

The Coverage Limits displayed on Page 2 of this specimen endorsement are for presentation purposes only. The information provided on the endorsement is representative of the limits of liability that will be provided in most states for a solo dentist policy. Other limits of liability will apply in some states. Different limits may also apply based on the size of the insured dental group.



THIS ENDORSEMENT CHANGES YOUR POLICY—PLEASE READ IT CAREFULLY.

First Named Insured:

Policy Number:

Policy Period:

Endorsement Effective Date:

To:

Date Issued:

CYBERGUARD AND MEDIGUARD COVERAGE

NOTICES:

CLAIMS-MADE AND REPORTED NOTICE: Insuring Agreements a, c, d, e, and f of this Endorsement provide coverage on a claims-made and reported basis and apply only to *Claims* first made against the Insured during the *Policy Period* or the *Extended Reporting Period* (if applicable) and reported to **us** during the *Policy Period* or as otherwise provided in Section VI item c. of this Endorsement.

INCIDENT DISCOVERED AND REPORTED NOTICE: Insuring Agreements b, g, and h of this Endorsement provide first party coverage on an incident discovered and reported basis and apply only to incidents first discovered by the Insured and reported to **us** during the *Policy Period*.

MEDIGUARD NOTICE: Insuring Agreement e of this Endorsement does not apply to Insureds in the state of Maryland.

Section I: CyberGuard and MediGuard Summary

- a. Only the following persons or entities described below are Insureds under this Endorsement:
1. the *First Named Insured* as listed in the Declarations Page;
 2. applicable to Insuring Agreement e: Each *Named Insured*;
 3. applicable to all Insuring Agreements except e: Each *Named Insured* licensed to practice as a Doctor of Dental Surgery (DDS) or Doctor of Dental Medicine (DMD);
 4. a professional dental corporation owned solely by the *First Named Insured* or a *Named Insured*;
 5. if the *Named Insured* is a partnership, professional dental corporation or professional association, any officer, director, partner, member, shareholder, or owner of the *Named Insured*, but only with respect to the performance of his or her duties as such on behalf of the *First Named Insured*;
 6. the *First Named Insured's* or any *Named Insured's Employees*, students, and *Volunteers* (except dentists), but only while such persons are acting within the capacity and scope of their duties as such for the *First Named Insured*. Such persons are only *Named Insureds* under Insuring Agreements a, c, d, and e of this Endorsement; and

7. any person who previously qualified as a *Named Insured* under paragraphs 4 and 5 above, but only with respect to his or her duties as such on behalf of the *First Named Insured*.

b. Coverage Limits:

The Incident Limits described below apply separately to each *Named Insured*.

Incident Limit of Liability applicable to Insuring Agreements a, b, c, d, f, g, and h	\$50,000
Incident Limit of Liability applicable to Insuring Agreement e	\$25,000
Number of <i>Notified Individuals</i> applicable to Insuring Agreement b.3	5,000

The Aggregate Limits described below apply to all *Named Insureds* combined.

Aggregate Limit of Liability applicable to Insuring Agreements a, b, c, d, f, g, and h	\$50,000
Aggregate Limit of Liability applicable to Insuring Agreement e	\$75,000
Maximum Number of <i>Notified Individuals</i> applicable to Insuring Agreement b.3	5,000

Retentions

<i>Computer Expert Services, Legal Services, and Public Relations and Crisis Management Expenses</i> (applicable to Insuring Agreement b)	\$1,000
Notifications (applicable to Insuring Agreement b.3)	50

The Aggregate Limits of Liability provided by this Endorsement is **our** combined total liability payable under this Endorsement.

Neither the inclusion of more than one *Named Insured* under this Endorsement, nor the making of *Claims* by more than one person or entity shall increase the Limit of Liability.

c. **We** shall not be obligated to pay for or to undertake or continue defense of any *Suit* or proceeding after the Aggregate Limit of Liability has been exhausted or after deposit of the Aggregate Limit of Liability in a court of competent jurisdiction. Upon such payment, **we** shall have the right to withdraw from the further defense of any *Claim* under this Endorsement by tendering control of said defense to the *First Named Insured*.

d. The amount stated above is the maximum total number of *Notified Individuals* to whom notification will be provided or attempted for all incidents or series of related incidents giving rise to an obligation to provide *Notification Services, Call Center Services or Breach Resolution and Mitigation Services*.

The Aggregate Limit of Liability stated above is the Aggregate Limit of Coverage for all *Computer Expert Services, Legal Services and Public Relations and Crisis Management Services* combined.

e. **We** shall not be obligated to provide *Privacy Breach Response Services*, including any computer security expert costs, attorney's fees, notifications, *Call Center Services*, credit monitoring, identity

monitoring or any other services after the number of *Notified Individuals* under Insuring Agreement b.3 reaches an aggregate of the number of *Notified Individuals* stated above.

- f. Unless otherwise specified in this Endorsement, *Privacy Breach Response Services* will be provided by the service providers listed in the *Information Packet*.
- g. To the extent that costs to provide *Privacy Breach Response Services* are covered pursuant to a *Claim*, such costs shall be covered solely under Insuring Agreement a.

Section II: Insuring Agreements

a. Information Security & Privacy Liability

To pay on behalf of a *Named Insured*, *Damages and Claims Expenses*, in excess of the Retention, which the *Named Insured* shall become legally obligated to pay because of any *Claim*, including a *Claim* for violation of a *Privacy Law*, for:

1. theft, *Loss*, or *Unauthorized Disclosure* of *Personally Identifiable Information* or *Third Party Information* that is in the care, custody, or control of the *Named Insured*, or a third party for whose theft, *Loss*, or *Unauthorized Disclosure* of *Personally Identifiable Information* or *Third Party Information* the *Named Insured* is legally liable; and such theft, *Loss*, or *Unauthorized Disclosure* involves *Personally Identifiable Information* of any patient to which the *Named Insured* has provided or is providing *Dental Professional Services* on or after their *Retroactive Date*, or any person who is legally responsible for the patient or for payment for *Dental Professional Services* rendered to the patient;
2. one or more of the following acts or incidents that directly result from a failure of *Computer Security* to prevent a *Security Breach*; and such act involves *Personally Identifiable Information* of any patient to which the *Named Insured* has provided or is providing *Dental Professional Services* on or after their *Retroactive Date* or any person who is legally responsible for the patient or for payment for *Dental Professional Services* rendered to the patient;
 - i. the alteration, corruption, destruction, deletion, or damage to data stored on *Computer Systems*;
 - ii. the failure to prevent transmission of *Malicious Code* from *Computer Systems* to computer or network systems that are not owned, operated or controlled by a *Named Insured*; or
 - iii. the participation by the *Named Insured's Computer System* in a denial of service attack directed against computer or network systems that are not owned, operated, or controlled by a *Named Insured*;
3. the *Named Insured's* failure to timely disclose an incident described in Insuring Agreement a.1 or a.2 in violation of any *Breach Notice Law*, which involves *Personally Identifiable Information* of any patient to which the *Named Insured* has provided or is providing *Dental Professional Services* on or after their *Retroactive Date* or any person who is legally responsible for the patient or for payment for *Dental Professional Services* rendered to the patient;
4. failure by the *Named Insured* to comply with that part of a *Privacy Policy* that specifically:

- i. prohibits or restricts the *Named Insured's* disclosure, sharing, or selling of a person's *Personally Identifiable Information*;
- ii. requires the *Named Insured* to provide access to *Personally Identifiable Information* or to correct incomplete or inaccurate *Personally Identifiable Information* after a request is made by a person; or
- iii. mandates procedures and requirements to prevent the *Loss of Personally Identifiable Information*;

provided the *Named Insured* must, at the time of such acts, errors, or omissions have in force a *Privacy Policy* that addresses those subsections above that are relevant to such *Claim* and that such act, error, or omission that constitutes such failure to comply with a *Privacy Policy* must involve *Personally Identifiable Information* of any patient to whom the *Named Insured* has provided or is providing *Dental Professional Services* on or after their *Retroactive Date* or any person who is legally responsible for the patient or for payment for *Dental Professional Services* rendered to the patient; and the *Named Insured* must, at the time of such acts, errors, or omissions have in force a *Privacy Policy* that addresses those subsections above that are relevant to such *Claim*; or

5. failure by the *Named Insured* to administer (a) an identity theft prevention program required by regulations and guidelines promulgated pursuant to 15 U.S.C. §1681m(e), as amended, or (b) an information disposal program required by regulations and guidelines promulgated pursuant to 15 U.S.C. §1681W, as amended.

All acts, incidents, failures to timely disclose, failures to comply, thefts, *Losses*, errors, or omissions described in Insuring Agreement a must first take place on or after their *Retroactive Date* and before the end of the *Policy Period* to be eligible for coverage under Insuring Agreement a.

b. *Privacy Breach Response Services*

To provide *Privacy Breach Response Services* to the *Named Insured* in excess of the Retention because of an incident described in Insuring Agreement a.1 or a.2.

Privacy Breach Response Services means the following:

1. *Computer Expert Services*;
2. *Legal Services*;
3. *Notification Services* to provide notification to:
 - i. individuals who are required to be notified by the *Named Insured* under the applicable *Breach Notice Law*; or

- ii. in **our** discretion, individuals affected by an incident in which their *Personally Identifiable Information* has been subject to theft, *Loss*, or *Unauthorized Disclosure* in a manner which compromises the security or privacy of such individual by posing a significant risk of financial, reputational, or other harm to the individual;

4. *Call Center Services*;
5. *Breach Resolution and Mitigation Services*; and
6. *Public Relations and Crisis Management Expenses*.

Privacy Breach Response Services also includes assistance from the BBR Services Team and access to education and loss control information at no charge.

Privacy Breach Response Services will be provided subject to the terms and conditions of this Endorsement and the *Information Packet* and shall not include any internal salary or overhead expenses of the *Named Insured*.

c. Regulatory Defense and Penalties

To pay on behalf of the *Named Insured*, *Claims Expenses* and *Penalties* in excess of the Retention, which the *Named Insured* shall become legally obligated to pay because of any *Claim* in the form of a *Regulatory Proceeding*, caused by an incident described in Insuring Agreements a.1, a.2, or a.3 that first takes place on or after their *Retroactive Date* and before the end of the *Policy Period*.

d. Website Media Content Liability

To pay on behalf of the *Named Insured*, *Damages* and *Claims Expenses*, in excess of the Retention, which the *Named Insured* shall become legally obligated to pay for one or more of the following acts first committed on or after their *Retroactive Date* and before the end of the *Policy Period* in the course of the *Named Insured's* display of *Media Material* on its web site or on social media web pages created and maintained by or on behalf of the *Named Insured*:

1. defamation, libel, slander, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
2. a violation of the rights of privacy of an individual, including false light and public disclosure of private facts;
3. invasion or interference with an individual's right of publicity, including commercial appropriation of name, persona, voice, or likeness;
4. plagiarism, piracy, misappropriation of ideas under implied contract;
5. infringement of copyright;
6. infringement of domain name, trademark, trade name, trade dress, logo, title, metatag, or slogan, service mark, or service name; or

7. improper deep-linking or framing within electronic content.

e. MediGuard

To pay on behalf of the *Named Insured*, *Damages* and *Claims Expenses*, in excess of the Retention, which the *Named Insured* shall become legally obligated to pay resulting from any *Claim* first made against any *Named Insured* during the *Policy Period* or *Extended Reporting Period* (if applicable) and reported in writing to **us** during the *Policy Period* or as otherwise provided in Section VI. item b. of this Endorsement arising out of any *Wrongful Act* or *Disciplinary Proceeding*.

f. Cyber Extortion

To indemnify the *Named Insured* for *Cyber Extortion Loss*, in excess of the Retention, incurred by the *Named Insured* as a direct result of an *Extortion Threat* first made against the *Named Insured* during the *Policy Period* by a person, other than the *Named Insured's Employees*, directors, officers, principals, trustees, governors, *Managers*, members, management committee members, members of the management board, partners, contractors, outsourcers, or any person in collusion with any of the foregoing. Coverage under this Insuring Agreement is subject to the applicable conditions and reporting requirements, including those set forth in Section VI, item h., *Obligations In The Event of an Extortion Threat*.

g. First Party Data Protection

To indemnify the *Named Insured* for *Data Protection Loss*, in excess of the Retention, incurred by the *Named Insured* as a direct result of:

1. alteration, corruption, destruction, deletion, or damage to a *Data Asset*, or
2. inability to access a *Data Asset*,

that first takes place during the *Policy Period* and is directly caused by a failure of *Computer Security* to prevent a *Security Breach*; provided that such *Security Breach* must take place on or after their *Retroactive Date* and before the end of the *Policy Period*.

h. First Party Network Business Interruption

To indemnify the *Named Insured* for *Business Interruption Loss*, in excess of the applicable Retention, incurred by the *Named Insured* during the *Period of Restoration* or the *Extended Interruption Period* (if applicable) as a direct result of the actual and necessary interruption or suspension of *Computer Systems* that first takes place during the *Policy Period* and is directly caused by a failure of *Computer Security* to prevent a *Security Breach*; provided that such *Security Breach* must first take place on or after their *Retroactive Date* and before the end of the *Policy Period*.

Section III: Defense and Settlement of Claims

a. We shall have the right and duty to defend:

- i. any *Claim* against the *Named Insured* seeking *Damages* even if any of the allegations of the *Claim* are groundless, false, or fraudulent; or

ii. under Insuring Agreement c, any *Claim* in the form of a *Regulatory Proceeding*.

Defense Counsel shall be mutually agreed upon between the *Named Insured* and **us**, but in the absence of such agreement, **our** decision shall be final.

- b.** With respect to any *Claim* against the *Named Insured* seeking *Damages* or *Penalties* **we** will pay *Claims Expenses* incurred with **our** prior written consent. The Limit of Liability available to pay *Damages* and *Penalties* shall be reduced and may be completely exhausted by payment of *Claims Expenses*. *Damages*, *Penalties*, and *Claims Expenses* shall be applied against the Retention payable by the *First Named Insured*.
- c.** If the *Named Insured* shall refuse to consent to any settlement or compromise recommended by **us** and acceptable to the claimant and elects to contest the *Claim*, **our** liability for any *Damages*, *Penalties* and *Claims Expenses* shall not exceed:
1. the amount for which the *Claim* could have been settled, less the remaining Retention, plus the *Claims Expenses* incurred up to the time of such refusal; or
 2. the applicable Limit of Liability, whichever is less, and **we** shall have the right to withdraw from the further defense thereof by tendering control of said defense to **you**. The portion of any proposed settlement or compromise that requires **you** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not *Damages* (or *Penalties* for *Claims* covered under Insuring Agreement c) shall not be considered in determining the amount for which a *Claim* could have been settled.
 3. with respect to Insuring Agreement e only and subject to the Limit of Liability of this Endorsement, **we** shall reimburse the *Named Insured* for all reasonable expenses, other than loss of earnings, incurred at **our** request.

Section IV: Exclusions

The coverage under this Endorsement does not apply to any *Claim* or *Loss*;

- a.** For, arising out of or resulting from any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written, provided, that this exclusion will not apply:
1. only with respect to the coverage provided pursuant to Insuring Agreement a.1, to any obligation of the Insured Entity to maintain the confidentiality or security of *Personally Identifiable Information* or of *Third Party Information*;
 2. only with respect to Insuring Agreement d.4, for misappropriation of ideas under implied contract;
 3. to the extent the *Named Insured* would have been liable in the absence of such contract or agreement; or
 4. to Insuring Agreement e.
- b.** For, arising out of or resulting from any actual or alleged false, deceptive, or unfair trade practices; however this exclusion does not apply to:

1. any *Claim* covered under Insuring Agreements a.1, a.2, a.3, or c; or
 2. the providing of *Privacy Breach Response Services* covered under Insuring Agreement b;
 3. that results from a theft, *Loss* or *Unauthorized Disclosure of Personally Identifiable Information* provided that no member of the *Control Group* participated or is alleged to have participated or colluded in such theft, *Loss*, or *Unauthorized Disclosure*.
- c. For, arising out of or resulting from any employment practices, including but not limited to any actual or alleged refusal to employ any person, termination of employment, demotion, reassignment, discipline, discrimination, or harassment, whether such *Claim* is brought by an *Employee*, former *Employee*, applicant for employment, or relative or domestic partner of such person; except this exclusion does not apply to Insuring Agreement e.
- d. For, arising out of or resulting from the actual or alleged unlawful collection, acquisition, or retention of *Personally Identifiable Information* (except as otherwise covered under Insuring Agreement a.5) or other personal information by, on behalf of, or with the consent or cooperation of the Insured Entity; or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (e.g. opt-in or opt-out) from the collection, disclosure, or use of *Personally Identifiable Information*; provided, that this exclusion shall not apply to the actual or alleged unlawful collection, acquisition, or retention of *Personally Identifiable Information* by a person or entity that is not a *Related Party* and without the knowledge of the *Named Insured*. This exclusion does not apply to Insuring Agreement e.
- e. For, arising out of or resulting from any act, error, omission, incident, failure of *Computer Security*, or *Security Breach* committed or occurring prior to the inception date of this Policy:
1. if any member of the *Control Group* on or before their *Retroactive Date* knew or could have reasonably foreseen that such act, error or omission, incident, failure of *Computer Security*, or *Security Breach* might be expected to be the basis of a *Claim* or *Loss*; or
 2. in respect of which any *Named Insured* has given notice of a circumstance, which might lead to a *Claim* or *Loss*, to the insurer of any other policy in force prior to the inception date of this Policy;
- This exclusion does not apply to Insuring Agreement e.
- f. For, arising out of, or resulting from any related or continuing acts, errors, omissions, incidents or events, where the first such act, error, omission, incident, or event was committed or occurred prior to their *Retroactive Date*;
- g. For, in connection with, or resulting from a *Claim* brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any other state, federal, local, or foreign governmental entity, in such entity's regulatory or official capacity; provided, this exclusion shall not apply to an otherwise covered *Claim* under Insuring Agreement c. or to the providing of *Privacy Breach Response Services* under Insuring Agreement b to the extent such services are legally required to comply with a *Breach Notice Law*;
- h. For, arising out of, or resulting from a *Claim* by or on behalf of one or more *Named Insureds* under this Endorsement against any other Insured or Insureds under this Endorsement; provided this

exclusion shall not apply to an otherwise covered *Claim* under Insuring Agreement a.1, a.2, or a.3 made by a current or former *Employee* of the Insured Entity;

i. For, arising out of or resulting from:

1. any *Claim* made by any business enterprise in which any *Named Insured* has greater than a fifteen percent (15%) ownership interest or made by any parent company or other entity which owns more than fifteen percent (15%) of the *Named Insured*; or
2. the *Named Insured's* activities as a trustee, partner, member, *Manager*, officer, director, or *Employee* of any employee trust, charitable organization, corporation, company or business other than that of the Insured Entity;

j. For, arising out of, or resulting from:

1. the actual or alleged obligation to make licensing fee or royalty payments;
2. any costs or expenses incurred or to be incurred by the *Named Insured* or others for the reprinting, reposting, recall, removal or disposal of any *Media Material* or any other information, content or media, including any media or products containing such *Media Material*, information, content or media;
3. any *Claim* brought by or on behalf of any intellectual property licensing bodies or organizations;
4. the actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services, cost guarantees, cost representations, or contract price estimates, the authenticity of any goods, products or services, or the failure of any goods or services to conform with any represented quality or performance;
5. any actual or alleged gambling, contest, lottery, promotional game, or other game of chance; or
6. any *Claim* made by or on behalf of any independent contractor, joint venture, or venture partner arising out of or resulting from disputes over ownership of rights in *Media Material* or services provided by such independent contractor, joint venture, or venture partner;

k. With respect to Insuring Agreements f, g, and h, arising out of or resulting from any criminal, dishonest, fraudulent, or malicious act, error, or omission, any *Security Breach*, *Extortion Threat*, or intentional or knowing violation of the law, if committed by any member of the *Control Group* or any person in participation or collusion with any member of the *Control Group*;

l. With respect to Insuring Agreements g and h, arising out of or resulting from:

1. any failure or malfunction of electrical or telecommunications infrastructure or services, provided that this exclusion shall not apply to any otherwise covered *Claim* or *Loss* arising out of failure of *Computer Security* to prevent a *Security Breach* that was solely caused by a failure or malfunction of telecommunications infrastructure or services under the *Named Insured's* direct operational control;

2. fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, act of God, or other physical event; or
3. any satellite failures;

m. With respect to Insuring Agreement f only:

1. arising out of or resulting from:
 - i. any threat to physically harm or kidnap any person; or
 - ii. any threat to harm, take, or transfer property other than any *Data Asset*, even if such threat is made in conjunction with a threat to a *Data Asset* or by carrying out such threat to, harm, theft, or transfer, a *Data Asset* may be damaged, corrupted, altered, taken, disseminated, or transferred;
2. if the existence of insurance for *Cyber Extortion Loss* provided by this Endorsement becomes public knowledge or is revealed to a person making an *Extortion Threat* through no fault of **us**.

n. Arising out of or resulting from any seizure, nationalization, confiscation, or destruction of *Computer Systems* or *Data Assets* by order of any governmental or public authority;

o. Arising out of or resulting from, directly or indirectly occasioned by, happening through or in consequence of: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority;

p. With respect to Insuring Agreement e arising out of relating to or otherwise with respect to Insureds in the state of Maryland;

q. With respect to Insuring Agreement e only:

1. based upon or arising out of:
 - i. any dishonest, fraudulent, criminal, intentional, or malicious act by any *Named Insured*;
 - ii. any willful violation of any law, statute, ordinance, rule, or regulation by any *Named Insured*; or
 - iii. any *Named Insured* gaining any profit, remuneration, or advantage to which such *Named Insured* was not legally entitled.

This exclusion shall not apply to any *Claim* brought under any federal or state statute, regulation or rule based on negligent and reckless conduct. For the purposes of determining the applicability of this exclusion, no *Wrongful Act* of any *Named Insured* shall be imputed to any other *Named Insured*.

2. arising out of any actual or alleged act, error, or omission in the rendering of or failure to render *Dental Services* by any *Named Insured*, except with respect to:

- i. any allegations of billing for *Dental Services* which were not rendered or were not medically necessary; or
 - ii. any allegations of a negligent or reckless act, error, or omission by a *Named Insured* in violation of the Emergency Medical Treatment and Labor Act (“EMTALA”) and any amendments thereto, or any rules or regulations promulgated thereunder.
3. for actual or alleged libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of tangible property (including loss of use thereof).
4. arising out of the actual or alleged publication or utterance of libel or slander or other defamatory or disparaging material, or a publication or utterance in violation of an individual’s right to privacy.
5. arising out of actual or alleged plagiarism, misappropriation of likeness, breach of confidence, or misappropriation or infringement of any intellectual property right, including patent, trademark, trade secret, trade dress, and copyright.
6. based upon an express or implied warranty or guarantee, or breach of contract in respect of any agreement to perform work for a fee.
7. arising out of employment discrimination, termination or other wrongful employment acts in violation of any municipal, state or federal civil rights law, regulation, or ordinance.
8. arising out of any actual or alleged ownership, operation, use, maintenance, loading, or unloading of any motor vehicle, trailer, watercraft, aircraft, or helipad.
9. arising out of any actual or alleged bodily injury, sickness, disease, or death to any *Employee* of any *Named Insured* arising out of and in the course of employment by the *First Named Insured*; or any obligation for which the *First Named Insured* in its capacity as an employer and/or its insurer may be held liable under any workers’ compensation, unemployment compensation, disability benefits law, or any similar law.
10. arising out of the Employment Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto.
11. arising out of or relating to any liability under any contract or agreement, whether written or oral, unless such liability would have attached to the *Named Insured* in the absence of such contract or agreement.
12. arising out of any actual or alleged:
 - i. insolvency, bankruptcy, conservatorship, rehabilitation, receivership, liquidation, or financial inability to pay of:
 - a. any *Named Insured* acting as an insurer or reinsurer; or
 - b. any other insurer, reinsurer, self-insurer, third party payor, managed care organization, health care plan, or other person or entity;

- ii. failure to obtain, effect, or maintain any form, policy, plan or program of insurance, stop loss or provider excess coverage, reinsurance, self-insurance, suretyship, or bond;
 - iii. commingling or mishandling of funds; or
 - iv. failure to collect or pay premiums, commissions, brokerage charges, fees or taxes.
13. for which any *Named Insured* has given notice to any *Government Entity*, insurer of any other policy or self-insurance in force prior to the *Effective Date* of this Policy, including notice of any circumstance which might lead to a *Claim* or *Loss*.
14. for which any *Named Insured* has given notice to a *Government Entity* during the *Policy Period* and has not provided notice to **us**, including notice of any circumstance which might lead to a *Claim* or *Loss*.
15. against any subsidiary designated in the schedule or its past, present, or future *Employees*, directors, officers, trustees, review board or committee members, or *Volunteers* acting in their capacity as such, which are based upon, arise out of, directly or indirectly result from, are in consequence of, or in any way involve any fact, circumstance, situation, transaction, event, or *Wrongful Act* or series of facts, circumstances, situations, transactions, events or *Wrongful Acts* happening before the date such entity became a subsidiary.
16. against any *Named Insured* by any other *Named Insured*. This provision shall not apply to any *Claim* brought by a qui tam plaintiff or brought under the False Claims Act (31 U.S.C. §3729 et seq.) or any similar state or local statute, ordinance or regulation.
17. based upon or arising out of any *Named Insured* gaining any profit, remuneration or advantage to which such *Named Insured* was not legally entitled.
18. arising from costs of complying with physical modifications to any premises or any changes to the *Named Insured's* usual business operations mandated by the Americans with Disabilities Act of 1990, including any amendments, or similar federal, state or local law.
19. associated with implementation of any compliance program or any policies, procedures or practices relating to participation as a provider of *Dental Services* to a managed care organization or under a healthcare benefit program, whether initiated voluntarily or pursuant to direction by, order of, or in settlement with a government body, hospital, healthcare facility, or managed care organization.
20. based upon or arising out of any actual or alleged violation of any federal, state, or local anti-trust, restraint of trade, unfair competition, anti-kickback or price fixing law, or any rules or regulations promulgated thereunder.
- i. that is covered, in whole or in part, by any portion of this Endorsement or would be covered by any portion of this Endorsement but for the exhaustion of the applicable Limits of Liability of such portion of this Endorsement; or
 - ii. for which **we** have a duty to pay or reimburse any defense costs or expenses pursuant under Insuring Agreement a or to providing *Privacy Breach Response Services* covered under Insuring Agreement b of the definition of *Claims Expenses*, in the section of the Endorsement titled Defense and *Claims Expenses* or for which **we** would have a duty to

pay or reimburse such defense costs or expenses but for the exhaustion of the applicable limits of Insuring Agreement a. or the *Privacy Breach Response Services* under Insuring Agreement b.

Section V: Definitions

- a. **Breach Notice Law** means any statute or regulation that requires notice to persons whose *Personally Identifiable Information* was accessed or reasonably may have been accessed by an unauthorized person;
- b. **Breach Resolution and Mitigation Services** means a credit monitoring, identity monitoring, or other solution selected from the products listed in the *Information Packet* and offered to *Notified Individuals*. The product offered to *Notified Individuals* will be selected by **us** in consultation with the Insured Entity and in accordance with the *Information Packet*.
- c. **Business Interruption Loss** means the total of:
1. *Income Loss* and *Extra Expense* during the *Period of Restoration*; and
 2. extended *Income Loss* if the *Income Loss* during the *Period of Restoration* is in excess of the applicable Retention.

Provided that *Business Interruption Loss* shall not mean and Insuring Agreement h shall not cover any of the following: *Loss* arising out of any liability to any third party for whatever reason; legal costs or legal expenses of any type; *Loss* incurred as a result of unfavorable business conditions, loss of market or any other consequential loss; or costs or expenses the Insured Entity incurs to identify and remove software program errors or vulnerabilities.

All *Business Interruption Loss* resulting from multiple covered interruptions or suspensions of *Computer Systems* that arise out of the same or a continuing *Security Breach*, from related or repeated *Security Breaches*, or from multiple *Security Breaches* resulting from a failure of *Computer Security* shall be deemed to be a single *Business Interruption Loss*; provided, however, that a separate *Waiting Period* shall apply to each *Period of Restoration*.

- d. **Call Center Services** means the provision of a call center to answer calls during standard business hours for a period of ninety (90) days following notification (or longer if required by applicable law or regulation) of an incident for which notice is provided pursuant to Insuring Agreement b.3 (*Notification Services*).

Call Center Services will be provided by a service provider selected by **us** in consultation with the Insured Entity from the list of service providers in the *Information Packet*.

- e. **Claim** means:
1. a written demand received by any *Named Insured* for money or services, including the service of a *Suit* or institution of regulatory or arbitration proceedings;
 2. with respect to coverage provided under Insuring Agreement c. only, institution of a *Regulatory Proceeding* against any *Named Insured*; and

3. a written request or agreement to toll or waive a statute of limitations relating to a potential *Claim* described in paragraph 1 above; and
4. with respect to coverage provided under Insuring Agreement a.1 only, a demand received by any *Named Insured* to fulfill the Insured Entity's contractual obligation to provide notice of an incident (or reasonably suspected incident) described in Insuring Agreement a.1 pursuant to a *Breach Notice Law*;
5. with respect to Insuring Agreement e only, any *Disciplinary Proceeding* or any written demand brought by or on behalf of any *Government Entity* or brought by a *Commercial Payor* against a *Named Insured* seeking *Damages* for a *Wrongful Act*, commencing an audit or investigation of a *Wrongful Act*, or seeking injunctive relief on account of a *Wrongful Act*. However, *Claim* does not include:
 - i. any customary or routine billing inquiry, including any cost report, request for documentation to support a submission for payment or reimbursement, or other audit/reconciliation conducted by or on behalf of a *Government Entity* or a *Commercial Payor*;
 - ii. any criminal proceeding against a *Named Insured*; or
 - iii. any written demand or civil proceeding brought by or on behalf of a private citizen against a *Named Insured*. This paragraph (iii.) shall not apply to a qui tam action commenced by a private citizen as the relator for a *Government Entity*.

Multiple Claims arising from the same or a series of related or repeated acts, errors, or omissions, or from any continuing acts, errors, omissions, or from multiple *Security Breaches* arising from a failure of *Computer Security*, shall be considered a single *Claim* for the purposes of this Endorsement, irrespective of the number of claimants or *Named Insureds* involved in the *Claim*. All such *Claims* shall be deemed to have been made at the time of the first such *Claim*.

f. ***Claims Expenses*** means:

1. reasonable and necessary fees charged by an attorney designated pursuant to **Section III: Defense and Settlement of Claims**, item a.;
2. all other legal costs and expenses resulting from the investigation, adjustment, defense and appeal of a *Claim*, *Suit*, or proceeding arising in connection therewith, or circumstance which might lead to a *Claim*, if incurred by **us**, or by the *Named Insured* with the prior written consent of **us**; and
3. the premium cost for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any *Claim* against a *Named Insured*; provided **we** shall have no obligation to appeal or to obtain bonds.

Claims Expenses do not include any salary, overhead, or other charges by the *Named Insured* for any time spent in cooperating in the defense and investigation of any *Claim* or circumstance that might lead to a *Claim* notified under this Endorsement, or costs to comply with any regulatory orders, settlements or judgments. In addition, with respect to Insuring Agreement e only, *Claims Expenses* do not include any:

1. fees, costs, or expenses incurred with respect to any criminal proceedings or actions against any *Named Insured*; or
2. any fees, costs, or expenses associated with the adoption and implementation of any corporate integrity agreement, compliance program, or similar provision regarding the operations of the *Named Insured's* business.

g. Commercial Payor means any entity which arranges for payment or reimbursement of expenses on account of *Dental Services*, including the following types of entities:

1. any entity, including an investor-owned insurance company, which indemnifies subscribers against expenses incurred for *Dental Services*;
2. any self-funded plan or any type of health plan where the risk for the cost of *Dental Services* is assumed, in whole or in part, by an employer rather than by an insurance company or managed care organization; or
3. any managed care organization, such as a health maintenance organization (“HMO”), preferred provider organization (“PPO”), point of service plan (“POS”), integrated delivery network (“IDN”), or any other type of entity which has all or some of the following characteristics:
 - i. negotiated discount arrangements with selected providers;
 - ii. explicit criteria for selection of providers;
 - iii. financial or program incentives or *Penalties* to enrollees who do not use selected providers; and
 - iv. provider risk-sharing arrangements.

h. Computer Expert Services means costs for:

1. a computer security expert to determine the existence and cause of an actual or suspected electronic data breach which may require the Insured Entity to comply with a *Breach Notice Law* and to determine the extent to which such information was accessed by an unauthorized person or persons; and
2. *Computer Expert Services* will be provided in accordance with the terms and conditions set forth in the *Information Packet* and will be provided by a service provider selected by the Insured Entity in consultation with **us** from the list of service providers in the *Information Packet*.

i. Computer Security means software, computer or network hardware devices, as well as the Insured Entity's written information security policies and procedures, the function or purpose of which is to prevent *Unauthorized Access or Use*, a denial of service attack against *Computer Systems*, infection of *Computer Systems* by *Malicious Code* or transmission of *Malicious Code* from *Computer Systems*. *Computer Security* includes anti-virus and intrusion detection software, firewalls, and electronic systems that provide access control to *Computer Systems* through the use of passwords, biometric, or similar identification of authorized users.

- j. **Computer Systems** means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:
1. operated by and either owned by or leased to the Insured Entity; or
 2. systems operated by a third party service provider and used for the purpose of providing hosted computer application services to the Insured Entity or for processing, maintaining, hosting, or storing the Insured Entity's electronic data, pursuant to written contract with the Insured Entity for such services.
- k. **Control Group** means the individuals holding the following positions in the Insured Entity: President; members of the Board of Directors; executive officers, including the Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer; General Counsel, staff attorneys employed by the Insured Entity; Chief Information Officer; Chief Security Officer; Chief Privacy Officer; *Manager*; and any individual in a substantially similar position or with substantially similar responsibilities as those referenced above.
- l. **Cyber Extortion Loss** means:
1. any *Extortion Payment* that has been made under duress by or on behalf of the *Named Insured* with **our** prior written consent, but solely to prevent or terminate an *Extortion Threat* and in an amount that does not exceed the covered *Damages and Claims Expenses* that would have been incurred had the *Extortion Payment* not been paid;
 2. an otherwise covered *Extortion Payment* that is lost in transit by actual destruction, disappearance or wrongful abstraction while being conveyed by any person authorized by or on behalf of the *Named Insured* to make such conveyance; and
 3. fees and expenses paid by or on behalf of the *Named Insured* for security consultants retained with **our** prior written approval, but solely to prevent or terminate an *Extortion Threat*.
- m. **Damages** means a monetary judgment, award or settlement; and any civil monetary amount, award, settlement, or civil fines and *Penalties* imposed by a *Government Entity*, and any interest accrued or imposed upon such amount, provided that the term *Damages* shall not include or mean:
1. future profits, restitution, disgorgement of unjust enrichment or profits by a *Named Insured*, or the costs of complying with orders granting injunctive or equitable relief;
 2. return or offset of fees, charges, or commissions charged by or owed to a *Named Insured* for goods or services already provided or contracted to be provided;
 3. any damages which are a multiple of compensatory damages, fines, taxes or loss of tax benefits, sanctions, or *Penalties*;
 4. punitive or exemplary damages, unless insurable by law in any applicable venue that most favors coverage for such punitive or exemplary damages;
 5. discounts, coupons, prizes, awards, or other incentives offered to the *Named Insured's* customers or clients;

6. liquidated damages to the extent that such damages exceed the amount for which the *Named Insured* would have been liable in the absence of such liquidated damages agreement; or
 7. any amounts for which the *Named Insured* is not liable or for which there is no legal recourse against the *Named Insured*.
 8. the return, disgorgement or restitution of fees, profits, charges, or benefit payments to any *Commercial Payor* or governmental health benefit payor or program, and any interest accrued or imposed thereon;
 9. any overpayments by any *Named Insured* to a *Government Entity* or *Commercial Payor* where payment is required by return or refund;
 10. any fees, costs, or expenses associated with the adoption and implementation of any security measures, corporate integrity agreement, compliance program, or similar provision regarding the operations of the *Named Insured's* business;
 11. matters deemed uninsurable by law;
 12. any costs associated, whether directly or indirectly, with the *Named Insured's* temporary or permanent loss of provider number(s) or the *Named Insured's* exclusion from participation in any *Commercial Payor* program or governmental health program, including, but not limited to, Medicare and/or Medicaid.
- n. **Data Asset** means any software or electronic data that exists in *Computer Systems* and that is subject to regular back up procedures, including computer programs, applications, account information, customer information, private or personal information, marketing information, financial information, and any other information maintained by the *Named Insured* in its ordinary course of business.
- o. **Data Protection Loss** means:
1. with respect to any *Data Asset* that is altered, corrupted, destroyed, deleted, or damaged the actual, reasonable and necessary costs and expenses incurred by the *Named Insured* to restore a *Data Asset* from back-ups or from originals or to gather, assemble, and recollect such *Data Asset* from other sources to the level or condition in which it existed immediately prior to its alteration, corruption, destruction, deletion, or damage; or
 2. with respect to any *Data Asset* that the *Named Insured* is unable to access, the lesser of the actual, reasonable and necessary costs and expenses incurred by the Insured Entity to:
 - i. regain access to such *Data Asset*; or
 - ii. restore such *Data Asset* from back-ups or originals or gather, assemble and recollect such *Data Asset* from other sources, to the level or condition in which it existed immediately prior to the *Named Insured's* inability to access it;

Provided that if such *Data Asset* cannot reasonably be accessed, restored, gathered, assembled or recollected, then *Data Protection Loss* means the actual, reasonable and necessary costs and expenses incurred by the *Named Insured* to reach this determination.

Provided further that *Data Protection Loss* shall not exceed, and shall not mean, any amount in excess of the amount by which the net profit before income taxes of the *Named Insured* would have decreased had the *Named Insured* failed to restore, gather, assemble, or recollect.

A *Data Protection Loss* will be deemed to occur at the time such alteration, corruption, destruction, deletion, or damage to or inability to access a *Data Asset* is first discovered by the *Named Insured*. All *Data Protection Loss* that arises out of the same or a continuing *Security Breach*, from related or repeated *Security Breaches*, or from multiple *Security Breaches* resulting from a failure of *Computer Security* shall be deemed to be a single *Data Protection Loss*.

Data Protection Loss shall not mean, and there shall be no coverage under Insuring Agreement f for:

1. costs or expenses incurred by the *Named Insured* to identify or remediate software program errors or vulnerabilities or update, replace, restore, gather, assemble, reproduce, recollect, or enhance a *Data Asset* or *Computer Systems* to a level beyond that which existed prior to the alteration, corruption, destruction, deletion, or damage of such *Data Asset*;
2. costs or expenses to research or develop any *Data Asset*, including but not limited to trade secrets or other proprietary information;
3. the monetary value of profits, royalties, or lost market share related to a *Data Asset*, including but not limited to trade secrets or other proprietary information or any other amount pertaining to the value of the *Data Asset*;
4. Loss arising out of any liability to any third party for whatever reason; or
5. legal costs or legal expenses of any type.

p. *Dental Services* means dental care, or treatment provided to any individual, including but not limited to, any of the following:

1. 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;
2. the furnishing of food or beverages in connection with such care; and
3. the provision of counseling or other social services in connection with such care.

q. *Dependent Business* means any third party service provider that provides hosted computer application services to the *Named Insured* or processes, maintains, hosts, or stores the *Named Insured's* electronic data, pursuant to written contract with the *Named Insured* for such services.

r. *Disciplinary Proceeding* means a civil regulatory proceeding by the *Government Entity* with jurisdiction to issue, revoke, suspend, or restrict the *Named Insured's* license to perform *Dental Services* including any action in a court of law for judicial review of any order or decision or such agency concerning the *Named Insured's* professional license. *Disciplinary Proceeding* includes any investigation by such an agency and any complaint filed with or by such an agency.

s. *Extended Interruption Period* means the period of time that:

1. begins on the date and time that the *Period of Restoration* ends; and
2. terminates on the date and time the *Named Insured* restores, or would have restored if the *Named Insured* had exercised due diligence and dispatch, the net profit before income taxes that would have been earned by the *Named Insured* directly through its business operations had the actual and necessary interruption or suspension of *Computer Systems* not occurred;

provided that in no event shall the *Extended Interruption Period* mean more than or exceed thirty (30) days.

t. **Extortion Payment** means cash, marketable goods or services demanded to prevent or terminate an *Extortion Threat*.

u. **Extortion Threat** means a threat to breach *Computer Security* in order to:

1. alter, destroy, damage, delete, or corrupt any *Data Asset*;
2. prevent access to *Computer Systems* or a *Data Asset*, including a denial of service attack or encrypting a *Data Asset* and withholding the decryption key for such *Data Asset*;
3. perpetrate a theft or misuse of a *Data Asset* on *Computer Systems* through external access;
4. introduce *Malicious Code* into *Computer Systems* or to third party computers and systems from *Computer Systems*; or
5. interrupt or suspend *Computer Systems*;

unless an *Extortion Payment* is received from or on behalf of the *Named Insured*.

Multiple related or continuing *Extortion Threats* shall be considered a single *Extortion Threat* for purposes of this Endorsement and shall be deemed to have occurred at the time of the first such *Extortion Threat*.

v. **Extra Expense** means reasonable and necessary expenses that are incurred by the *Named Insured* during the *Period of Restoration* to minimize, reduce, or avoid an *Income Loss*, provided:

1. that such expenses are over and above those the *Named Insured* would have incurred had no interruption or suspension of the *Computer Systems* occurred; and
2. do not exceed the amount by which the *Income Loss* in excess of the Retention and covered under this Endorsement is thereby reduced; and

provided that *Extra Expense* shall not mean, and there shall be no coverage under Insuring Agreement g for expenses incurred by the *Named Insured* to update, upgrade, enhance, or replace *Computer Systems* to a level beyond that which existed prior to the actual and necessary interruption or suspension of *Computer Systems*; or the costs and expenses incurred by the *Named Insured* to restore, reproduce, or regain access to any *Data Asset* that was altered, corrupted, destroyed, deleted, damaged, or rendered inaccessible as a result of the failure of *Computer Security* to prevent a *Security Breach*.

w. Government Entity means:

1. any department, agency, task force, or other organization created by any federal, state, or local law, executive order, ordinance, or rule;
2. any department, agency, task force, or other organization operated, funded or staffed, in whole or in part, by the federal or any state, county, or local government; or
3. any organization operating as a Medicare Integrity Program Contractor in accordance with 63 F.R. 1590 (March 20, 1998) and pursuant to section 1893 of the Social Security Act (42 U.S.C. § 1395ddd).

x. Income Loss means:

1. the net profit before income taxes that the *Named Insured* is prevented from earning through its business operations or the net loss before income taxes that the *Named Insured* is unable to avoid through its business operations as a direct result of the actual and necessary interruption or suspension of *Computer Systems*; and
2. fixed operating expenses incurred by the *Named Insured* (including payroll), but only to the extent that (a) such operating expenses must necessarily continue during the *Period of Restoration* (or *Extended Interruption Period*, if applicable); and (b) such expenses would have been incurred by the *Named Insured* had such interruption or suspension not occurred.

Income Loss shall be reduced to the extent the *Named Insured* or *Dependent Business* (if applicable) is able, with reasonable dispatch and due diligence, to reduce or limit such interruption or suspension of *Computer Systems* or conduct its business operations by other means.

In determining *Income Loss*, due consideration shall be given to the prior experience of the *Named Insured's* business operations before the beginning of the *Period of Restoration* and to the probable business operations the Insured Entity could have performed had no actual and necessary interruption or suspension occurred as result of a failure of *Computer Security* to prevent a *Security Breach*.

Income Loss will be calculated on an hourly basis based on the *Named Insured's* net profit (or loss) and fixed operating expenses as set forth above.

y. Information Packet means the *Information Packet*, which is incorporated into and forms part of this Endorsement and available at The Doctors Company website ([www.thedoctors.com/member area](http://www.thedoctors.com/memberarea)).

z. Legal Services means fees charged by an attorney:

1. to determine the applicability of and actions necessary for the Insured Entity to comply with *Breach Notice Laws* due to an actual or reasonably suspected theft, *Loss*, or *Unauthorized Disclosure of Personally Identifiable Information*;
2. to provide necessary legal advice to the Insured Entity in responding to actual or suspected theft, *Loss*, or *Unauthorized Disclosure of Personally Identifiable Information*; and

3. *Legal Services* will be provided in accordance with the terms and conditions set forth in the *Information Packet* and will be provided by an attorney selected by the Insured Entity in consultation with **us** from the list of attorneys in the *Information Packet*.

aa. Loss means *Damages, Claims Expenses, Penalties, Privacy Breach Response Services, Cyber Extortion Loss, Business Interruption Loss, and Data Protection Loss*.

bb. Malicious Code means any virus, Trojan horse, worm, or any other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.

cc. Manager means a manager of a limited liability company.

dd. Media Material means any information in electronic form, including words, sounds, numbers, images, or graphics and shall include advertising, video, streaming content, web-casting, online forum, bulletin board, and chat room content, but does not mean computer software or the actual goods, products, or services described, illustrated, or displayed in such *Media Material*.

ee. Notification Services means:

1. notification by first class mail or e-mail to United States; and
2. notification by first class mail or e-mail to individuals residing outside the United States, but only to the extent reasonably practicable.

Notification Services will be provided by a service provider selected by **us** in consultation with the Insured Entity from the list of service providers in the *Information Packet* and will be provided in accordance with the terms and conditions set forth in the *Information Packet*.

ff. Notified Individual means an individual person to whom notice is given or attempted to be given under Insuring Agreement b.3 pursuant to a *Breach Notice Law*.

gg. Penalties means:

1. any civil fine or money penalty payable to a governmental entity that was imposed in a *Regulatory Proceeding* by the Federal Trade Commission, Federal Communications Commission, or any other federal, state, local, or foreign governmental entity, in such entity's regulatory or official capacity; the insurability of *Penalties* shall be in accordance with the law in the applicable venue that most favors coverage for such *Penalties*; and
2. amounts which the *Named Insured* is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment or settlement of a *Regulatory Proceeding*; but shall not include payments to charitable organizations or disposition of such funds other than for payment of consumer claims for *Losses* caused by an event covered pursuant to Insuring Agreements a.1, a.2, or a.3;

but shall not mean (a) costs to remediate or improve *Computer Systems*, (b) costs to establish, implement, maintain, improve, or remediate security or privacy practices, procedures, programs, or policies, (c) audit, assessment, compliance or reporting costs, or (d) costs to protect the confidentiality, integrity and/or security of *Personally Identifiable Information* from theft, *Loss*, or disclosure.

hh. *Period of Restoration* means the time period that:

1. begins on the specific date and time that the actual and necessary interruption or suspension of *Computer Systems* first occurred; and
2. ends on the specific date and time that the actual and necessary interruption or suspension of *Computer Systems* ends, or would have ended had the *Named Insured* or *Dependent Business* (if applicable) acted with due diligence and dispatch;

provided that in no event shall the *Period of Restoration* mean more than or exceed thirty (30) days; and provided further that restoration of *Computer Systems* will not end the *Period of Restoration* if such systems are actually and necessarily interrupted or suspended again within one hour of such restoration due to the same cause as the original interruption or suspension.

ii. *Personally Identifiable Information* means:

1. information concerning the individual that constitutes “nonpublic personal information” as defined in the Gramm-Leach Bliley Act of 1999, as amended, and regulations issued pursuant to the Act;
2. dental or health care information concerning the individual, including “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act;
3. information concerning the individual that is defined as private personal information under statutes enacted to protect such information in foreign countries, for *Claims* subject to the law of such jurisdiction;
4. information concerning the individual that is defined as private personal information under a *Breach Notice Law*;
5. education records as defined by the Family Educational Rights and Privacy Act (FERPA), which are directly related to an individual’s attendance as a student;
6. the individual’s driver’s license or state identification number, social security number; unpublished telephone number, and credit, debit, or other financial account numbers in combination with associated security codes, access codes, passwords, or personal identification numbers (PINs);

if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual’s financial account or dental record information.

Personally Identifiable Information does not include publicly available information that is lawfully made available to the general public from government records.

jj. *Privacy Breach Response Services* means the services and coverage provided by Insuring Agreement b.

kk. *Privacy Law* means a federal, state, or foreign statute or regulation requiring the Insured Entity to protect the confidentiality and/or security of *Personally Identifiable Information*.

ll. Privacy Policy means the Insured Entity's public declaration of its policy for collection, use, disclosure, sharing, dissemination, and correction or supplementation of, and access to, *Personally Identifiable Information*.

mm. Public Relations and Crisis Management Expense shall mean the following costs approved in advance by **us** in **our** discretion, and which are directly related to mitigating harm to the Insured Entity's reputation or potential *Loss* covered by this Endorsement resulting from an incident described in Insuring Agreement a.1 or a.2 or from a *Public Relations Event*:

1. costs incurred by a public relations or crisis management consultant;
2. costs for media purchasing or for printing or mailing materials intended to inform the general public about the incident.
3. for incidents or events in which *Notification Services* are not otherwise provided pursuant to Insuring Agreement a or b, costs to provide notifications and notices via e-mail or first class mail to customers or patients where such notifications are not required by law ("voluntary notifications"), including to non-affected customers or patients of the Insured Entity;
4. costs to provide government mandated public notices related to breach events (including such notifications required under HITECH);
5. costs to provide services to restore healthcare records of *Notified Individuals* residing in the United States whose *Personally Identifiable Information* was compromised as a result of theft, *Loss* or *Unauthorized Disclosure*; and
6. other costs approved in advance by **us**.

Public Relations and Crisis Management Expenses must be incurred no later than twelve (12) months following the reporting of such *Claim* or breach event to **us** and, with respect to clauses 1 and 2 above, within ninety (90) days following the first publication of such *Claim* or incident. If voluntary notifications are provided, e-mail notification will be provided in lieu of first class mail to the extent practicable.

nn. Public Relations Event means the publication or imminent publication in a newspaper (or other general circulation print publication) or on radio, television or a publicly accessible website of a covered *Claim* under this Endorsement.

oo. Regulatory Proceeding means a request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar proceeding brought by or on behalf of the Federal Trade Commission, Federal Communications Commission, or any federal, state, local, or foreign governmental entity in such entity's regulatory or official capacity in connection with such proceeding.

pp. Related Party means the Insured Entity and any past, present, or future *Employees*, directors, officers, *Managers*, partners, natural persons, or independent contractors of the Insured Entity.

qq. Security Breach means:

1. *Unauthorized Access or Use of Computer Systems*, including *Unauthorized Access or Use* resulting from the theft of a password from a *Computer System* or from any *Named Insured*;
2. a denial or service attack against *Computer Systems* or *Computer Systems* that are not owned, operated or controlled by a *Named Insured*; or
3. infection of *Computer Systems* by *Malicious Code* or transmission of *Malicious Code* from *Computer Systems*.

A series of continuing *Security Breaches*, related or repeated *Security Breaches*, or multiple *Security Breaches* resulting from a continuing failure of *Computer Security* shall be considered a single *Security Breach* and be deemed to have occurred at the time of the first such *Security Breach*.

- rr. *Third Party Information*** means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report, or other item of information of a third party not insured under this Endorsement 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 Insured Entity is legally required to maintain in confidence; however, *Third Party Information* shall not include *Personally Identifiable Information*.
- ss. *Unauthorized Access or Use*** means the gaining of access to or use of *Computer Systems* by an unauthorized person or persons or the use of *Computer Systems* in an unauthorized manner.
- tt. *Unauthorized Disclosure*** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by the Insured Entity and is without knowledge of, consent, or acquiescence of any member of the *Control Group*.
- uu. *Waiting Period*** means twelve (12) hours beginning when the *Period of Restoration* begins and expiring after the elapse of the twelve (12) hours. A *Waiting Period* shall apply to each *Period of Restoration*.
- x. *Wrongful Act*** means:
1. presenting, or causing or allowing to be presented, by a *Named Insured* any actual or alleged erroneous submission to a government health benefit payor or program or to a *Commercial Payor* from which a *Named Insured* seeks payment or reimbursement for *Dental Services* provided or prescribed by a practitioner who is a *Named Insured*;
 2. any negligent or reckless act, error, or omission by a *Named Insured* in violation of any federal, state, or local self-referral laws, or any rules or regulations promulgated thereunder;
 3. any negligent or reckless act, error, or omission by a *Named Insured* in violation of the Health Insurance Portability and Accountability Act ("HIPAA") and any amendments thereto, or any rules or regulations promulgated thereunder; or
 4. any negligent or reckless act, error, or omission by a *Named Insured* in violation of the Emergency Medical Treatment and Labor Act ("EMTALA") and any amendments thereto, or any rules or regulations promulgated thereunder.

Section VI: General Rules

a. RETENTION

1. The Retention amount set forth above applies separately to each incident, event or related incidents or events, giving rise to a *Claim*. The Retention shall be satisfied by monetary payments by the *Named Insured* of *Damages, Claims Expenses, Penalties* or, Expenses and Costs.
2. *Notification Services, Call Center Services, and Breach Resolution and Mitigation Services* will only be provided for each incident, event or related events requiring notification to at least the number of individuals set forth above. For incidents involving notification to fewer individuals there shall be no coverage for any such services under Insuring Agreement b.

For all *Computer Expert Services, Legal Services, and Public Relations and Crisis Management Services*, the Retention amounts set forth above apply separately to each incident, event, or related incidents or events, giving rise to an obligation to provide such services; and the Retention shall be satisfied by monetary payments by the *Named Insured* for such services.

3. In the event that *Damages, Claims Expenses* or *Loss* arising out of a *Claim* are subject to more than one Retention, the applicable Retention amounts shall apply to such *Damages, Claims Expenses* or *Loss*, provided that the sum of such Retention amounts shall not exceed the largest applicable Retention amount .
4. Satisfaction of the applicable Retention is a condition precedent to the payment by **us** of any amounts or providing of any services hereunder, and **we** shall be liable only for the amounts in excess of such Retention subject to **our** total liability not exceeding the Aggregate Limit or Limits of Coverage for *Privacy Breach Response Services* set forth above. The *Named Insured* shall make direct payments within the Retention to appropriate other parties designated by **us**.

b. EXTENDED REPORTING PERIOD

With respect to Insuring Agreements a, c, d, f, g, and h only: If an Extended Reporting Period Endorsement is issued for a *Named Insured*, the Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the applicable Limit of Liability for the *Policy Period* and the Extended Reporting Period shall not in any way increase the Aggregate Limits or any sublimit of liability provided by this Endorsement. The period for reporting *Claims* will be automatically extended for a period of up to one (1) year immediately following the termination of this Policy.

With respect to Insuring Agreement e only: If an Extended Reporting Period Endorsement is issued for a *Named Insured*, the Limit of Liability will reinstate **your** Aggregate Limit of Liability for this Endorsement when the Extended Reporting Period Endorsement is first issued to **you**. The period for reporting *Claims* will be automatically extended for the duration of the Extended Reporting Period as specified in the Extended Reporting Period Endorsement.

Cancellation or termination, for any reason, of the Extended Reporting Period Endorsement automatically terminates the period for reporting *Claims*. If an Extended Reporting Period Endorsement is not issued for a *Named Insured*, then coverage for such *Named Insured* under this Endorsement terminates at the end of the *Policy Period*.

c. NOTICE OF CLAIM, LOSS OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

1. If any *Claim* is made against the *Named Insured*, the *Named Insured* shall forward as soon as practicable to **us** written notice of such *Claim* in the form of a telecopy, email, or express or certified mail together with every demand, notice, summons, or other process received by the *Named Insured* or the *Named Insured's* representative. In no event shall **we** be notified later than the end of the *Policy Period* or the end of the Extended Reporting Period (if applicable).
2. With respect to Insuring Agreement b, for a legal obligation to comply with a *Breach Notice Law* because of an incident described in Insuring Agreement a.1 or a.2, such incident or reasonably suspected incident must be reported as soon as practicable during the *Policy Period* after discovery by the *Named Insured*.
3. If during the *Policy Period*, the *Named Insured* becomes aware of any circumstance that could reasonably be the basis for a *Claim* it may give written notice to **us** in the form of a telecopy, email or express or certified mail as soon as practicable during the *Policy Period*. Such a notice must include:
 - i. the specific details of the act, error, omission, or *Security Breach* that could reasonably be the basis for a *Claim*;
 - ii. the injury or *Damage* which may result or has resulted from the circumstance; and
 - iii. the facts by which the *Named Insured* first became aware of the act, error, omission, or *Security Breach*.

Any subsequent *Claim* made against the *Named Insured* arising out of such circumstance which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to **us**.

4. A *Claim* or legal obligation under paragraph 1 or 2 above shall be considered to be reported to **us** when written notice is first received by **us** in the form of a telecopy, email or express or certified mail or email of the *Claim* or legal obligation, or of an act, error, or omission, which could reasonably be expected to give rise to a *Claim* if provided in compliance with paragraph 3 above.

d. FIRST NAMED INSURED AS AGENT

The *First Named Insured* shall be considered the agent of all *Named Insureds*, and shall act on behalf of all *Named Insureds* with respect to the giving of or receipt of all notices. With respect to Insuring Agreement f, in the event of an *Extortion Threat* to which this Endorsement applies, the *Named Insured* shall notify **us** by calling (800) 421-2368 immediately upon receipt of any *Extortion Threat*, and shall thereafter also provide written notice by telecopy, email or express mail within five (5) days following the *Extortion Threat*.

e. CONDITIONS APPLICABLE TO PRIVACY BREACH RESPONSE SERVICES

With respect to Insuring Agreement g, the *Named Insured* must forward written notice by express mail, email or telecopy to **us** upon discovery of alteration, corruption, destruction, deletion or

damage to or inability to access a *Data Asset* to which this Endorsement applies. All covered *Data Protection Loss* must be discovered and reported (in accordance with item f. Proof and Appraisal of Loss below) to **us** no later than six (6) months after the end of the *Policy Period*.

f. PROOF AND APPRAISAL OF LOSS

1. Proof of Loss. With respect to Insuring Agreements g and h, before coverage will apply, the *Named Insured* must:
 - i. prepare and submit to **us** a written and detailed proof of Loss sworn by an officer of the *Named Insured* within ninety (90) days after the Insured discovers a *Data Protection Loss* or the Insured Entity sustains a *Business Interruption Loss* (as applicable), but in no event later than six (6) months following the end of the *Policy Period* (unless such period has been extended by **our** written consent). Such proof of Loss shall include a narrative with full particulars of such *Data Protection Loss* or *Business Interruption Loss*, including, the time, place, and cause of the *Data Protection Loss* or *Business Interruption Loss*, a detailed calculation of any *Data Protection Loss* or *Business Interruption Loss*, the Insured Organization's interest and the interest of all others in the property, the sound value thereof, and the amount of *Data Protection Loss* or *Business Interruption Loss* or damage thereto and all *Other Insurance* thereon; and
 - ii. upon **our** request, 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 *Claim* for such *Data Protection Loss* or *Business Interruption Loss*.

The costs and expenses of preparing and submitting a proof of Loss, and establishing or proving *Data Protection Loss*, *Business Interruption Loss* or any other Loss under this Endorsement shall be the Insured's obligation, and are not covered under this Endorsement.

2. Appraisal of Loss. If the *Named Insured* and **we** do not agree on the amount of a Loss, each party shall select and pay an appraiser or other qualified expert (the "Appraiser") to state the amount of the Loss or reasonable expenses, and the Appraisers shall choose an umpire. If the Appraisers cannot agree on an umpire, the *Named Insured* or **we** may request a judge of a court having jurisdiction to make the selection. Each Appraiser shall submit the amount of the Loss or reasonable expenses to the umpire, and agreement by the umpire and at least one of the Appraisers as to the amount of a Loss shall be binding on all *Named Insureds* and **us**. The *Named Insured* and **us** will equally share the costs of the umpire and any other costs other than the cost of the Appraisers. This provision shall govern only the appraisal of the amount of a Loss, and shall not control the determination of whether such Loss is otherwise covered by this Endorsement. **We** will still retain and do not waive their rights to deny coverage or enforce any obligation under this Endorsement.

g. RECOVERED PROPERTY

If the Insured or **we** recover any property, money or *Data Assets* after a loss payment is made, the party making the recovery must give prompt notice of the recovery to the other party. If the recovered property is money or other funds, the recovery shall be applied first to any costs incurred by **us** in recovering the property, second to loss payments made by **us**, and third to any Retention payment made by the *Named Insured*. If property other than money or funds is recovered, then the *Named Insured* may keep the recovered property and return the loss

payment, plus the any costs of recovery incurred by **us**, or keep the loss payment less the costs of recovery incurred by **us** and transfer all rights in the property to **us**.

h. OBLIGATIONS IN THE EVENT OF AN *EXTORTION THREAT*

1. Insured's Duty of Confidentiality

The *Named Insured* shall use its best efforts at all times to ensure that knowledge regarding the existence of this insurance for *Cyber Extortion Loss* afforded by this Endorsement is kept confidential.

2. Insured Entity's Obligation to Investigate *Extortion Threat* and Avoid or Limit *Extortion Payment*

Prior to the payment of any *Extortion Payment*, the *Named Insured* shall make every reasonable effort to determine that the *Extortion Threat* is not a hoax, or otherwise not credible. The *Named Insured* shall take all steps reasonable and practical to avoid or limit the payment of an *Extortion Payment*.

3. Conditions Precedent

As conditions precedent to this insurance for *Cyber Extortion Loss* under the terms of this Endorsement:

i. *Named Insured's* Obligation to Demonstrate Duress

The *Named Insured* must be able to demonstrate that the *Extortion Payment* was surrendered under duress.

ii. Notification of Police

The *Named Insured* shall allow **us** to notify the police or other responsible law enforcement authorities of any *Extortion Threat*.

**ALL OTHER TERMS, CONDITIONS, AND LIMITATIONS
CONTAINED IN YOUR POLICY REMAIN THE SAME.**