



ENTERPRISE PRIVACY PROTECTION ENDORSEMENT – SOUTH DAKOTA

THE LIABILITY COVERAGES PROVIDED IN THIS ENDORSEMENT ARE WRITTEN ON A "CLAIMS-MADE" BASIS AND PROVIDE COVERAGE FOR THOSE CLAIMS WHICH ARE THE RESULT OF WRONGFUL ACTS OCCURRING ON OR AFTER THE PRIOR ACTS DATE, AND WHICH ARE FIRST MADE AGAINST YOU DURING THE POLICY PERIOD AND WHICH ARE REPORTED IN ACCORDANCE WITH THE TERMS OF THIS ENDORSEMENT. NO COVERAGE EXISTS FOR CLAIMS FIRST MADE AGAINST YOU AFTER THE END OF THE POLICY PERIOD UNLESS, AND TO THE EXTENT, AN EXTENDED REPORTING PERIOD APPLIES. DEFENSE COSTS ARE WITHIN THE LIMIT OF LIABILITY.

In consideration of an additional premium scheduled below, it is understood and agreed that the Professional Liability Coverage Part is amended as follows:

Table with 2 columns: Description and Amount. Rows include: MAXIMUM AGGREGATE LIMIT OF LIABILITY (All damages, claim expenses, privacy event expenses in the Aggregate), COVERAGE AGREEMENTS (Privacy Injury Liability, Privacy Regulation Proceeding, Privacy Event Expense), ENTERPRISE PRIVACY PROTECTION PRIOR ACTS DATE, and PREMIUM.

I. COVERAGE AGREEMENTS

The section entitled COVERAGE AGREEMENTS is amended to add the following new Coverage Agreements:

A. PRIVACY INJURY COVERAGE AGREEMENTS

If the Coverage Agreement has been purchased, as indicated above, we will pay on behalf of you all sums up to the applicable limit of liability that you shall become legally obligated to pay:

1. Privacy Injury Liability

as damages and claim expenses resulting from any claim first made against you during the policy period, or any extended reporting period, if applicable, alleging wrongful acts by you or by someone (including a rogue employee or third-party custodian) for whose wrongful acts you are legally liable;

2. Privacy Regulation Proceeding

as damages (including privacy regulation fines) and claim expenses resulting from any claim first made against you during the policy period, or any extended reporting period, if applicable, alleging wrongful acts by you or by someone (including a rogue employee or third-party custodian) for whose wrongful acts you are legally liable;



Provided that:

- a. prior to the inception date of this Policy or the first such policy issued and continuously renewed by us, of which this Policy is a renewal, whichever is earlier;
  1. **you** did not know or should not have known that any such **wrongful act**, or **related wrongful act**, might result in such **claim**;
  2. such **wrongful act** has not been the subject of any notice given under any prior policy;
- b. such **wrongful act** occurred on or after the applicable **prior acts date** and prior to the end of the **policy period**; and,
- c. the **claim** is reported to us in accordance with the section entitled **Notice of Claims/Circumstances** of this endorsement;
- d. such **claim** is not covered under any other coverage agreement of this Policy or any other coverage issued by us, or any affiliate of us

## B. PRIVACY EVENT EXPENSE

If the Coverage Agreement has been purchased, as indicated above, we will reimburse the **named insured** for **privacy event expenses**, up to the **privacy event expenses** limit of liability provided that:

1. the **privacy event** is first discovered during the **policy period**;
2. the **privacy event expenses** were incurred within twelve months after the date that **you** report the **privacy event**, in accordance with the section entitled **Notice of Claims or Circumstances** of this endorsement and such amounts are consented to in writing by us, such consent may not to be unreasonably withheld; and,
3. there is no other coverage issued by us, or any affiliate of us, that provides coverage for such **privacy event**.

## II. LIMITS OF LIABILITY

Solely with respect to the coverage provided by this endorsement, the section entitled **LIMITS OF LIABILITY** is amended to add the following new paragraphs:

- Maximum Limit of Liability For All Coverage Provided By This Endorsement

Our maximum Limit of Liability for all **damages, claim expenses** and **privacy event expenses** shall be the limit stated in the Coverage Schedule above. Such limit of liability shall be in addition to the limit of liability provided on the Certificate of Insurance of this Policy.

- All **Claims** Aggregate Limit of Liability

Subject to the maximum aggregate limit of liability, our limit of liability for **damages** and **claim expenses** shall not exceed the amount set forth in the Coverage Schedule above. This amount is a sublimit of liability which further reduces, and in no way increases the Maximum Aggregate Limit of Liability of this endorsement.

- Aggregate Privacy Event Expense Limit of Liability



The amount set forth above as the **privacy event** expense limit is the total amount we will reimburse the **named insured** for all covered **privacy event expenses**. This payment is a sublimit and is part of and not in addition to the maximum aggregate limit of liability as stated in the Coverage Schedule above.

### III. ADDITIONAL DEFINITIONS

Solely with respect to the coverage provided by this endorsement, the section entitled **ADDITIONAL DEFINITIONS** is amended to add the following new terms:

**“Confidential Health Information”** means information pertaining to a patient or client that has been received or created by **you** or provided by **you** to another, subject to protection pursuant to “HIPAA”, including an individual’s health, or healthcare treatment information, including the fact that any such individual has been treated by any provider.

**“Extended Reporting Period”** means the time after the **policy period**, for reporting **claims** arising out of **wrongful acts** which occurred on or after the applicable **Prior Acts Date** set forth in the Schedule of this endorsement and prior to the end of the **policy period**.

**“Prior Acts Date”** means the effective date of the first **policy period** to which this endorsement is attached and that is in a continuous series to the current policy effective date.

**“Privacy Event”** means any act, error or omission which, in the reasonable opinion of the **named insured** did cause or is reasonably likely to result in the unauthorized disclosure or the unauthorized use of **protected information**.

**“Privacy Event Expenses”** means all reasonable and necessary fees, costs and expenses incurred by the **named insured** and consented to by us:

- A. to directly affect compliance with a **security breach notice law** including notification to individuals or entities who are required to be notified;
- B. to provide voluntary notification to individuals or entities whose **protected information** may have been subject to a **privacy event**;
- C. to hire a computer forensics firm to investigate the existence and cause of a **privacy event** and to determine the extent such **protected information** has been or may have been disclosed;
- D. to hire an attorney or expert to determine the applicability of and the actions necessary to comply with **security breach notice laws**;
- E. to minimize harm to the **named insured’s** reputation from a **privacy event**, including but not limited to the costs to set up a call center or provide a credit monitoring service for those impacted by a **privacy event**.

However, **privacy event expenses** do not include the costs, fees and expenses necessary to remediate any deficiencies that gave rise to the **privacy event**.

**“Privacy Injury”** means:

- A. unauthorized collection, disclosure, use, access, destruction or modification of **protected information**;
- B. failure to implement, maintain, or comply with policies and procedures stating the **named insured’s** obligations with regard to **protected information**.



“**Privacy Regulation Fines**” means civil fines, sanctions or penalties insurable under applicable law and imposed under any **privacy regulation proceeding** for a violation of any **security breach notice law** or any law, statute or regulation governing **protected information**.

“**Privacy Regulation Proceeding**” means a civil, administrative or regulatory proceeding or by a federal, state, local or foreign governmental authority, including a complaint, investigation or hearing instituted against **you** by the Department of Health and Human Services or its designee alleging a violation of responsibilities or duties imposed upon **you** under the Health Insurance Portability and Accountability Act (“HIPAA”) or any rules or regulations promulgated thereunder, with respect to the management of **protected information** alleging a **wrongful act** as defined in paragraph 2. of the definition of **wrongful act**.

“**Protected Information**” means any information relating to an identified or identifiable natural person, including **confidential health information** pertaining to a patient or client that has been received or created by **you** or provided by **you** to another, subject to protection pursuant to “HIPAA”, including an individual’s health, or health care treatment information, including the fact that any such individual has been treated by any provider.

“**Related Wrongful Act**” means all **wrongful acts** that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.

“**Rogue Employee**” means a past, present or future employee of the **named insured** who acts outside of his or her scope of employment.

“**Security Breach Notice Law**” means any statute or regulation that requires an entity that maintains **protected information** to provide notice to specified individuals of any actual or potential unauthorized disclosure or potential disclosure of such **protected information**.

“**Third-Party Custodian**” means any third party to whom the **named insured** entrusts **protected information**.

“**Wrongful Act**” means:

- A. with respect to **Coverage Agreement 1.A.1.** only, **wrongful act** means any **privacy injury**;
- B. with respect to **Coverage Agreement 1.A.2.** only, **wrongful act** means any actual or alleged act, error or omission that results in a violation of any statute or regulation governing **protected information** or any violation of a **security breach notice law**.

#### IV. REVISED DEFINITIONS

Solely with respect to the coverage provided by this endorsement, the terms **Claim, Claim Expenses, Damages** and **Related Claims** are deleted in their entirety and replaced as follows:

“**Claim**” means:

- A. a written demand for monetary damages or non-monetary relief, including a demand for injunctive or declaratory relief;
- B. a civil proceeding in a court of law or equity or any alternative dispute resolution proceeding;
- C. a **privacy regulation proceeding**,

against **you**, alleging a **wrongful act** including any appeal therefrom. **Claim** also means a written request received by the **named insured** to toll or waive a statute of limitations in connection with a **claim** as defined by paragraphs **B.** and **C.** above.



However, a **claim** does not include any criminal proceeding or criminal or civil investigation. Nor does a **claim** include any regulatory proceeding except if the regulatory proceeding is a **privacy regulation proceeding**.

“**Claim Expenses**” mean:

- A. fees charged by attorneys designated by us;
- B. all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** if incurred by us including, but not limited to, premiums for any appeal bond, attachment bond or similar bond but without any obligation of us to apply for or furnish any such bond.

In the event **you** are entitled by law to select independent counsel to defend **you** at our expense, **claim expenses** also include fees we must pay to such counsel provided that such fees are limited to fees charged in accordance with the rates we actually pay to counsel that we retain in the ordinary course of business in the defense of similar **claims** in the community where the **claim** is being defended;

However, **claim expenses** do not include fees and expenses of independent adjusters or salaries of our officials or employees.

“**Damages**” mean settlements, judgments (including any award of pre-judgment and post-judgment interest on a covered judgment), or other amounts for which **you** are legally obligated to pay on account of a covered **claim**.

However, **damages** do not include:

- 1. civil or criminal fines, penalties, taxes, sanctions or forfeitures, imposed on **you**, except that this does not apply to **privacy regulation fines**;
- 2. fees, costs and expenses paid or incurred or charged by **you**, no matter whether claimed as restitution of specific funds, financial loss, mitigation expenses, set-off amounts or payments in the form of service credits or coupons or other non-cash consideration;
- 3. liquidated damages pursuant to a written contract or agreement in excess of **your** liability caused by the **wrongful act**;
- 4. **your** production costs, or **your** cost of reprinting, recalling, recovering, shipping, mailing, correcting, reprocessing, restoring, repairing, replacing, or reproducing erroneous, damaged or lost tangible property;
- 5. any amount attributable to the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature;
- 6. funds, monies, or securities that **you** transferred or failed to transfer;
- 7. any loss of investment income;
- 8. any amounts assessed as royalty fees or payments;
- 9. any amount for which **you** are absolved from payment by reason of any covenant, agreement or court order;
- 10. punitive and exemplary damages and the multiplied portion of multiplied award;
- 11. plaintiff’s attorney fees or expenses associated with items 1. through 10. above.

“**Related Claims**” mean all **claims** based upon or arising out of a single **wrongful act** or any **related wrongful acts**.



## V. EXCLUSIONS

Solely with respect to the coverage provided by this endorsement, the section entitled **EXCLUSIONS** is amended to add the following new exclusions:

This Policy does not apply to any **claim**:

- **BODILY INJURY/PROPERTY DAMAGE**

based upon or arising out of any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, of any person, or property damage, provided however that this exclusion does not apply to the wrongful infliction of emotional distress or mental anguish arising out of **privacy injury**;

- **CLAIMS BY INSUREDS**

by or on behalf of **you** provided, however that this exclusion does not apply to:

1. any **claim** that is in the form of a crossclaim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **claim** which is not otherwise excluded under this Policy;
2. any **claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver or rehabilitator for the **named insured** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator;
3. any **claim** by **you** (other than the **named insured**) that alleges **privacy injury**;

- **DISCRIMINATION**

based upon or arising out of any actual or alleged discrimination, humiliation, harassment or misconduct that relate to an individual's race, creed, color, age, sex, national origin, religion, handicap, marital status or sexual preference;

- **GOVERNMENTAL ORDERS**

as a direct result of any action or order by any domestic or foreign law enforcement, administrative, regulatory or judicial body or other governmental authority;

- **OWNED ENTITY**

made against **you** by any entity, if at the time of the **wrongful act** giving rise to such **claim**:

1. **you** controlled, owned, operated or managed such entity;
2. **you** were an owner, partner, director, officer or employee of such entity;

For the purpose of this exclusion, a 5% or more owner of the voting stock of a publicly held corporation or a 40% or more owner of the voting stock of a privately held corporation shall be deemed to own such entity;

- **PATENT INFRINGEMENT**

based upon or arising out of actual or alleged infringement of patent;



- **SECURITIES AND INVESTMENT CLAIMS**

based upon or arising out of any actual or alleged:

1. filing of any registration statement under the Securities Acts of 1933, or the Securities Exchange Act of 1934, any State Blue Sky Law, or any other state or local securities law;
2. violation of the Investment Advisers Act of 1940, the Securities Act of 1933, the Securities and Exchange Act of 1934, rules or regulations of the Securities Exchange Commission under either or both acts, similar securities laws or regulations of state, or any laws of any state relating to any transaction arising out of, involving, or relating to the public offering of securities;

Provided however that this exclusion does not apply to any **claim** for **privacy injury**;

- **TRADE SECRETS**

based upon or arising out of any actual or alleged misappropriation of trade secrets obtained by **you** prior to commencing employment with the **named insured**;

- **UNFAIR COMPETITION/ANTITRUST CLAIMS/RICO CLAIMS**

based upon or arising out of any actual or alleged:

1. unfair competition, dilution, deceptive trade practices, civil actions for consumer fraud or false or deceptive advertising or misrepresentation in advertising;
2. charges of price fixing, monopolization or restraint of trade;
3. violation of:
  - a. the Federal Trade Commission Act;
  - b. the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;
  - c. the Racketeer Influenced and Corrupt Organizations Act;
  - d. any rules or regulations promulgated under or in connection with the above statutes, or any similar provision of any federal, state, foreign or other law (including common law) or statute,

except that paragraphs **1.** and **3.a.** do not apply to any **claim** under **Coverage Agreement A.3 Privacy Regulation Proceeding**.

## VI. **NOTICE OF CLAIMS OR CIRCUMSTANCES**

Solely with respect to the coverage provided by this endorsement, the following is added:

1. **Notice of Claim**

**You**, as a condition precedent to the obligations of us shall give written notice of any **claim** or **privacy event** to us as soon as reasonably practicable after **you** learn of such **Claim** but in no event later than ten (10) days after termination or expiration of the **policy period** or **extended reporting period**, if applicable.



All **claims** arising out of the same **wrongful act** will be considered as having been made at the time the first **claim** is made.

## 2. Notice of Circumstances

If during the **policy period**, **you** first become aware of any facts or circumstances which may reasonably be expected to give rise to a **claim** and during such **policy period** give written notice to us of:

1. the allegations anticipated as the basis of the potential **claim** and the names of any potential claimants;
2. the identity of the specific **you** allegedly responsible for such specific facts and circumstances;
3. the consequences which have resulted or may result from such specific facts and circumstances;
4. the amount of the potential monetary damages or the nature of non-monetary relief which may be sought in consequence of such specific facts and circumstances; and
5. the circumstances by which **you** first became aware of such specific facts and circumstances,

then any such covered **Claim** which is subsequently made and which arises out of such facts and circumstances shall be deemed to have been first made against **you** and reported to us by **you** at the time such written notice was received by us.

## VII. EXTENDED REPORTING PERIOD

Solely with respect to the coverage provided by this endorsement, the following is added:

- **Extended Reporting Period**

If this endorsement is terminated for any reason other than failure to pay the premium, if such unpaid premium is paid in full and **extended reporting period** premium is paid in advance, the **named insured** has the right to an **extended reporting period** for the coverage provided by this endorsement. To use this right, the **named insured** must:

1. write to us within 60 days of the termination telling us the **named insured** wants the extension; and
2. pay the premium to us promptly when due.

The additional premium for the **extended reporting period** shall be a one (1) year **extended reporting period** for a premium of 100% or a three (3) year **extended reporting period** for a premium of 187% of the premium charged for this endorsement.

The limits of liability stated under this Policy at the time will be the limits of liability applying to the **extended reporting period**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.