CLAIMS MADE AND REPORTED

Professional and Limited Office Premises Liability Insurance Policy

Ophthalmic Mutual Insurance Company

(A Risk Retention Group)

OMIC

OPHTHALMIC MUTUAL
INSURANCE COMPANY
(A Risk Retention Group)

January 1, 2016

OMIC PROFESSIONAL AND LIMITED OFFICE PREMISES LIABILITY INSURANCE POLICY UPDATE INSERT

The following changes to the January 1, 2016, OMIC Professional and Limited Office Premises Liability Insurance policy are effective retroactive to January 1, 2016.

SECTION I. DEFINITIONS

24. **Terrorism.** Any **act of terrorism** or action taken to control, prevent, or respond to an **act of terrorism**, unless specifically covered ~~under Section VII. Additional Benefits C.7. Cyber Terrorism or~~ by **endorsement**.

SECTION VII. ADDITIONAL BENEFITS

C. e-MD™ Protection

This Section VII.C. provides ~~seven~~nine different insuring agreements. Section VII.C.1. covers Multimedia Liability. Section VII.C.2. covers Security and Privacy Liability. Section VII.C.3. covers Privacy Regulatory Defense and Penalties. Section VII.C.4. covers Security and Privacy Breach Response Costs, Notification Expenses, and Support and Credit Monitoring Expenses. Section VII.C.5. covers Network Asset Protection. Section VII.C.6. covers Cyber Extortion. Section VII.C.7. covers Cyber Terrorism. Section VII.C.8. covers BrandGuard™. Section VII.C.9. covers PCI DSS Assessment.

7. Cyber Terrorism Coverage

OMIC shall pay ***income loss, interruption expenses***, and/or ***special expenses*** incurred by any **Insured** ophthalmologist or **professional entity** named in the **Declarations** during the ***period of restoration*** because of an ***act of cyber terrorism*** which directly causes a total or partial interruption, degradation in service, or failure of the ***Insured's computer system***.

This Benefit will only be provided if:

a. The ***act of cyber terrorism*** takes place or first begins during the **policy period**;
b. A ***claim*** is first made by the **Insured** (1) during the **policy period**, (2) within sixty days after the expiration of the **policy period**, or (3) within the first two years of any **extended reporting period** added by **endorsement** to this policy;
c. The **Insured** provides timely written notice of the ***act of cyber terrorism*** to **OMIC** no later than sixty days from the date an **Insured** first discovers the ***act of cyber terrorism***;
d. The **Insured** provides clear evidence that the ***income loss, interruption expenses***, and/or ***special expenses*** directly resulted from the ***act of cyber terrorism***; and
e. The total or partial interruption, degradation in service, or failure of an ***Insured's computer system*** exceeds the ***waiting period***.

8. BrandGuard Coverage

OMIC shall pay the provable and ascertainable ***brand loss*** incurred by any **Insured** ophthalmologist or **professional entity** named in the **Declarations** during the ***period of indemnity***, but after the ***waiting period***, as a direct result of an ***adverse media report*** or ***notification***.

This Benefit will only be provided if:

a. The ***adverse media report*** or ***notification*** results from a ***privacy breach*** or ***security breach*** that takes place or first begins on or after the **retroactive date** and prior to the end of the **policy period**;
b. The ***brand loss*** is first discovered by the **Insured** during the **policy period**;
c. The **Insured** provides timely written notice of the ***brand loss*** to **OMIC** no later than sixty days from the date an **Insured** first discovers the actual or potential ***brand loss***; and
d. The **Insured** provides clear evidence that the ***brand loss*** directly resulted from the ***adverse media report*** or ***notification***.

9. PCI DSS Assessment Coverage

OMIC shall pay on behalf of any **Insured** ophthalmologist or **professional entity** named in the **Declarations** the ***PCI DSS assessment*** such **Insured** becomes legally obligated to pay, and related ***legal expenses***, because

of a ***claim*** first made against such **Insured** during the **policy period** or within the first two years of any **extended reporting period** added by **endorsement** to this policy. **OMIC** shall have the right and duty to defend any ***claim*** even if the allegations are groundless, false, or fraudulent. **OMIC** shall have the right to appoint defense counsel and to investigate any ***claim*** as **OMIC** deems necessary.

This Benefit will only be provided if:

a. The actual or alleged ***security breach*** or ***privacy breach*** giving rise to the ***claim*** takes place or first begins on or after the **retroactive date** and prior to the end of the **policy period**; and

b. The **Insured** provides timely written notice of the ***claim*** to OMIC (1) during the **policy period**, (2) within sixty days after the expiration of the **policy period**, or (3) within the first two years of any **extended reporting period** added by **endorsement** to this policy.

Definitions. This Section defines various terms used in this Subsection VII.C. These terms are indicated throughout the subsection in bold, italicized print. Refer to Section I. Definitions of the policy for terms that are shown in bold, but not defined below. If a term is defined below and in Section I. Definitions of the policy, the definition below applies to this Subsection VII.C.

~~1~~

1. ***Acquiring bank*** means a bank or financial institution that accepts credit and/or debit card payments (including stored value cards and pre-paid cards) for products or services on behalf of a merchant, including processing and crediting those payments to a merchant's account.

2. ***Act of cyber terrorism*** means the premeditated use of disruptive activities, or the threat thereof, against computers, computer systems, networks, and/or the public internet by any person or group(s) of persons, whether acting alone or on behalf of, or in connection with, any organization(s) or government(s) with the intent to intimidate or cause destruction or harm and/or further social, ideological, religious, political, or similar objectives. ***Act of cyber terrorism*** includes, but is not limited to, the use of information technology to organize and execute attacks against ***computer systems***, networks, and/or the public internet, resulting in disabling and/or deleting critical infrastructure, ***data***, or information. ***Act of cyber terrorism*** does not include any **act of terrorism**.

3. ***Adverse media report*** means any unexpected report or communication of an actual or potential ***security breach*** or ***privacy breach***, which:
   a. Has been publicized through any media channel, including but not limited to, television, ***print media***, radio or electronic networks, the internet, and/or electronic mail; and
   b. Threatens material damage to an **Insured's** reputation or brands.

~~2~~4. ***Assumed under contract*** means liability for ***loss*** resulting from a ***multimedia peril*** where such liability has been assumed by an **Insured** in the form of a written hold harmless or indemnification agreement that predates the ***multimedia peril***.

~~3~~5. ***Bodily injury*** means physical injury, sickness, disease, pain, or death, and, if arising out of the foregoing, mental anguish, mental injury, shock, humiliation, or emotional distress sustained by a person at any time.

~~4~~6. ***BPO service provider*** means any third-party independent contractor that provides business process outsourcing services for the benefit of an **Insured** ophthalmologist or **professional entity** named in the **Declarations**, under a written contract with such **Insured**, including, but not limited to, call center services, fulfillment services, and logistical support.

~~5~~7. ***Brand loss*** means the net income of an **Insured** as could have been reasonably projected immediately prior to ***notification*** or, in the event of an ***adverse media report***, immediately prior to the publication of an ***adverse media report***, but which has been lost as a direct result of such ***notification*** or ***adverse media report***. ***Brand loss*** will be determined in accordance with the Loss Determination section below.

8. ***Card association*** means Visa International, Mastercard, Discover, JCB American Express, and any similar credit or debit card association that is a participating organization of the Payment Card Industry Security Standards Council.

9. ***Claim*** means:
   a. With respect to Multimedia Liability Coverage and Security and Privacy Liability Coverage only:
      i. Any written demand for monetary damages or other non-monetary relief against an **Insured**;
      ii. Any civil proceeding or arbitration proceeding commenced against an **Insured** by the service of a summons, complaint, or similar pleading or notification;
      iii. Any written request to toll or waive a statute of limitations relating to a potential ***claim*** against an **Insured**, including any appeal therefrom.

A ***claim*** under the Multimedia Liability Coverage or the Security and Privacy Liability Coverage will be deemed to be first made when any of the foregoing is first received by an **Insured**.

b. With respect to Privacy Regulatory Defense and Penalties Coverage only, proceedings against an **Insured** brought by a government entity, commenced by letter notification, complaint, or order of investigation, the subject matter of which is a ***security breach*** or ***privacy breach***. A ***claim*** under the Privacy Regulatory Defense and Penalties Coverage will be deemed to be first made when it is received by an **Insured**.

c. With respect to Security and Privacy Breach Response Costs, Notification Expenses, and Support and Credit Monitoring Expenses Coverage only, a written report by an **Insured** to **OMIC** of an ***adverse media report***, ***security breach***, or ***privacy breach***. A ***claim*** under Security and Privacy Breach Response ~~Cost~~Costs, Notification Expenses, and Support and Credit Monitoring Expenses Coverage will be deemed to be first made when such written report is received by **OMIC**.

d. With respect to Network Asset Protection Coverage only, a written report by an **Insured** to **OMIC** of a ***covered cause of loss***. A ***claim*** under the Network Asset Protection Coverage will be deemed to be first made when such written report is received by **OMIC**.

e. With respect to Cyber Extortion Coverage only, a written report by an **Insured** to **OMIC** of a ***cyber extortion threat***. A ***claim*** under the Cyber Extortion Coverage will be deemed to be first made when such written report is received by **OMIC**.

f. With respect to Cyber Terrorism Coverage only, a written report by an **Insured** to **OMIC** of an ***act of cyber terrorism***. A ***claim*** under the Cyber Terrorism Coverage will be deemed to be first made when such written report is received by **OMIC**.

~~6~~g. With respect to BrandGuard Coverage only, a written report by an **Insured** to **OMIC** of ***brand loss***. A ***claim*** under the BrandGuard Coverage will be deemed to be first made when such written report is received by **OMIC**.

h. With respect to PCI DSS Assessment Coverage only, a written demand made against an **Insured** by an ***acquiring bank*** or ***card association*** for a ***PCI DSS assessment*** due to the **Insured's** non-compliance with the ***PCI Data Security Standard***. A ***claim*** under the PCI DSS Assessment Coverage will be deemed to be first made when such written demand is received by an **Insured**.

10. ***Computer hardware*** means the physical components of any ***computer system*** including CPU's, memory, storage devices, storage media, and input/output devices and other peripheral devices and components including but not limited to cables, connectors, fiber optics, wires, power supply units, keyboards, display monitors, and audio speakers.

~~7~~11. ***Computer program~~(s)~~*** means an organized set of instructions that, when executed, causes a computer to behave in a predetermined manner. ***Computer program~~(s)~~*** ~~include~~ includes, but ~~are~~is not limited to, communication systems, networking systems, operating systems, and related ***computer programs*** used to create, maintain process, retrieve, store, and/or transmit electronic ***data***.

~~8~~12. ***Computer ~~system(s)~~systems*** means interconnected electronic, wireless, web, or similar systems (including all ***computer hardware*** and software) used to process and store ***data*** or information in an analog, digital, electronic, or wireless format including but not limited to ***computer programs***, electronic ***data***, operating systems, ***firmware***, servers, media libraries, associated input and output devices, mobile devices, networking equipment, websites, extranets, off line storage facilities (to the extent that they hold electronic ***data***), and electronic backup equipment.

~~9~~13. ***Computer virus*** means a program that possesses the ability to create replicas of itself (commonly known as an auto-reproduction program) within other programs or operating system areas, and which is capable of spreading copies of itself, wholly or in part, to other ***computer systems***.

~~10~~14. ***Covered cause of loss*** means, and is limited to, the following:

a. Accidental Damage or Destruction

i. Accidental physical damage or destruction of ***electronic media***, so that stored ***digital assets*** are no longer machine-readable;

ii. Accidental damage or destruction of ***computer hardware***, so that stored ***data*** is no longer machine-readable;

iii. Failure in power supply or under/over voltage, but only if such power supply is under the direct operational control of an **Insured** ophthalmologist or **professional entity** named in the **Declarations**. "Direct operational control" includes back-up generators;

iv. ***Programming error*** of ***delivered programs***; or

v. Electrostatic build-up and static electricity.

b. Administrative or Operational Mistakes
An accidental, unintentional, or negligent act, mistake, error, or omission by an **Insured**, a ***BPO service provider***, or ***Outsourced IT service provider*** in:
i. The entry or modification of the electronic ***data*** of an **Insured** ophthalmologist or **professional entity** named in the **Declarations**, which causes damage to such ***data***;
ii. The creation, handling, development, modification, or maintenance of ***digital assets***; or
iii. The ongoing operation or maintenance of an ***Insured's computer system***, excluding the design, architecture, or configuration of the ***Insured's computer system***.

c. Computer Crime and Computer Attacks
An act, mistake, or negligent error or omission in the operation of an ***Insured's computer system*** or in the handling of ***digital assets*** by an **Insured**, a ***BPO service provider***, or ***Outsourced IT service provider***, which fails to prevent or hinder any of the following attacks on the ***Insured's computer system***:
i. a ***denial of service attack***;
ii. ***malicious code***;
iii. ***unauthorized access***; or
iv. ***unauthorized use***.

~~11~~15. ***Cyber extortion expenses*** ~~mean~~means all reasonable and necessary costs and expenses, which an **Insured** incurs, with **OMIC's** prior written consent, as a direct result of a ***cyber extortion threat***, other than ***cyber extortion monies***.

~~12~~16. ***Cyber extortion monies*** ~~mean~~means any funds or property, which an **Insured** pays, with **OMIC's** prior written consent, to a person(s) or entity(ies) reasonably believed to be responsible for a ***cyber extortion threat***, in order to terminate such ***cyber extortion threat***.

~~13~~17. ***Cyber extortion threat*** means a credible threat or series of related credible threats, including but not limited to a demand for ***cyber extortion monies***, which is directed at an **Insured** and threatens to:
a. Release, divulge, disseminate, destroy, or use the confidential information of a third party taken from an **Insured** as a result of ***unauthorized access*** to, or ***unauthorized use*** of, the ***Insured's computer system***;
b. Introduce ***malicious code*** into the ***Insured's computer system***;
c. Corrupt, damage, or destroy the ***Insured's computer system***;
d. Restrict or hinder access to the ***Insured's computer system***, including but not limited to the threat of a ***denial of service attack***; or
e. Electronically communicate with an **Insured's** patients and falsely claim to be an **Insured** or to be acting under an **Insured's** direction in order to falsely obtain personal or confidential information (also known as pharming or phishing) or other types of false communications.

~~14~~18. ***Data*** means any and all information stored, recorded, appearing or present in or on an ***Insured's computer system***, including but not limited to information stored, recorded, appearing, or present in or on an **Insured's** electronic and computer databases, the internet, intranet, extranet and related websites, facsimiles, and electronic mail.

~~15~~19. ***Delivered programs*** means programs, applications, and software where the development stage has been finalized, having passed all test-runs and been proven successful in a live environment.

~~16~~20. ***Denial of service attack*** means an event caused by unauthorized or unexpected interference or a malicious attack intended by the perpetrator to overwhelm the capacity of a ***computer system*** by sending an excessive volume of electronic ***data*** to such ***computer system*** in order to prevent authorized access to such ***computer system***.

~~17~~21. ***Digital assets*** mean ***data*** and ***computer programs*** that exist in the ***Insured's computer system***. ***Digital assets*** do not include ***computer hardware*****.**

~~18~~22. ***Digital assets loss*** means reasonable and necessary expenses and costs which an **Insured** incurs to replace, recreate, or restore ***digital assets*** to the same state and with the same contents immediately before it was damaged, destroyed, altered, misused, or stolen, including expenses for materials and machine time. ***Digital assets loss*** also includes amounts representing **employee** work time to replace, recreate, or restore ***digital assets***, which shall be determined on a predefined billable hours or per hour basis as based upon an **Insured's** schedule of **employee** billable hours.

~~19~~23. ***Electronic media*** means floppy disks, CD ROMs, flash drives, hard drives, solid state drives, magnetic tapes, magnetic discs, or any other media on which electronic data is recorded or stored.

~~20~~24. ***Firmware*** means the fixed programs that internally control basic low-level operations in a device.

~~21~~25. ***Income loss*** means financial loss, which an **Insured** sustains, as determined in accordance with the provisions of Coverage 5.b. or Coverage 7.

~~22~~26. ***Insured's computer system*** means:

a. A ***computer system*** operated by and either owned by or leased to an **Insured** ophthalmologist or **professional entity** named in the **Declarations**;

b. With respect to Coverage 2 only, a ***computer system*** operated by a ***BPO service provider*** or ***Outsourced IT service provider*** and used for the sole purpose of providing hosted computer application services to an **Insured** ophthalmologist or **professional entity** named in the **Declarations** or for processing, maintaining, hosting, or storing such **Insured's** electronic ***data*** pursuant to a written contract with such **Insured** to provide such services.

~~23~~27. ***Interruption expenses*** means those expenses, excluding **special expenses**, which an **Insured** incurs in accordance with the provisions of Coverage 5.b. or Coverage 7 to:

a. Avoid or minimize the suspension of the **Insured's** business as a result of a total or partial interruption, degradation in service, or failure of the ***Insured's computer system*** caused directly by a ***covered cause of loss*** or an ***act of cyber terrorism***, which such **Insured** would not have incurred had no ***covered cause of loss*** or ***act of cyber terrorism*** occurred, including but not limited to the use of rented/leased external equipment, substitution of other work or production procedures, use of third party services, or additional staff expenditures or labor costs; and

b. Minimize or avoid a ***covered cause of loss*** or an ***act of cyber terrorism*** and continue the **Insured's** business.

The amount of ***interruption expenses*** recoverable shall not exceed the amount by which the covered ***income loss*** is reduced by such incurred expenses.

~~24~~28. ***Legal expenses*** ~~mean~~means reasonable and necessary fees, costs, and expenses incurred in the investigation, defense, and appeal of any ***claim*** covered under Coverage 1, 2, 3, or ~~3~~9; but ***legal expenses*** shall not include any wages, salaries, or other compensation or income of any **Insured**.

~~25~~29. ***Loss*** means money an **Insured** is legally obligated to pay as a result of a ***claim*** covered under Coverage 1 or 2. ***Loss*** includes damages and judgments; prejudgment and post-judgment interest awarded against an **Insured** on that part of any judgment paid or to be paid by **OMIC**; legal fees and costs awarded pursuant to such judgments; and settlements negotiated with **OMIC's** prior consent. ***Loss*** does not include~~(~~:

a~~)~~ ~~taxes;~~ ~~(~~. Taxes;

b~~)~~. Any amount for which the **Insured** is absolved from legal responsibility to make payment to any third party;

~~(~~c~~)~~. Amounts owed under, or assumed by, any contract;

~~(~~d~~)~~. Any return, withdrawal, restitution, or reduction of professional fees, profits, or other charges;

~~(~~e~~)~~. Punitive or exemplary damages or the multiple portion of any multiplied damages;

~~(~~f~~)~~. Fines, penalties, or sanctions;

~~(~~g~~)~~. Any matters that are deemed uninsurable under applicable law;

~~(~~h~~)~~. The costs to comply with orders granting injunctive relief or non-monetary relief, including specific performance or any agreement to provide such relief; and ~~(i) settlements negotiated without **OMIC's** prior consent.~~

~~26~~ i. Settlements negotiated without **OMIC's** prior consent.

30. ***Malicious code*** means software intentionally designed to insert itself and damage a ***computer system*** without the owner's informed consent by a variety of forms including but not limited to viruses, worms, Trojan horses, spyware, dishonest adware, and crimeware.

~~27~~31. ***Multimedia peril~~(s)~~*** means the release or display of any ***electronic media*** on the internet site of an **Insured** ophthalmologist or **professional entity** named in the **Declarations** or in ***print media*** for which such **Insured** is solely responsible, which directly results in any of the following:

a. Any form of defamation or other tort related to the disparagement or harm to the reputation or character of any person or organization, including libel, slander, product disparagement, or trade libel, and infliction of emotional distress, mental anguish, outrage, or outrageous conduct, if directly resulting from any of the foregoing;

b. Invasion, infringement, or interference with an individual's right of privacy or publicity, including false light, intrusion upon seclusion, commercial misappropriation of name, person, or likeness, and public disclosure of private facts;

c. Plagiarism, piracy, or misappropriation of ideas under an implied contract;

d. Infringement of copyright, trademark, trade name, trade dress, title, slogan, service mark, or service name; or

e. Domain name infringement, improper deep linking, or framing.

~~28~~32. ***Notification*** means notification to individuals in the event of a ***security breach*** or a ***privacy breach***.

33. ***Notification expenses*** means all reasonable and necessary expenses incurred by an **Insured**, with **OMIC's** prior written consent, to comply with governmental privacy legislation mandating notification to affected individuals in the event of a ***security breach*** or ***privacy breach***, ~~including but not limited to (a) legal expenses; (b) computer forensic and investigation fees; (c) public relations expenses; (d) postage expenses; and (e) related advertising expenses.~~whether or not there is a specific requirement by law to do so. ***Notification expenses*** includes, but is not limited to:

~~29~~a. Legal expenses;

b. Computer forensic and investigation fees;

c. Public relations expenses;

d. Postage expenses; and

e. Related advertising expenses.

34. ***Operational programs*** means programs and software that are ready for operational use, having been fully developed, tested, and accepted by an **Insured** ophthalmologist or **professional entity** named in the **Declarations**.

~~30~~35. ***Outsourced IT service provider*** means a third party independent contractor that provides information technology services for the benefit of an **Insured** ophthalmologist or **professional entity** named in the **Declarations**, under a written contract with such **Insured**. ***Outsourced IT service provider*** services include but are not limited to hosting, security management, co-location, and ***data*** storage.

~~31~~36. ***PCI Data Security Standard*** (known as "PCI DSS") means the published Payment Card Industry Security Council Data Security Standard in effect now or as hereafter amended, which all merchants and processors must follow when storing, processing, and transmitting cardholder ***data***.

37. ***PCI DSS assessment*** means a monetary fine or penalty assessed against an **Insured** by an ***acquiring bank*** or ***card association*** as a result of a ***security breach*** or ***privacy breach***.

38. ***Period of indemnity*** means the period beginning with the earlier of the date of ***notification*** or the first publication of an ***adverse media report*** (whichever applies), and ending on the earlier of:

a. The date that gross revenues are restored to the level they had been prior to ***notification*** or the first ***adverse media report*** (whichever applies); or

b. 180 consecutive days after the notice of ***brand loss*** is received by **OMIC**.

39. ***Period of restoration*** means the period of time that begins on the date when the interruption, degradation, or failure of the ***Insured's computer system*** began and ends on the earlier of:

a. The date when the ***Insured's computer system*** is restored or could have been repaired or restored with reasonable speed to the same condition, functionality, and level of service that existed prior to the ***covered caused of loss*** or ***act of cyber terrorism*** plus no more than thirty consecutive days after the restoration of the ***Insured's computer system*** to allow for restoration of the **Insured's** business; or

b. One hundred and twenty consecutive days after the notice of the ***covered cause of loss*** or ***act of cyber terrorism*** is received by **OMIC**.

~~32~~40. ***Print media*** means newspapers, newsletters, magazines, brochures, books, and literary works in any form, or other types of publications and advertising materials including packaging, photographs, and digital images.

~~33~~41. ***Privacy breach*** means any of the below, whether actual or alleged, but only if committed or allegedly committed by an **Insured** or by others acting on the **Insured's** behalf for whom such **Insured** is legally responsible, including ***BPO service providers*** and ***Outsourced IT service providers***:

a. Breach of confidence or invasion, infringement, interference, or violation of any rights to privacy including but not limited to breach of the **Insured's** privacy statement, breach of a person's right of publicity, false light, intrusion upon a person's seclusion, public disclosure of a person's private information, or intrusion or misappropriation of a person's name or likeness for commercial gain; or

b. Any breach or violation of U.S. federal, state, or local statutes and regulations associated with the control and use of personally identifiable financial or medical information including but not limited to:

i. The Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) ("HIPAA"), including Title II which requires protection of confidentiality and security of electronic protected health information, and the rules and regulations promulgated thereunder as they currently exist and as amended, including related state medical privacy laws as they currently exist and as amended;

ii. Gramm-Leach-Bliley Act of 1999 ("G-L-B"), also known as the Financial Services Modernization Act of 1999, including sections concerning security protection and standards for customer or patient records maintained by financial services companies, and the rules and regulations promulgated thereunder as they currently exist and as amended;

iii. State Attorneys General and Federal Trade Commission enforcement actions regarding the security and privacy of consumer information;

iv. Governmental privacy protection regulations or laws, as they currently exist now or in the future, which require commercial internet sites or online services that collect personal information or medical information (as defined by such laws or acts) to post privacy policies and adopt specific privacy controls or to notify those impacted by identity or data thief, abuse, or misuse;

v. Federal and state consumer credit reporting laws, such as the federal Fair Credit Reporting Act ("FCRA"); and

vi. The Health Information Technology for Economic and Clinical Health Act ("HITECH ACT"), Title XIII of the American Recovery and Reinvestment Act ("ARRA") of 2009.

A series of continuing ***privacy breaches***, related or repeated ***privacy breaches***, or multiple ***privacy breaches*** resulting from the same facts or circumstances shall be considered a single ***privacy breach*** and shall be deemed to have taken place at the time of the first such ***privacy breach***.

~~34~~42. ***Programming error*** means an error that occurs during the development or encoding of a computer program, software, or application, which would, when in operation, result in a malfunction or incorrect operation of a ***computer system***.

~~35~~43. ***Property damage*** means injury to tangible property, including all resulting loss of use of that property, and loss of use of tangible property that is not physically injured.

~~36~~44. ***Public relations expenses*** means reasonable and necessary expenses incurred by an **Insured** to re-establish the **Insured's *reputation***, which was damaged as a direct result of an ***adverse media report***.

45. ***Regulatory compensatory award*** means a sum of money that an **Insured** is legally obligated to pay as an award or fund for affected individuals, including a regulatory agency's monetary award to a third party, due to an adverse judgment or settlement arising out of a ***claim*** covered under Coverage 3. ***Regulatory compensatory award*** does not include a criminal penalty or fine issued by a regulatory agency of any kind, including federal, state, or local governmental agencies.

~~37~~46. ***Regulatory fines and penalties*** ~~mean~~means any administrative fines and penalties an **Insured** is legally required to pay because of a ***claim*** covered under Coverage 3.

~~38~~47. ***Reputation*** means the estimation of trust that patients, customers, or clients have in doing business with an **Insured** or in purchasing an **Insured's** products or services.

48. ***Security and privacy breach response costs*** means those reasonable and necessary fees and expenses, which an **Insured** incurs, with **OMIC's** prior written consent, for the employment of a public relations consultant prior to, or following, the publication of an ***adverse media report***, if such action is deemed necessary in order to avert or mitigate any actual or potential material damage to the reputation or brands of an **Insured** ophthalmologist or **professional entity** named in the **Declarations**, which harm results or reasonably will result from ~~an~~the ***adverse media report***.

~~39~~49. ***Security and privacy wrongful act*** means any of the below, whether actual or alleged, but only if committed or allegedly committed by an **Insured**:

a. The failure to prevent or hinder a ***security breach***, which in turn results in:

i. the alteration, copying, corruption, destruction, deletion, or damage to electronic ***data*** stored on the ***Insured's computer system***;

ii. the theft, loss, or unauthorized disclosure of electronic and non-electronic confidential commercial, corporate, personally identifiable, or private information that is in an **Insured's** care, custody, or control;

iii. the theft, loss, or unauthorized disclosure of electronic and non-electronic confidential commercial, corporate, personally identifiable, or private information that is in the care, custody, or control of a ***BPO service provider*** or ***Outsourced IT service provider*** that is holding, processing, or transferring such information on behalf of an **Insured** ophthalmologist or **professional entity** named in the **Declarations** provided, however, that the theft, loss, or unauthorized disclosure occurs while such **Insured's** written contract with the ***BPO service provider*** or ***Outsourced IT service provider*** is in effect; or

iv. ***unauthorized use*** of or ***unauthorized access*** to a ***computer system*** other than an ***Insured's computer system***;

b. The failure to timely disclose a ***security breach*** affecting personally identifiable, nonpublic information, or the failure to dispose of personally identifiable, nonpublic information within the required time period, in violation of privacy regulations in effect now or in the future;

c. The failure to prevent the transmission of ***malicious code*** or a ***computer virus*** from an ***Insured's computer system*** to the ***computer system*** of a third party;

d. A ***privacy breach***;

e. The failure to prevent or hinder the ***Insured's computer system*** from participating in a ***denial of service attack*** directed against internet sites or the ***computer system*** of any third party; or

f. Loss of **employee** information.

~~40~~50. ***Security breach*** means any of the following, whether a specifically targeted attack or a generally distributed attack:

a. ***Unauthorized access*** to, or ***unauthorized use*** of, the ***Insured's computer system***, including ***unauthorized access*** or ***unauthorized use*** resulting from the theft of a password from the ***Insured's computer system*** or from an **Insured**;

b. A ***denial of service attack*** against an ***Insured's computer system***; or

c. Infection of the ***Insured's computer system*** by ***malicious code*** or the transmission of ***malicious code*** from the ***Insured's computer system***,

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 taken place at the time of the first such ***security breach***.

~~41~~51. ***Special expenses*** ~~mean~~means reasonable and necessary costs and expenses that an **Insured** incurs to:

a. Prevent, preserve, minimize, or mitigate any further damage to ***digital assets***, including the reasonable and necessary fees and expenses of specialists, outside consultants, or forensic experts;

b. Preserve critical evidence of any criminal or malicious wrongdoing;

c. Purchase replacement licenses for ***computer programs*** because the copy protection system and/or access control software was damaged or destroyed by a ***covered cause of loss*** or an ***act of cyber terrorism***; or

d. Notify an **Insured's** patients of a total or partial interruption, degradation in service, or failure of the ***Insured's computer system*** resulting from a ***covered cause of loss*** or ***act of cyber terrorism***.

~~42~~52. ***Support and credit monitoring expenses*** means those reasonable and necessary expenses which an **Insured** incurs, with **OMIC's** prior written consent, for the provision of customer support activity in the event of a ***privacy breach***, including the provision of credit file monitoring services and identity theft education and assistance for up to a period of twelve months from the date of enrollment in such credit file monitoring services.

~~43~~53. ***Unauthorized access*** means the gaining of access to a ***computer system*** by an unauthorized person or persons.

~~44~~54. ***Unauthorized use*** means the use of a ***computer system*** by unauthorized persons or by authorized persons in an unauthorized manner.

~~45~~55. ***Waiting period*** means:

a. With respect to Coverage 5.b. or Coverage 7, the eight-hour period ~~of time, which~~that must elapse before **OMIC** will consider the recovery of loss ~~under Coverage 5.b. or Coverage 7~~. The ***waiting period*** applies to each ***period of restoration***.

b. With respect to Coverage 8, the two-week period that must elapse after ***notification*** or publication of the first ***adverse media report*** (whichever applies), before ***brand loss*** may be payable. The ***waiting period*** applies to each ***period of indemnity***.

Exclusions. These exclusions are applicable to this Subsection VII.C~~.~~:

. This Benefit does not apply to any ***claim*** based on, resulting from, arising out of, attributable to, or in any way involving:

23. War, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular uprising, military uprising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions; the confiscation, nationalization, requisition, or destruction of, or damage to, property by or under the order of any government or public or local authority; or any action taken in controlling, preventing,

suppressing, or in any way relating to any of the above. This exclusion does not apply to an ***act of cyber terrorism***;

38. The confiscation, commandeering, requisition, destruction of, or damage to ***computer hardware*** by order of a government de jure or de facto or by any public authority for whatever reason; or

39. The existence, emission, or discharge of any electromagnetic field, electromagnetic radiation, or electromagnetism that actually or allegedly affects the health, safety, or condition of any person or the environment or that affects the value, marketability, condition, or use of any property; or.

~~40. Any agreement by an **Insured** to comply with, or follow, any Payment Card Industry Standard or Payment Card Company Rules; or the implementation, maintenance, or compliance with any security measures or standards related to any payment card data, such as any fine or penalty imposed by a payment card company on a merchant bank or payment processor that an **Insured** has paid or agreed to reimburse or indemnify. This exclusion does not apply to ***regulatory fines and penalties*** to the extent insurable by law and if resulting from an otherwise covered ***claim*** under the Privacy Regulatory Defense and Penalties Coverage.~~

With respect to Multimedia Liability Coverage, Security and Privacy Liability Coverage, Privacy Regulatory Defense and Penalties Coverage, ~~and~~ Security and Privacy Breach Response Costs, Notification Expense, and Support and Credit Monitoring Expense Coverage, BrandGuard Coverage, and PCI DSS Assessment Coverage, **OMIC** is not obligated to defend or pay any ***claim*** based upon, arising out, or attributable to:

1. Any actual or alleged ***multimedia peril, security and privacy wrongful act, security breach***, or ***privacy breach*** occurring before the **retroactive date**; or
2. Any other actual or alleged ***multimedia peril, security and privacy wrongful act, security breach***, or ***privacy breach*** occurring on or after the **retroactive date** which, together with a ***multimedia peril, security and privacy wrongful act, security breach***, or ***privacy breach*** actually or allegedly occurring prior to such date would constitute related ***multimedia perils, security and privacy wrongful acts, security breaches***, or ***privacy breaches***.

For purposes of this exclusion, ***multimedia perils, security and privacy wrongful acts, security breaches***, and ***privacy breaches*** will be deemed related if they are logically or causally connected by any common fact, circumstance, situation, event, transaction, or series of facts, circumstances, situations, events, or transactions.

With respect to Network Asset Protection Coverage 5.~~b~~a. – Loss of Digital Assets only, **OMIC** is not obligated to pay any of the following:

1. Any amount incurred in restoring, updating, or replacing ***digital assets*** to a level beyond that which existed prior to the ***covered cause of loss***;
2. Physical damage to the ***computer hardware*** or ***data*** center, other than accidental physical damage or destruction of ***electronic media***, so that stored ***digital assets*** are no longer machine-readable;
3. Contractual penalties or consequential damages;
4. Any liability to third parties for whatever reason, including legal costs and expenses of any type;
5. Fines or penalties imposed by law;
6. The economic or market value of ***digital assets***;
7. Costs or expenses incurred to identify, patch, or remediate software program errors or ***computer system*** vulnerabilities;
8. Costs to upgrade, redesign, reconfigure, or maintain the ***Insured's computer system*** to a level of functionality beyond that which existed prior to the ***covered cause of loss***; or
9. Any amount paid under Network Asset Protection Coverage 5.b. - Non-Physical Business Interruption and Extra Expense.

With respect to BrandGuard Coverage only, **OMIC** is not obligated to pay any of the following:

1. Any amounts incurred by an **Insured** in an effort to re-establish the **Insured's *reputation***, including ***public relations expenses***;
2. Any amounts incurred in any **claim** that is insured by any other insurance, except excess insurance;
3. Any amounts incurred in connection with an ***adverse media report*** that also affects or refers in similar terms to a general security issue, an industry, or specific competitors of the **Insured** without any specific allegations regarding a ***security breach*** or a ***privacy breach*** by an I**nsured**, a ***BPO service provider***, an ***outsourced IT service provider***, or a ***privacy breach*** by others acting on an **Insured's** behalf and for whom the **Insured** is legally responsible;
4. Any civil or regulatory liability to third parties for whatever reason, including legal costs and expenses of any type;

5. Contractual penalties or consequential damages;
6. ***Security and privacy breach response costs***, ***notification expenses***, or ***support and credit monitoring expenses*** paid under Coverage 4; or
7. Fines or penalties imposed by law or regulation.

Notice of Claim

1. If a ***claim*** under the Multimedia Liability Coverage, the Security and Privacy Liability Coverage, ~~or~~the Privacy Regulatory Defense and Penalties Coverage, or the PCI DSS Assessment Coverage is made against an **Insured**, the **Insured** must give **OMIC** timely written notice of such ***claim*** (1) during the **policy period**, (2) within sixty days after the expiration of the **policy period**, or (3) within the first two years of any **extended reporting period** added by **endorsement** to this policy.
2. If an **Insured** has a ***claim*** under the Security and Privacy Breach Response Costs, Notification Expenses and Support and Credit Monitoring Expenses Coverage, the Network Asset Protection Coverage, the Cyber Extortion Coverage, ~~or~~ the Cyber Terrorism Coverage, or the BrandGuard Coverage, the **Insured** must give **OMIC** written notice of such ***claim*** no later than sixty days from the date an **Insured** first discovers the ***security breach, privacy breach, covered cause of loss, cyber extortion threat***, ~~or~~ ***act of cyber terrorism***, or ***brand loss*** giving rise to such ***claim***.
3. An **Insured** shall provide **OMIC** with copies of all documentation comprising the ***claim*** as well as all authorization, cooperation, or assistance as **OMIC** may require.
4. **OMIC** is not obligated to pay any ***loss, legal expense, regulatory compensatory awards, regulatory fines and penalties, security and privacy breach response costs, notification expenses, support and credit monitoring expenses, digital assets loss, special expenses, income loss, interruption expenses, cyber extortion expenses***, ~~and/or~~ ***cyber extortion monies***, ***brand loss***, and/or ***PCI DSS assessments*** that are incurred prior to notification of a ***claim***.

Loss Determination under Network Asset Protection Coverage ~~and~~, Cyber Terrorism Coverage, and BrandGuard Coverage

1. Digital Assets Loss: For all coverage provided under Network Asset Protection Coverage, 5.a. – Loss of Digital Assets, any ***digital assets loss*** will be determined as follows:
   a. If the impacted ***digital asset*** was purchased from a third party, then **OMIC** will pay only the lesser of the original purchase price of the ***digital asset*** or the reasonable and necessary ***digital assets loss***.
   b. If it is determined that the ***digital assets*** cannot be replaced, restored, or recreated, then **OMIC** will only reimburse the actual and necessary ***digital assets loss*** incurred up to such determination.
2. Income Loss: For any coverage provided under Network Asset Protection Coverage 5.b. – Non-Physical Business Interruption and Extra Expenses and Cyber Terrorism Coverage, ***income loss*** will be determined as the reduction of an **Insured's** income during the ***period of restoration***, which is:
   a. The **Insured's** net income (net profit or loss before income taxes) that would have been reasonably projected, but which has been lost directly as a result of the total or partial interruption, degradation in service, or failure of an ***Insured's computer system*** caused directly by a ***covered cause of loss*** or an ***act of cyber terrorism***. The revenue projection will take into account the prior experience of the **Insured's** business preceding the date of the ***covered cause of loss*** or the ***act of cyber terrorism*** and the probable experience had no ***covered cause of loss*** or ***act of cyber terrorism*** occurred. Revenues include the amount of money paid or payable to an **Insured** for goods, products or services sold, delivered, or rendered in the normal course of the **Insured's** business. Revenue projection will be reduced by the extent to which the **Insured** uses substitute methods, facilities, or personnel to maintain its revenue stream. **OMIC** will take into consideration an **Insured's** documentation of the trends in its business and variations in or other circumstances affecting its business before or after the ***covered cause of loss*** or ***act of cyber terrorism***, which would have affected the **Insured's** business had no ***covered cause of loss*** or ***act of cyber terrorism*** occurred; and
   b. Any fixed operating expenses (including ordinary payroll) incurred, but only to the extent that such operating expenses must continue during the ***period of restoration***.
3. BrandGuard: For any coverage provided under Coverage 8, the income projection required to calculate ***brand loss*** will take into account the prior experience of an **Insured's** business preceding the date of the ***adverse media report*** or ***notification***, whichever applies, and the probable experience had no ***adverse media report*** been published or ***notification*** occurred. Income includes the amount of money paid or payable to the **Insured** for goods, products, or services sold, delivered, or rendered in the normal course of the **Insured's** business. Income projections will be reduced by the extent to which the **Insured** uses

substitute methods, facilities, or personnel to maintain its revenue stream. **OMIC** will take into consideration the **Insured's** documentation of the trends in the **Insured's** business and variations in, or other circumstances affecting, the **Insured's** business before or after the ***adverse media report*** or ***notification*** that would have affected the **Insured's** business had no ***adverse media report*** been published or ***notification*** occurred. Any fixed operating expenses (including ordinary payroll) incurred will be considered in calculating ***brand loss***, but only to the extent that such operating expenses must continue during the ***period of indemnity***.

Related Claims.

1. With respect to Multimedia Liability Coverage, Security and Privacy Liability Coverage, ~~and~~ Privacy Regulatory Defense and Penalties Coverage, and PCI DSS Assessment Coverage, all related ***claims*** made against an **Insured** will be considered a single claim, and only one "each ***claim***" limit will apply to such ***claim***. Such ***claim*** shall be deemed to have been first made on the date the earliest of the related ***claims*** was first made against an **Insured** and shall be deemed to have been first reported to **OMIC** on the date the earliest of the related ***claims*** was first reported to **OMIC**. Appeals and any post-trial proceedings shall be considered part of the original ***claim***. ***Claims*** will be deemed related if they are logically or causally connected by any common fact, circumstance, situation, event, transaction, or series of facts, circumstances, situations, events, or transactions.
2. With respect to Security and Privacy Breach Response Costs, Notification Expense and Support and Credit Monitoring Expense Coverage, Network Asset Protection Coverage, Cyber Extortion Coverage, ~~and~~ Cyber Terrorism Coverage, and BrandGuard Coverage, all ***claims*** arising out of the same, related or continuing incident(s), act(s), fact(s), or circumstance(s) will be considered a single ***claim***, and only one "each ***claim***" limit of liability will apply, regardless of the number of ***claims*** made or the number of **Insureds** involved or affected. All such ***claims*** will be deemed first made on the date the earliest of such ***claims*** is first made.
3. If a ***claim*** is covered under more than one of the insuring agreements of this Section VII.C., then only one "each ***claim***" limit will apply. **OMIC** has the sole discretion to allocate ***claims*** paid, if any, against the appropriate limit of liability.
4. In the event two or more ***claims*** arising out of the same facts, circumstances, situations, events, or transactions are covered under more than one insuring agreement of this Section VII.C., then only one "each ***claim***" limit will apply to such ***claims***. **OMIC** has the sole discretion to allocate ***claims*** paid, if any, against the appropriate limit of liability. All such ***claims***, whenever first made, shall be considered as reported to **OMIC** during the **policy period** in which the **Insured** reports the first of such ***claims*** to **OMIC**, and shall be subject to the limits of insurance applicable to that policy.

SECTION XI. ENDORSEMENTS

PART II – ENDORSEMENTS APPLIED AUTOMATICALLY

OMC144 – Wisconsin Amendatory Endorsement

*This **endorsement** automatically applies to all **Insureds** who participate in the Wisconsin Injured Patients and Families Compensation Fund under the provisions of Chapter 655 of the Wisconsin Statutes. In the event that a similar provision is already contained in another **endorsement** under Section XI. Part II – Endorsements Applied Automatically, the provisions of this **endorsement** will take precedence.*

OMIC and the **Insured** agree that the policy is amended as follows:

Section VIII. 11. Consent to Settle is deleted.

Section IX. Termination and Changes in Premium A.1.c. is amended as follows:

(i) If the policy or an **Insured's** coverage under the policy has been in effect for fewer than sixty days from the **original inception date** or the **Insured's original effective date**, respectively, **OMIC** may cancel this policy or the **Insured's** coverage under this policy for any reason, with ~~no prior notice~~ at least ten days' notice prior to such date of cancellation.

The following is added to Section X. Extended Reporting Period:

The **Insured** has the obligation under s. 655.23 (3) (a), Wis. Stats., to purchase the **extended reporting period endorsement** unless other insurance is available to ensure continuing coverage for the liability of all **Insureds** under this policy for the term the policy was in effect. **OMIC** will notify the Wisconsin commissioner of insurance if the **Insured** does not purchase the **extended reporting period endorsement**. Such **Insured**, if a natural person, may be subject to administrative action by the **Insured's** licensing board.

OMC159 – Indiana Amendatory Endorsement

*This **endorsement** automatically applies to all **Insureds** who participate in the Indiana Patient's Compensation Fund under the provisions of the Indiana Medical Malpractice Act. In the event that a similar provision is already contained in another **endorsement** under Section XI. Part II – Endorsements Applied Automatically, the provisions of this **endorsement** will take precedence.*

OMIC and the **Insured** agree that the policy is amended as follows:

The following is added to Section VIII. 11. Consent to Settle: However, in the event a medical review panel issues a unanimous opinion that the **Insured** failed to comply with the appropriate standard of care as charged in the **Claim**, **OMIC** has the right to settle the liability **Claim** without the **Insured's** consent.

Section IX. Termination and Changes in Premium A.1.b. is deleted and replaced by the following:

b. **Cancellation by the Insured.** The **Policyholder** may cancel this policy and the **Policyholder** or any **Insured** may cancel that **Insured's** coverage under this policy at any time by giving **OMIC** at least thirty days' written notice prior to the desired date of cancellation. If the **Policyholder** gives less than thirty days' notice, cancellation will be effective thirty days from the receipt by OMIC of the notice. Any premium due or to be refunded will be calculated as of the applied cancellation date.