you" against that "personal data breach suit". If no other insurer defends, "we" will undertake to do so, but "we" will be entitled to the insured's rights against all other insurers.

When this insurance is excess over other insurance, "we" will pay only "our" share of the amount of the loss, if any, that exceeds the sum of:

- 1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- 2) The total of all deductible and self-insured amounts under all that other insurance.

"We" will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the limits of insurance shown in the Declarations for this endorsement.

#### c. **Method of Sharing**

If all of the other insurance permits contribution by equal shares, "we" will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, "we" will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

### 5. **RECORDS**

"You" must keep proper records so that "we" can accurately determine the "affected individuals" of a "personal data breach".

### 6. **SETTLEMENTS**

With "your" written consent, "we" may settle a "personal data breach suit" in any way "we" consider reasonable. If "you" withhold consent, then "our" liability for damages is limited to what "we" would have paid as of the date of the proposed settlement. "You" assume any further responsibilities and expenses regarding settlement of the "personal data breach suit".

### 7. **YOUR DUTIES AFTER A PERSONAL DATA BREACH**

In case of a covered "personal data breach", "you" must perform the following duties:

- a. Give "us" prompt notice of the "personal data breach";
- b. Take all reasonable steps to protect "personally identifying information" remaining in "your" care, custody, or control;
- c. Preserve all evidence of the "personal data breach";
- d. Permit "us" to inspect the property and records proving the "personal data breach";
- e. Produce for examination, with permission to copy, all books of accounts, bills, invoices, receipts, and other vouchers as "we" may reasonably require;

- f. Send "us", within 60 days after the "personal data breach", "your" signed and sworn proof of loss statement which includes:
- 1) Time and cause of the "personal data breach";
  - 2) Other policies which may cover the "personal data breach";
  - 3) The method of the "personal data breach";
  - 4) The approximate number of "affected individuals" compromised as a result of the "personal data breach";
  - 5) A detailed description of the type and nature of the information that was compromised;
  - 6) Whether or not the information was encrypted and if so, the level of encryption;
  - 7) Whether or not law enforcement has been notified;
  - 8) If available, the states in which the "affected individuals" are domiciled; and
  - 9) If available who received the "personally identifying information" as a result of the "personal data breach";
- g. Cooperate with "us" in "our" investigation of a "personal data breach";
- h. Separately submit to examinations under oath and sign a transcript of the same; and
- i. Agree to help "us" enforce any right of recovery against any party liable for the "personal data breach" under this policy. This will not apply if "you" have waived recovery rights in writing prior to a "personal data breach".
- er, specific individuals may qualify as "affected individuals" for another reason, such as being an employee of "yours".
- b. If "you" store, process, transmit, or transport records, the individual whose "personally identifying information" "you" are storing, processing, transmitting, or transporting for another entity do not qualify as "affected individuals". However, specific individuals may qualify as "affected individuals" for another reason, such as being an employee of "yours".
  - c. "You" may have operations, interests, or properties that are not insured under this policy. Individuals who have a relationship with "you" through such other operations, interests, or properties do not qualify as "affected individuals". However, specific individuals may qualify as "affected individuals" for another reason, such as being an employee of "yours".
3. An "affected individual" may reside anywhere in the world but must be a citizen or legal alien of the United States (its territories and possessions), Puerto Rico, or Canada with a valid Social Security Number (SSN) or Social Insurance Number (SIN).
- "Coverage territory" means the United States (including its territories and possessions), Puerto Rico, and Canada.
  - "Electronic data" means information, facts, or computer programs stored as or on, created or used on, or transmitted to or from software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices, or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve, or send data.
  - "Identity theft" means the fraudulent use of "personally identifying information". This includes fraudulently using such information to establish credit accounts, secure loans, enter into contracts, or commit crimes.

## SECTION VIII – DEFINITIONS

- "Affected Individual" means any person who is "your" current, former, or prospective customer, client, member, director, or employee and whose "personally identifying information" is lost, stolen, accidentally released, or accidentally published by a "personal data breach" covered under this endorsement. This definition is subject to the following provisions:
  1. "Affected individual" does not include any business or organization. Only an individual person may be an "affected individual".
  2. An "affected individual" must have a direct relationship with "your" interests as an insured under this policy. The following are examples of individuals who would not meet this requirement:
    - a. If "you" aggregate or sell information about individuals as part of "your" business, the individuals about whom "you" keep such information do not qualify as "affected individuals". However,
- "Identity theft" does not include the fraudulent use of a business name, d/b/a, or any other method of identifying a business activity.
- "Malicious code" means any loss of data that results from a worm, virus, Trojan, BOT, or other piece of computer code, software, spyware, or malware that is used to collect, destroy, alter, retrieve, or affect computer software and/or data on a computer system, network, storage device, Smartphone, or other peripheral device; and on the date the "personal data breach" occurred is named and recognized by the CERT Coordination Center or any oth-

er industry acceptable third party antivirus, antimalware, or other solution that monitors malicious code activity.

- "Personal data breach" means the loss, theft, accidental release, or accidental publication of "personally identifying information" regarding one or more "affected individuals", if such loss, theft, accidental release, or accidental publication has or could reasonably result in the fraudulent use of such information. This definition is subject to the following provisions:
    1. At the time of the loss, theft, accidental release, or accidental publication, the "personally identifying information" must be in "your" direct care, custody, or control.
    2. "Personal data breach" does not include the loss, theft, release, or publication of information that is in the care, custody, or control of a third party to whom "you" have directly or indirectly turned over such information for any reason. This includes but is not limited to storage, processing, transmission, or transportation of such information.
    3. "Personal data breach" includes disposal or abandonment of "personally identifying information" without appropriate safeguards such as shredding or destruction, subject to the following provisions:
      - a. "Your" failure to use appropriate safeguards must be accidental and not reckless or deliberate; and
      - b. Such disposal or abandonment must take place during the time period for which this Data Breach Liability Coverage is effective.
    4. "Personal data breach" includes situations where there is a reasonable cause to suspect that such "personally identifying information" has been lost, stolen, accidentally released, or accidentally published, even if there is no firm proof.
    5. All "personal data breaches" that are discovered at the same time or arise from the same cause will be considered one "personal data breach".
  - "Personal data breach suit" means written notice or demand for monetary damages for a covered "personal data breach".
  - "Personally identifying information" means information that could be used to commit fraud or other illegal activity involving the credit or identity of an "affected individual". This includes but is not limited to social security numbers, driver's license numbers, credit card numbers, bank account information, or any other account numbers correlated with names and addresses.
- "Personally identifying information" does not mean or include information that is otherwise available to the public, such as names and addresses with no correlated social security numbers or account numbers.