CHUBB®

CHUBB CYBER ENTERPRISE RISK MANAGEMENT POLICY

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms and conditions of this **Policy**, the **Insureds** and the **Insurer** agree as follows:

I. INSURING AGREEMENTS

Coverage is afforded pursuant to those Insuring Agreements purchased, as shown in Item 4 of the Declarations.

FIRST PARTY INSURING AGREEMENTS

A. *CYBER INCIDENT RESPONSE FUND*

The **Insurer** will pay **Cyber Incident Response Expenses** incurred by an **Insured** in response to a **Cyber Incident** first discovered by any **Control Group Member** during the **Policy Period**.

B. *BUSINESS INTERRUPTION AND EXTRA EXPENSES*

The **Insurer** will pay:

1. the **Business Interruption Loss** and **Extra Expenses** incurred by an **Insured** during the **Period of Restoration** resulting directly from a **Cyber Incident** which first occurs during the **Policy Period**; and
2. the **Contingent Business Interruption Loss** and **Extra Expenses** incurred by an **Insured** during the **Period of Restoration** resulting directly from a **Cyber Incident** which first occurs during the **Policy Period**.

C. *DIGITAL DATA RECOVERY*

The **Insurer** will pay the **Digital Data Recovery Costs** incurred by an **Insured** resulting directly from a **Cyber Incident** first discovered by any **Control Group Member** during the **Policy Period**.

D. *NETWORK EXTORTION*

The **Insurer** will reimburse **Extortion Expenses** incurred by an **Insured** in response to a **Cyber Incident** first discovered by any **Control Group Member** during the **Policy Period**.

THIRD PARTY LIABILITY INSURING AGREEMENTS

E. *CYBER, PRIVACY AND NETWORK SECURITY LIABILITY*

The **Insurer** will pay **Damages** and **Claims Expenses** by reason of a **Claim** first made against an **Insured** during the **Policy Period** for a **Cyber Incident** which first occurs on or after the **Retroactive Date** and prior to the end of the **Policy Period**.

F. ELECTRONIC, SOCIAL AND PRINTED MEDIA LIABILITY

The **Insurer** will pay **Damages** and **Claims Expenses** by reason of a **Claim** first made against an **Insured** during the **Policy Period** for a **Media Incident** which first occurs on or after the **Retroactive Date** and prior to the end of the **Policy Period**.

II. DEFINITIONS

When used in this **Policy**:

Act of Cyber-Terrorism means: (i) any act, including force or violence, or the threat thereof, expressly directed against a **Computer System** operated by an **Insured**, by an individual or any group of individuals, whether acting alone, on behalf of, or in connection with any entity or government to damage, destroy, or access such **Computer System** without authorization; or, (ii) a targeted denial of service attack or transmittal of corrupting or harmful software code at or into the **Insured's Computer System** for social, ideological, religious, economic, or political reasons, including intimidating or coercing a government or a civilian population, or disrupting any segment of an economy.

Application means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy of which this **Policy** is a direct renewal or replacement. All such applications, attachments, information, and materials are deemed attached to and incorporated into this **Policy**.

Bodily Injury means injury to the body, sickness, disease, or death. **Bodily Injury** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease, or death of any person.

Business Interruption Loss means:

1. the **Insured's** continuing normal operating and payroll expenses; and
2. the difference between the amount of the **Insured's** net profit actually earned before income taxes and the amount of the **Insured's** net profit that would have been earned before income taxes had no **Interruption in Service** of the **Insured's Computer System** occurred.

Claim means any:

1. written demand against any **Insured** for monetary damages or non-monetary or injunctive relief;
2. civil proceeding against any **Insured** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;
3. arbitration, mediation, or other alternative dispute resolution proceeding against any **Insured** seeking monetary damages or non-monetary or injunctive relief, commenced by the receipt of a written demand, or service of a complaint or similar pleading;
4. criminal proceeding against any **Insured** commenced by: (a) an arrest, or (b) a return of an indictment, information, or similar document;
5. written request directed at any **Insured** to toll or waive a statute of limitations applicable to a **Claim** referenced in paragraphs 1-4 immediately above; or
6. **Regulatory Proceeding** against any **Insured**, including, where applicable, any appeal therefrom.

Claims Expenses means the reasonable and necessary:

1. attorneys' fees, mediation costs, arbitration expenses, expert witness fees, and other fees and costs incurred by the **Insurer**, or by an **Insured** with the **Insurer's** prior written consent, in the investigation and defense of a **Claim**; and
2. premiums for any appeal bond, attachment bond, or similar bond, although the **Insurer** shall have no obligation to apply for or furnish such bond.

Claims Expenses shall not include wages, salaries, or other compensation of directors, officers, similar executives, or employees of the **Insurer** or any **Insured**.

Computer System means computer hardware, software, **Telephone System**, firmware, and the data stored thereon, as well as associated input and output devices, data storage devices, mobile devices, networking equipment, and storage area network, or other electronic data backup facilities. The terms referenced herein include Industrial Control Systems.

Consumer Redress Fund means a sum of money which an **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**. **Consumer Redress Fund** shall not include any amounts paid which constitute taxes, fines, penalties, injunctive relief, or sanctions.

Contingent Business Interruption Loss means:

1. the **Insured's** continuing normal operating and payroll expenses; and
2. the difference between the amount of the **Insured's** net profit actually earned before income taxes and the amount of the **Insured's** net profit that would have been earned before income taxes had no **Interruption in Service** of a **Shared Computer System** occurred.

Control Group Member means, as applicable, an **Organization's** Chief Executive Officer, Chief Financial Officer, Chief Information Officer, Chief Information Security Officer, Chief Privacy Officer, Chief Technology Officer, General Counsel, or Risk Manager, or the organizational or functional equivalent of such positions.

Costs means:

1. **Cyber Incident Response Expenses**;
2. **Business Interruption Loss**;
3. **Contingent Business Interruption Loss**;
4. **Extra Expenses**;
5. **Digital Data Recovery Costs**; or
6. **Extortion Expenses**.

Cyber Incident means:

1. with respect to Insuring Agreement A, Cyber Incident Response Fund,
   a. any actual or reasonably suspected **Network Security Failure**;
   b. any actual or reasonably suspected failure by an **Insured**, or any independent contractor for whom or for which an **Insured** is legally responsible, to properly handle, manage, store, destroy, protect, use, or otherwise control **Protected Information**;
   c. any unintentional violation by an **Insured** of any **Privacy or Cyber Law**, including the unintentional wrongful collection of **Protected Information** by an **Insured**;
   d. any reasonably suspected **Interruption in Service**, provided a Limit of Insurance is shown in the Declarations applicable to Insuring Agreement B, Business Interruption And Extra Expenses; or
   e. any reasonably suspected **Network Extortion Threat**, provided a Limit of Insurance is shown in the Declarations applicable to Insuring Agreement D, Network Extortion;
2. with respect to Insuring Agreement B, Business Interruption And Extra Expenses, an actual **Interruption in Service**;
3. with respect to Insuring Agreement C, Digital Data Recovery, an actual **Network Security Failure** resulting in **Digital Data Recovery Costs**;
4. with respect to Insuring Agreement D, Network Extortion, an actual **Network Extortion Threat**; or

5. with respect to Insuring Agreement E, Cyber, Privacy And Network Security Liability, any error, misstatement, misleading statement, act, omission, neglect, breach of duty, or other offense actually or allegedly committed or attempted by any **Insured** in their capacity as such, resulting in or based upon a **Cyber Incident** as referenced in paragraphs 1 – 4 immediately above.

Cyber Incident Response Coach means the law firm within the **Cyber Incident Response Team**, designated for consultative and pre-litigation legal services provided to an **Insured**.

Cyber Incident Response Expenses means those reasonable and necessary expenses paid or incurred by an **Insured** as a result of a **Cyber Incident**. Such expenses are as follows:

1. retaining the services of a law firm for consultative and pre-litigation legal services, whether or not provided by the **Cyber Incident Response Coach**;
2. retaining the services of third party forensic firms, including a Payment Card Industry (PCI) Forensic Investigator, to determine the cause and scope of a **Cyber Incident**, and if such **Cyber Incident** is actively in progress, to assist in containing it;
3. retaining the services of a public relations or crisis communications firm for the purpose of protecting or restoring the reputation of, or mitigating financial harm to, an **Insured**;
4. retaining the services of a law firm to determine the **Insured's** rights under the indemnification provisions of a written agreement between the **Insured** and any other person or entity with respect to a **Cyber Incident** otherwise covered under Insuring Agreements A - E of this **Policy**;
5. expenses required to comply with **Privacy or Cyber Laws**, including:
   a. retaining the services of a law firm to determine the applicability of and actions necessary to comply with **Privacy or Cyber Laws**;
   b. drafting notification letters, and to report and communicate as required with any regulatory, administrative, or supervisory authority;
   c. call center services, mailing services or costs, and other related services for notification as required by law; or
   d. providing credit monitoring, credit freezing, or credit thawing.

   For purposes of this paragraph 5, compliance with **Privacy or Cyber Laws** shall follow the law of the applicable jurisdiction that most favors coverage for such expenses;
6. with the **Insurer's** prior consent, expenses not required to comply with **Privacy or Cyber Laws**, for:
   a. notifying a natural person whose **Protected Information** has been wrongfully disclosed or otherwise compromised, including retaining a notification service or the services of a call center;
   b. providing credit monitoring, credit freezing, credit thawing, healthcare record monitoring (where available), social media monitoring, password management services, or fraud alert services for those natural persons who accept an offer made by or on behalf of the **Insured** for, and receive, such services;
   c. retaining the services of a licensed investigator or credit specialist to provide fraud consultation to the natural persons whose **Protected Information** has been wrongfully disclosed or otherwise compromised;
   d. retaining the services of third party identity restoration service for natural persons identified by a licensed investigator as victims of identity theft directly resulting from a **Cyber Incident** otherwise covered under Insuring Agreements A or E;
   e. paying any reasonable amount to an informant for information not otherwise available which leads to the arrest and conviction of a natural person or an entity responsible for a **Cyber Incident**; or

f. other services that are deemed reasonable and necessary by the **Insurer**, including those services to mitigate or reduce any **Costs** that may otherwise be covered under this **Policy**, such as the removal of malicious software.

Cyber Incident Response Expenses shall not include:

i. costs or expenses incurred to update or improve privacy or network security controls, policies or procedures, or compliance with **Privacy or Cyber Laws**, to a level beyond that which existed prior to the applicable **Cyber Incident**;

ii. taxes, fines, penalties, amounts for injunctive relief, or sanctions;

iii. the **Insured's** money or any money in the **Insured's** care, custody, or control; or

iv. wages, salaries, and other compensation of directors, officers, similar executives, or employees of an **Organization**, or internal operating costs, expenses, or fees of any **Organization**.

Cyber Incident Response Team means **Pre-Approved Response Providers** who provide services as defined in **Cyber Incident Response Expenses**.

Damages means compensatory damages, any award of prejudgment or post-judgment interest, **Payment Card Loss**, **Regulatory Fines**, **Consumer Redress Fund**, settlements, and amounts which an **Insured** becomes legally obligated to pay on account of any **Claim**. **Damages** shall not include:

1. any amount for which an **Insured** is not financially liable or legally obligated to pay;

2. taxes, fines, penalties, or sanctions imposed directly against an **Insured**, except for **Payment Card Loss** or **Regulatory Fines** otherwise covered under Insuring Agreement E;

3. matters uninsurable under the laws pursuant to which this **Policy** is construed;

4. punitive or exemplary damages, or the multiple portion of any multiplied damage award, except to the extent that such punitive or exemplary damages, or multiplied portion of any multiplied damage award, are insurable under the applicable laws of any jurisdiction which most favors coverage for such damages and which has a substantial relationship to the **Insured**, **Insurer**, this **Policy**, or the **Claim** giving rise to such damages;

5. the cost to an **Insured** to comply with any injunctive, remedial, preventative, or other non-monetary or declaratory relief, including specific performance, or any agreement to provide such relief;

6. consideration owed or paid by or to an **Insured**, including any royalties, restitution, reduction, disgorgement, or return of any payment, charges, or fees; or costs to correct or re-perform services, or for the reprint, recall, or removal of **Media Content**;

7. liquidated damages pursuant to a contract, to the extent such amount exceeds the amount which the **Insured** would have been liable in the absence of such contract; or

8. penalties against an **Insured** of any nature, however denominated, arising by contract, except for **Payment Card Loss** otherwise covered under Insuring Agreement E.

Digital Data means software or other information in electronic form which is stored on an **Insured's Computer System** or **Shared Computer System**. **Digital Data** shall include the capacity of an **Insured's Computer System** or **Shared Computer System** to store information, process information, and transmit information over the Internet. **Digital Data** shall not include or be considered tangible property.

Digital Data Recovery Costs means:

1. the reasonable and necessary costs incurred by an **Insured** to replace, restore, recreate, re-collect, or recover **Digital Data** from written records or from partially or fully matching electronic records due

to their corruption, theft, or destruction, caused by a **Network Security Failure**, including disaster recovery or computer forensic investigation efforts. However, in the event that it is determined that the **Digital Data** cannot be replaced, restored, recreated, re-collected, or recovered, **Digital Data Recovery Costs** shall be limited to the reasonable and necessary costs incurred to reach such determination; or

2. **Telephone Fraud Financial Loss**,

including reasonable and necessary expenses incurred to mitigate or reduce any costs or loss in paragraphs 1 and 2 immediately above.

Digital Data Recovery Costs shall not include:

a. costs or expenses incurred to update, replace, upgrade, recreate, or improve **Digital Data** or a **Computer System** to a level beyond that which existed prior to the applicable **Cyber Incident**;

b. costs or expenses incurred to identify or remediate software program errors or vulnerabilities;

c. costs incurred to research and develop **Digital Data**, including **Trade Secrets**;

d. the economic or market value of **Digital Data**, including **Trade Secrets**; or

e. any other consequential loss or damages.

Extended Reporting Period means the period of time shown in Item 7B of the Declarations, subject to Section V, Extended Reporting Period.

Extortion Expenses means reasonable and necessary expenses incurred by an **Insured** resulting directly from a **Network Extortion Threat**, including money, cryptocurrencies (including Bitcoin), or other consideration surrendered as payment by an **Insured** to a natural person or group believed to be responsible for a **Network Extortion Threat**. **Extortion Expenses** shall also include reasonable and necessary expenses incurred to mitigate or reduce any of the forgoing expenses.

Extra Expenses means the reasonable and necessary:

1. expenses incurred by an **Insured** to mitigate, reduce, or avoid an **Interruption in Service**, provided they are in excess of expenses that an **Insured** would have incurred had there been no **Interruption in Service**;
2. expenses incurred by an **Insured** to reduce the **Period of Restoration**; and
3. with the **Insurer's** prior consent, costs incurred by an **Insured** to retain the services of a third party forensic accounting firm to determine the amount of **Business Interruption Loss** or **Contingent Business Interruption Loss**.

Extra Expenses shall not include:

a. costs or expenses incurred to prevent a loss or correct any deficiencies or problems with an **Insured's Computer System** or **Shared Computer System** that may cause or contribute to a **Claim**;

b. costs or expenses incurred to update, replace, upgrade, or improve any **Computer System** to a level beyond that which existed prior to the applicable **Interruption in Service**; or

c. penalties of any nature, however denominated, arising by contract.

Incident means **Cyber Incident** or **Media Incident**.

Insured means:

1. the **Named Insured**;

2. any **Subsidiary** of the **Named Insured**, but only with respect to **Incidents** which occur while it is a **Subsidiary**;
3. any past, present, or future natural person principal, partner, officer, director, trustee, employee, leased employee, or temporary employee of an **Organization**, but only with respect to an **Incident** committed within the scope of such natural person's duties performed on behalf of such **Organization**;
4. any past, present, or future independent contractor of an **Organization** who is a natural person or single person entity, but only with respect to the commission of an **Incident** within the scope of such natural person's or single person entity's duties, performed on behalf of such **Organization**; or
5. any past, present, or future natural person intern or volunteer worker of an **Organization** and who is registered or recorded as an intern or volunteer worker with such **Organization**, but only with respect to an **Incident** committed within the scope of such natural person's duties performed on behalf of such **Organization**.

Insured's Computer System means a **Computer System** leased, owned, or operated by an **Insured** or operated solely for the benefit of an **Insured** by a third party under written contract with an **Insured**.

Insurer means the insurance company providing this insurance.

Interrelated Incidents means all **Incidents** that have as a common nexus any act, fact, circumstance, situation, event, transaction, cause, or series of related acts, facts, circumstances, situations, events, transactions, or causes.

Interruption in Service means a detectable interruption or degradation in service of:

1. with respect to Insuring Agreement B1, an **Insured's Computer System**; or
2. with respect to Insuring Agreement B2, a **Shared Computer System**,

caused by a **Malicious Computer Act**.

Malicious Computer Act means malicious or fraudulent:

1. unauthorized access to or use of a **Computer System**;
2. alteration, corruption, damage, manipulation, misappropriation, theft, deletion, or destruction of **Digital Data**;
3. creation, transmission, or introduction of a computer virus or harmful code into a **Computer System**; or
4. restriction or inhibition of access, including denial of service attacks, upon or directed against a **Computer System**.

Media Content means any data, text, sounds, images, graphics, music, photographs, or advertisements, and shall include video, streaming content, webcasts, podcasts, blogs, online forums, and chat rooms. **Media Content** shall not include computer software, software technology, or the actual goods, products, or services described, illustrated, or displayed in such **Media Content**.

Media Incident means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by any **Insured**, or by any person or entity for whom an **Insured** is legally responsible, in the public display of:

1. **Media Content** on an **Insured's** website or printed material; or
2. **Media Content** posted by or on behalf of an **Insured** on any social media site or anywhere on the Internet,

which results in the following:

a. copyright infringement, passing-off, plagiarism, piracy, or misappropriation of property rights;

b. infringement or dilution of title, logo, slogan, domain name, metatag, trademark, trade name, service mark, or service name;

c. defamation, libel, slander, or any other form of defamation or harm to the character, reputation, or feelings of any person or entity, including product disparagement, trade libel, outrage, infliction of emotional distress, or *prima facie* tort;

d. invasion or infringement of the right of privacy or publicity, including the torts of intrusion upon seclusion, publication of private facts, false light, or misappropriation of name or likeness;

e. false arrest, detention or imprisonment, harassment, trespass, wrongful entry or eviction, eavesdropping, or other invasion of the right of private occupancy;

f. improper deep linking or framing; or

g. unfair competition or unfair trade practices, including misrepresentations in advertising, solely when alleged in conjunction with the alleged conduct referenced in items a–f immediately above.

Named Insured means the entity shown in Item 1 of the Declarations.

Network Extortion Threat means any credible threat or series of related threats directed at an **Insured** to:

1. release, divulge, disseminate, destroy, or use **Protected Information**, or confidential corporate information of an **Insured**, as a result of the unauthorized access to or unauthorized use of an **Insured's Computer System** or **Shared Computer System**;

2. cause a **Network Security Failure**;

3. alter, corrupt, damage, manipulate, misappropriate, encrypt, delete, or destroy **Digital Data**; or

4. restrict or inhibit access to an **Insured's Computer System** or **Shared Computer System**,

where a demand is made for the **Insured** to make a payment or a series of payments, or otherwise meet a demand, in exchange for the mitigation or removal of such threat or series of related threats.

Furthermore, **Network Extortion Threat** includes a threat or series of related threats connected to any of the acts above that have already commenced.

Network Security means those activities performed by an **Insured**, or by others on behalf of an **Insured**, to protect an **Insured's Computer System** or **Shared Computer System**.

Network Security Failure means a failure in **Network Security**, including the failure to prevent a **Malicious Computer Act**.

Non-Panel Response Provider means any firm providing the services shown in the definition of **Cyber Incident Response Expenses** to an **Insured** that is not a **Pre-Approved Response Provider**.

Organization means the **Named Insured** and any **Subsidiary**.

Payment Card means an authorized account, or evidence of an account, for a credit card, debit card, charge card, fleet card, or stored value card between the **Payment Card Brand** and its customer.

Payment Card Brand means any payment provider whose payment method is accepted for processing, including Visa Inc. International, MasterCard Worldwide, Discover Financial Services, American Express Company, and JCB International.

Payment Card Industry Data Security Standards means the rules, regulations, standards, or guidelines adopted or required by the **Payment Card Brand** or the Payment Card Industry Data

Security Standards Council relating to data security and the safeguarding, disclosure, and handling of **Protected Information**.

Payment Card Loss means monetary assessments, fines, penalties, chargebacks, reimbursements, and fraud recoveries, including card reissuance costs, which an **Insured** becomes legally obligated to pay as a result of an **Insured's** actual or alleged failure:

1. of **Network Security**; or
2. to properly protect, handle, manage, store, destroy, or otherwise control **Payment Card** data, including **Protected Information**, where such amount is determined pursuant to a payment card processing agreement between an **Organization** and a **Payment Card Brand**, or a merchant agreement between an **Organization** and a payment services provider, including for mobile payment services, or demanded in writing from an issuing or acquiring bank that processes **Payment Card** transactions, due to an **Insured's** actual or alleged non-compliance with applicable **Payment Card Industry Data Security Standards**, EMV specifications, or mobile payment security requirements. **Payment Card Loss** shall not include:
    a. subsequent fines or assessments for non-compliance with the **Payment Card Industry Data Security Standards**, EMV Specifications, or a mobile payment services merchant agreement unrelated to a specific **Claim**; or
    b. costs or expenses incurred to update or improve privacy or network security controls, policies, or procedures to a level beyond that which existed prior to the applicable **Cyber Incident** or to be compliant with applicable **Payment Card Industry Data Security Standards**, EMV Specifications, or a mobile payment services merchant agreement.

Period of Restoration means the continuous period of time that:

1. begins with the earliest date of an **Interruption in Service**; and
2. ends on the date when an **Insured's Computer System** or **Shared Computer System** is or could have been repaired or restored with reasonable speed to the same functionality and level of service that existed prior to the **Interruption in Service**. In no event shall the **Period of Restoration** exceed sixty (60) days.

Policy means, collectively, the Declarations, **Application**, this policy form, and any endorsements attached hereto.

Policy Period means the period of time shown in Item 2 of the Declarations, unless changed pursuant to Section XV, Termination of this Policy.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, asbestos products, or waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

Pre-Approved Response Provider means any firm listed on the **Insurer's** pre-approved response provider list available on request from the **Insurer** or on the pre-approved response provider list specified on the website shown in Item 9A of the Declarations.

Privacy or Cyber Laws means any local, state, federal, and foreign identity theft and privacy protection laws, legislation, statutes, or regulations that require commercial entities that collect **Protected Information** to post privacy policies, adopt specific privacy or security controls, or notify individuals in the event that **Protected Information** has potentially been compromised.

Property Damage means physical injury to or destruction of tangible property, including the resulting loss of use thereof.

Protected Information means the following, in any format:

1. a natural person's name, e-mail address, social security number, medical or healthcare data, other protected health information, driver's license number, state identification number, credit card number, debit card number, address, telephone number, account number, account histories, personally identifiable photos, personally identifiable videos, Internet browsing history, biometric records, passwords, or other non-public personal information as defined in any **Privacy or Cyber Laws**; or
2. any other third party confidential or proprietary information:
   a. that is not available to or known by the general public; or
   b. which an **Organization** is legally responsible to maintain in confidence.

Regulatory Fines means any civil monetary fine or penalty imposed by a federal, state, local, or foreign governmental entity in such entity's regulatory or official capacity as a result of a **Regulatory Proceeding**. **Regulatory Fines** shall not include any civil monetary fines or penalties that are not insurable by law, criminal fines, disgorgement, or the multiple portion of any multiplied damage award.

Regulatory Proceeding means a suit, civil investigation, or civil proceeding by or on behalf of a government agency, government licensing entity, or regulatory authority, commenced by the service of a complaint, notice, or similar pleading based on an alleged or potential violation of **Privacy or Cyber Laws** as a result of a **Cyber Incident**, and which may reasonably be expected to give rise to a **Claim** under Insuring Agreement E.

Retroactive Date means the applicable date shown in Item 5 of the Declarations. If Item 5 of the Declarations is left blank or contains the phrase "Full Prior Acts", "N/A", "Not Applicable", or "None", then **Retroactive Date** means the beginning of time.

Shared Computer System means a **Computer System**, other than an **Insured's Computer System**, operated for the benefit of an **Insured** by a third party under written contract with an **Insured**, including data hosting, cloud services or computing, co-location, data back-up, data storage, data processing, platforms, software, and infrastructure-as-a-service.

Subsidiary means:

1. any entity while more than fifty percent (50%) of the outstanding securities representing the present right to vote for election of or to appoint directors, trustees, managers, members of the Board of Managers, or equivalent positions of such entity, are owned or controlled by the **Named Insured**, directly or through one or more **Subsidiaries**;
2. any entity formed as a partnership while more than fifty percent (50%) of the ownership interests representing the present right to vote for election of or to appoint the management or executive committee members or equivalent positions of such entity, are owned or controlled by the **Named Insured**, directly or through one or more **Subsidiaries**; or
3. any entity while:
   a. exactly fifty percent (50%) of the voting rights representing the present right to vote for election of or to appoint directors, trustees, managers, members of the Board of Managers, or equivalent positions of such entity, are owned or controlled by the **Named Insured**, directly or through one or more **Subsidiaries**; and
   b. the **Named Insured**, pursuant to a written contract with the owners of the remaining and outstanding voting stock of such entity, solely controls the management and operation of such entity.

Telephone Fraud Financial Loss means toll and line charges which an **Insured** incurs, solely as a result of the fraudulent infiltration and manipulation of the **Insured's Telephone System** from a remote location to gain access to outbound long distance telephone service.

Telephone System means PBX, CBX, Merlin, VoIP, remote access (including DISA), and all related peripheral equipment or similar systems owned or leased by an **Insured** for purposes of voice-based telecommunications.

Trade Secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that derives actual or potential economic value from not being generally known to or readily ascertainable by other persons who can obtain value from its disclosure or use, so long as reasonable efforts have been made to maintain its secrecy.

Waiting Period means the number of hours shown in Item 4 of the Declarations.

III. EXCLUSIONS

A. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

The **Insurer** shall not be liable for **Costs**, **Damages**, or **Claims Expenses** on account of any **Incident** or any **Claim**:

1. Conduct

alleging, based upon, arising out of, or attributable to:

a. any fraudulent, criminal, malicious, or intentional act, error or omission, or any intentional or knowing violation of the law by an **Insured**; or

b. the gaining in fact of any profit, remuneration, or financial advantage to which any **Insured** was not legally entitled.

However, this exclusion shall not apply to **Claims Expenses** or the **Insurer's** duty to defend any such **Claim**, until there is a final, non-appealable adjudication against, binding arbitration against, adverse admission by, finding of fact against, or plea of *nolo contendere* or no contest by, the **Insured** as to such conduct or violation, at which time the **Insured** shall reimburse the **Insurer** for any **Claims Expenses** paid by the **Insurer**. Provided that:

i. no conduct pertaining to any natural person **Insured** shall be imputed to any other natural person **Insured**; and

ii. any conduct pertaining to any past, present, or future **Control Group Member**, other than a Rogue Actor, shall be imputed to an **Organization**. For purposes of this exclusion, "Rogue Actor" means a **Control Group Member** acting outside his or her capacity as such.

2. Prior Knowledge

alleging, based upon, arising out of, or attributable to any **Incident** that first occurred, arose, or took place prior to the earlier of the effective date of this **Policy**, or the effective date of any policy or coverage part issued by the **Insurer** of which this **Policy** is a continuous renewal or a replacement, and any **Control Group Member** knew of such **Incident**; and, with respect to Insuring Agreements E and F, any **Control Group Member** reasonably could have foreseen that such **Incident** did or could lead to a **Claim**.

3. Pending or Prior Proceedings

alleging, based upon, arising out of, or attributable to:

a. any pending or prior litigation, **Claim**, written demand, arbitration, administrative or regulatory proceeding, or administrative or regulatory investigation filed or commenced against an **Insured** on or before the applicable Pending or Prior Proceedings Date shown in Item 6 of the Declarations, or alleging or derived from the same or substantially the same fact, circumstance, or situation underlying or alleged therein; or

b. any other **Incident** whenever occurring which, together with an **Incident** underlying or alleged in any pending or prior litigation, **Claim**, written demand, arbitration, administrative or regulatory proceeding, or administrative or regulatory investigation as set forth pursuant to paragraph a. immediately above, would constitute **Interrelated Incidents**.

4. Prior Notice

alleging, based upon, arising out of, or attributable to:

a. any **Incident**, fact, circumstance, or situation which has been the subject of any written notice given and accepted under any other policy or coverage part of which this **Policy** is a direct or indirect renewal or replacement; or

b. any other **Incident** whenever occurring which, together with an **Incident** which has been the subject of such notice pursuant to paragraph a. immediately above, would constitute **Interrelated Incidents**.

5. Bodily Injury

for any **Bodily Injury**. However, solely with respect to Insuring Agreements E and F, this exclusion shall not apply to mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock resulting from an **Incident**.

6. Property Damage

alleging, based upon, arising out of, or attributable to **Property Damage**.

7. Pollution

alleging, based upon, arising out of, or attributable to the actual, alleged, or threatened discharge, release, escape, seepage, migration, or disposal of **Pollutants**, or any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants**, or any voluntary decision to do so.

8. Infrastructure Outage

alleging, based upon, arising out of, or attributable to any electrical or mechanical failure or interruption, electrical disturbance, surge, spike, brownout, blackout, or outages to electricity, gas, water, Internet access service provided by the Internet service provider that hosts an **Insured's** website, telecommunications, or other infrastructure. However, this exclusion shall not apply to failures, interruptions, disturbances, or outages of telephone, cable or telecommunications systems, networks, or infrastructure:

a. under an **Insured's** operational control which are a result of a **Network Security Failure**;

b. solely with respect to Insuring Agreement B, which are the result of a **Cyber Incident** impacting a **Shared Computer System**; or

c. solely with respect to Insuring Agreement E, which are the result of a **Cyber Incident**.

9. War

alleging, based upon, arising out of, or attributable to war, invasion, acts of foreign enemies, terrorism, hijacking, hostilities, or warlike operations (whether war is declared or not), military or usurped power, civil commotion assuming the proportions of or amounting to an uprising, strike, lock-out, riot, civil war, rebellion, revolution, or insurrection. However, this exclusion shall not apply to an **Act of Cyber-Terrorism** that results in a **Cyber Incident**.

10. Nuclear

alleging, based upon, arising out of, or attributable to the planning, construction, maintenance, operation, or use of any nuclear reactor, nuclear waste, storage or disposal site, or any other nuclear

facility, the transportation of nuclear material, or any nuclear reaction or radiation, or radioactive contamination, regardless of its cause.

11. Contract

for breach of any express, implied, actual, or constructive contract, warranty, guarantee, or promise, or for any actual or alleged liability assumed by an **Insured** under contract; unless such liability would have attached to the **Insured** even in the absence of such contract, warranty, guarantee, or promise. However, this exclusion shall not apply to:

a. the actual or alleged disclosure or theft of **Protected Information** resulting from a **Network Security Failure**;

b. an unintentional violation by an **Insured** to comply with an **Organization's** Privacy Policy;

c. solely with respect to Insuring Agreement E, **Payment Card Loss**; or

d. solely with respect to Insuring Agreement F, misappropriation of idea under implied contract.

12. Fees or Chargebacks

alleging, based upon, arising out of, or attributable to:

a. any fees, expenses, or costs paid to or charged by an **Insured**; or

b. chargebacks, chargeback fees, interchange fees or rates, transfer fees, transaction fees, discount fees, merchant service fees, or prospective service fees.

However, solely with respect to Insuring Agreement E, this exclusion shall not apply to **Payment Card Loss**.

13. Intellectual Property

alleging, based upon, arising out of, or attributable to any infringement of, violation of, misappropriation of, or assertion of any right to or interest in a patent or **Trade Secret** by or on behalf of any **Insured**. However, this exclusion shall not apply to:

a. solely with respect to Insuring Agreements A-D, the actual or alleged theft of a third party's **Trade Secret** resulting from a **Cyber Incident**; provided, however, this exclusion shall still nevertheless apply to any **Costs**, **Damages**, or **Claims Expenses** on account of any **Cyber Incident** or **Claim** for the economic or market value of **Trade Secrets**;

b. solely with respect to Insuring Agreement E, any **Claim** alleging, based upon, arising out of, or attributable to the actual or alleged disclosure or theft of **Protected Information** resulting from a **Network Security Failure**; or

c. solely with respect to Insuring Agreement F, any **Claim** alleging, based upon, arising out of, or attributable to any infringement of, violation of, misappropriation of, or assertion of any right to or interest in, any copyright, service mark, trade name, or trademark.

14. Antitrust or Unfair Trade Practices

alleging, based upon, arising out of, or attributable to any price fixing, restraint of trade, monopolization, interference with economic relations (including interference with contractual relations or with prospective advantage), unfair competition, unfair business practices, or unfair trade practices, or any violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing, restraint of trade, unfair competition, unfair business practices, or unfair trade practices, and any amendments thereto or any rules or regulations promulgated thereunder, amendments thereof, or any similar federal, state, or common law anywhere in the world. However, this exclusion shall not apply to:

a. solely with respect to Insuring Agreement E, a **Claim** resulting directly from a violation of **Privacy or Cyber Laws**; or

b. solely with respect to Insuring Agreement F, a **Claim** for a **Media Incident** as defined in paragraph g. of such definition.

15. Consumer Protection Laws

alleging, based upon, arising out of, or attributable to any violation by an **Insured** of the Truth in Lending Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, or the Fair and Accurate Credit Transactions Act, and any amendments thereto or any rules or regulations promulgated thereunder, amendments thereof, or any similar federal, state, or common law anywhere in the world. However, solely with respect to Insuring Agreements A and E, this exclusion shall not apply to a **Claim** arising out of the actual or alleged disclosure or theft of **Protected Information** resulting from a **Network Security Failure**.

16. Securities Law Violation

alleging, based upon, arising out of, or attributable to an **Insured's** violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisors Act, or any other federal, state, or local securities law, and any amendments thereto or any rules or regulations promulgated thereunder, amendments thereof, or any similar federal, state, or common law anywhere in the world.

17. Discrimination or Employment Practices

alleging, based upon, arising out of, or attributable to any illegal discrimination of any kind, or any employment relationship, or the nature, terms or conditions of employment, including claims for workplace torts, wrongful termination, dismissal or discharge, or any discrimination, harassment, breach of employment contract, or defamation. However, solely with respect to Insuring Agreement E, this exclusion shall not apply to that part of any **Claim** alleging employee-related invasion of privacy or employee–related wrongful infliction of emotional distress in the event such **Claim** arises out of the actual or alleged disclosure or theft of **Protected Information** resulting from a **Cyber Incident**.

18. Unsolicited Communications

alleging, based upon, arising out of, or attributable to any unsolicited electronic dissemination of faxes, e-mails, or other communications by or on behalf of an **Insured**, including actions brought under the Telephone Consumer Protection Act, any federal or state anti-spam statutes, or any other federal or state statute, law, rule, regulation, or common law anywhere in the world relating to a person's or entity's right of seclusion. However, solely with respect to Insuring Agreement E, this exclusion shall not apply to a **Claim** resulting from a **Cyber Incident** as defined under subparagraphs 1(a) or 1(c) of such definition.

19. Intentional Unlawful Collection or Use of Protected Information

alleging, based upon, arising out of, or attributable to:

a. the intentional unlawful collection or intentional unlawful use of **Protected Information**; or

b. the failure to provide adequate notice that **Protected Information** is being collected or used, by an **Insured**, with knowledge of any **Control Group Member** at the time of the **Incident**.

B. EXCLUSIONS APPLICABLE TO SPECIFIC INSURING AGREEMENTS

In addition to the Exclusions in Section IIIA above, the **Insurer** shall not be liable for **Costs**, **Damages**, or **Claims Expenses** on account of any **Incident** or any **Claim**:

1. Force Majeure

solely with respect to Insuring Agreements B and C, alleging, based upon, arising out of, or attributable to fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God (which does not include acts by actors purporting to be God), nature, or any other physical event, however caused and whether contributed to, made worse by, or in any way results from any such events. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently with or in any sequence to the **Costs**, **Damages**, or **Claims Expenses** on account of any **Incident** or any **Claim**.

2. Governmental Authority

   solely with respect to Insuring Agreements B, C, and D, alleging, based upon, arising out of, or attributable to any public or governmental authority, foreign enemy, military, or usurped power seizing or confiscating an **Insured's Computer System**, a **Shared Computer System**, or an **Insured's Digital Data**.

3. Insured v. Insured

   solely with respect to Insuring Agreements E and F, brought or maintained by, on behalf of, or in the right of any **Insured**. Provided, however, solely with respect to Insuring Agreement E, this exclusion shall not apply to that part of any **Claim** alleging employee-related invasion of privacy or employee–related wrongful infliction of emotional distress in the event such **Claim** arises out of the actual or alleged disclosure or theft of **Protected Information** resulting from a **Cyber Incident**.

4. Regulatory or Licensing Entities

   solely with respect to Insuring Agreement F, alleging, based upon, arising out of, or attributable to any action brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any other federal, state, or local government agency, or ASCAP, SESAC, BMI, or other licensing or rights entities in such entity's regulatory, quasi-regulatory, or official capacity, function, or duty.

5. False Advertising or Misrepresentation

   solely with respect to Insuring Agreement F, alleging, based upon, arising out of, or attributable to false or deceptive advertising or promotion, any unfair or deceptive trade practices with respect to the advertising or sale of any goods, products, or services, any inaccurate, inadequate, or incomplete description of the price of goods, products, or services, disclosure of fees, representations with respect to authenticity of any product, or the failure of any goods, products, or services to conform with advertised quality or performance.

6. Contest or Game of Chance

   solely with respect to Insuring Agreement F, alleging, based upon, arising out of, or attributable to any gambling, contest, game of chance or skill, lottery, or promotional game, including tickets or coupons or over-redemption related thereto.

IV. SPOUSES, COMMON LAW PARTNERS, ESTATES AND LEGAL REPRESENTATIVES

Coverage under this **Policy** shall extend to any **Claim** for any **Incident** made against:

A. the lawful spouse or domestic partner of a natural person **Insured** solely by reason of such spouse's or domestic partner's status as a spouse or domestic partner, or such spouse's or domestic partner's ownership interest in property which the claimant seeks as recovery in such **Claim**; or

B. the estate, heirs, legal representatives, or assigns of a natural person **Insured** if such natural person **Insured** is deceased, or the legal representatives or assigns of a natural person **Insured** if such natural person **Insured** is legally incompetent, insolvent, or bankrupt,

provided that:

1. no coverage is provided for any act, error or omission of an estate, heir, legal representative, assign, spouse, or domestic partner; and
2. all of the terms and conditions of this **Policy** including, without limitation, all applicable Retentions shown in Item 4 of the Declarations apply to such **Claim**.

V. EXTENDED REPORTING PERIOD

A. Solely with respect to Insuring Agreements A, E, and F, if the **Insurer** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), or if the **Named Insured** terminates or does not renew this **Policy** and does not obtain replacement coverage as of the effective date of such termination or nonrenewal, the **Named Insured** shall have the right, upon payment of the additional premium shown in Item 7A of the Declarations and subject to the terms specified in Subsections B-E directly below, to a continuation of the coverage granted by this **Policy** for an **Extended Reporting Period** shown in Item 7B of the Declarations following the effective date of such termination or non-renewal.

B. Coverage for the **Extended Reporting Period** shall be only for **Claims** first made or **Incidents** first discovered during such **Extended Reporting Period** and arising from **Incidents** taking place prior to the effective date of such termination or non-renewal. This right to continue coverage shall lapse unless written notice of such election is given by the **Named Insured** to the **Insurer**, and the **Insurer** receives payment of the additional premium shown in Item 7A of the Declarations, within thirty (30) days following the effective date of termination or non-renewal.

C. The **Extended Reporting Period** is non-cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

D. The **Extended Reporting Period** shall not increase or reinstate any Limits of Insurance. The Limits of Insurance as shown in Item 3 and Item 4 of the Declarations shall apply to both the **Policy Period** and the **Extended Reporting Period**, combined.

E. A change in **Policy** terms, conditions, exclusions, or premiums shall not be considered a non-renewal for purposes of triggering the rights to the **Extended Reporting Period**.

VI. LIMITS OF INSURANCE

Regardless of the number of Insuring Agreements purchased under this **Policy**, or the number of **Incidents**, **Insureds** against whom **Claims** are brought, **Claims** made, or persons or entities making **Claims**:

A. MAXIMUM POLICY AGGREGATE LIMIT OF INSURANCE

The **Insurer's** maximum limit of insurance for all **Incidents** or **Claims** under all Insuring Agreements shall be the Maximum Policy Aggregate Limit of Insurance shown in Item 3B of the Declarations.

B. AGGREGATE LIMIT FOR ALL INCIDENTS OR CLAIMS UNDER ANY ONE INSURING AGREEMENT

The **Insurer's** maximum limit of insurance for all **Incidents** or **Claims** under any one Insuring Agreement shall be the applicable Aggregate Limit for all **Incidents** or **Claims** shown in Item 4 of the Declarations, which shall be part of, and not in addition to, the Maximum Policy Aggregate Limit of Insurance shown in Item 3B of the Declarations.

C. MAXIMUM LIMIT OF INSURANCE FOR EACH INCIDENT OR CLAIM UNDER ANY ONE INSURING AGREEMENT

The **Insurer's** maximum limit of insurance for each **Incident** or **Claim** under any one Insuring Agreement shall be the applicable Each **Incident** or **Claim** Limit shown in Item 4 of the Declarations, which shall be part of, and not in addition to, both the applicable Aggregate Limit for all **Incidents** or

Claims shown in Item 4 of the Declarations, and the Maximum Policy Aggregate Limit of Insurance shown in Item 3B of the Declarations.

D. MAXIMUM LIMIT OF INSURANCE FOR ALL INTERRELATED INCIDENTS AND CLAIMS

All **Claims** arising out of the same **Incident** and all **Interrelated Incidents** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**.

All **Interrelated Incidents** shall be deemed to be one **Incident**, and such **Incident** shall be deemed to be first discovered or have first occurred, as applicable, on the date the earliest of such **Incidents** is first discovered or first occurs, regardless of whether such date is before or during the **Policy Period**.

The **Insurer's** maximum limit of insurance for all **Interrelated Incidents** and **Claims** arising out of such **Interrelated Incidents** shall be the Maximum Single Limit of Insurance shown in Item 3A of the Declarations, regardless of whether **Costs**, **Damages**, or **Claims Expenses** from a single **Incident** or **Claim** are covered under more than one Insuring Agreement. Notwithstanding anything in this paragraph to the contrary, in no event shall the **Insurer** pay more than the applicable:

1. Maximum Policy Aggregate Limit of Insurance shown in Item 3B of the Declarations,
2. Aggregate Limit for all **Incidents** or **Claims** under any one Insuring Agreement shown in Item 4 of the Declarations, and
3. Each **Incident** or **Claim** Limit under any one Insuring Agreement shown in Item 4 of the Declarations.

E. **Costs**, **Damages**, and **Claims Expenses** shall be part of and not in addition to the applicable Limit of Insurance shown in the Declarations, and shall reduce such applicable Limit of Insurance. If the applicable Limit of Insurance is exhausted by payment of **Costs**, **Damages**, and **Claims Expenses**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished.

F. Any sub-limits shown in the Declarations or added by endorsement to this **Policy** shall be part of and not in addition to the applicable Limit of Insurance shown in the Declarations, and shall reduce such applicable Limit of Insurance.

VII. RETENTION

A. The liability of the **Insurer** shall apply only to that part of **Costs**, **Damages**, and **Claims Expenses** which is in excess of the applicable Retention amount shown in Item 4 of the Declarations. Such Retention shall be borne uninsured by the **Named Insured** and at the risk of all **Insureds**.

B. With respect to Insuring Agreement B, the liability of the **Insurer** shall apply only to:

1. the actual **Business Interruption Loss** and **Contingent Business Interruption Loss** incurred by an **Insured** once the applicable **Waiting Period** shown in Item 4B of the Declarations has expired, provided that such amount is in excess of the applicable Retention amount shown in Item 4B of the Declarations; and
2. **Extra Expenses** incurred by an **Insured** as of the start of the **Interruption in Service**, provided that such amount is in excess of the applicable Retention amount shown in Item 4B of the Declarations.

The **Waiting Period** and Retention amounts shall be computed as of the start of the **Interruption in Service**.

Any **Business Interruption Loss**, **Contingent Business Interruption Loss**, or **Extra Expenses** incurred by an **Insured** during the **Waiting Period** shall reduce and may exhaust any applicable Retention.

C. A single Retention amount shall apply to **Costs**, **Damages**, and **Claims Expenses** arising from all **Interrelated Incidents** or **Claims** alleging **Interrelated Incidents**.

D. If a single **Incident** or **Claim**, or **Interrelated Incidents**, are subject to different Retentions, the applicable Retention shall be applied separately to each part of the **Costs**, **Damages**, and **Claims Expenses**, but the sum of such Retentions shall not exceed the largest applicable Retention.

VIII. NOTICE

A. Urgent crisis management assistance by the **Cyber Incident Response Coach** is available at the hotline number shown in the Declarations. Use of the services of the **Cyber Incident Response Coach** for a consultation DOES NOT constitute notice under this **Policy** of a **Cyber Incident** or **Claim**. In order to provide notice under this **Policy**, such notice must be given in accordance with and is subject to Subsections B-D of this Section VIII.

B. An **Insured** shall, as a condition precedent to such **Insured's** rights under this **Policy**, give to the **Insurer** written notice of any **Incident** or **Claim** as soon as practicable after any **Control Group Member** discovers such **Incident** or becomes aware of such **Claim**, but in no event later than:

1. if this **Policy** expires (or is otherwise terminated) without being renewed with the **Insurer**, ninety (90) days after the effective date of such expiration or termination; or
2. the expiration of the **Extended Reporting Period**, if applicable,

provided that if the **Insurer** sends written notice to the **Named Insured**, stating that this **Policy** is being terminated for nonpayment of premium, an **Insured** shall give to the **Insurer** written notice of such **Claim** prior to the effective date of such termination.

If the **Insured** is unable to provide notification required under this **Policy** due a prohibition by any law enforcement or governmental authority, the **Insured** will use its best efforts to provide the **Insurer** with information to make the **Insurer** aware of a potential or actual **Incident** or **Claim** until written notice can actually be provided.

Notwithstanding the foregoing, there shall be no coverage for any such **Incident** or **Claim** if the information withheld relating to such **Incident** or **Claim** was:

a. both (i) known to the **Insured** prior to the **Policy** Inception Date shown in Item 2 of the Declarations, and (ii) not disclosed in the **Application**; or
b. not disclosed in writing to the **Insurer** within a reasonable time period after the prohibition on disclosing the information was revoked or no longer necessary.

C. If, during the **Policy Period**, any **Control Group Member** first becomes aware of any **Incident**, or any fact, circumstance, situation, or **Incident** which may reasonably give rise to a future **Claim** under this **Policy** ("**Potential Claim**"), and written notice is given to the **Insurer** during the **Policy Period**, of the:

1. nature of the **Incident** or **Potential Claim**;
2. identity of the **Insureds** allegedly involved;
3. circumstances by which the **Insureds** first became aware of the **Incident** or **Potential Claim**;
4. identity of the actual or potential claimants;
5. foreseeable consequences of the **Incident** or **Potential Claim**; and
6. nature of the potential **Damages**;

then any **Claim** which arises out of such **Incident** or **Potential Claim** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. The **Insurer** will not pay for **Damages** or **Claims Expenses** incurred prior to the time such **Incident** or **Potential Claim** results in a **Claim**.

D. All notices under any provision of this **Policy** shall be given as follows:

1. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations.

2. Notice to the **Insurer** of any **Incident**, **Claim**, or **Potential Claim** shall be given to the **Insurer** at the physical address or email address shown in Item 9A of the Declarations.

3. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the physical address shown in Item 9B of the Declarations.

Notice given as set out above shall be deemed to be received and effective upon actual receipt thereof by the addressee, or one day following the date such notice is sent, whichever is earlier. When any such notices are sent to a physical address, such notices shall be sent by prepaid express courier or certified mail properly addressed to the appropriate party.

IX. DEFENSE AND SETTLEMENT

A. Except as provided in Subsection B of this Section IX, the **Insurer** shall have the right and duty to defend any **Claim** brought against an **Insured** even if such **Claim** is groundless, false, or fraudulent.

The **Insurer** shall consult and endeavor to reach an agreement with the **Insured** regarding the appointment of counsel, but shall retain the right to appoint counsel and to make such investigation and defense of a **Claim** as it deems necessary.

B. The **Insurer** shall have the right, but not the duty, to defend any **Regulatory Proceeding**. For such **Claims**, the **Insured** shall select defense counsel from the **Insurer's** list of approved law firms, and the **Insurer** reserves the right to associate in the defense of such **Claims**.

C. No **Insured** shall settle any **Claim**, incur any **Claims Expenses**, or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the **Insurer's** written consent, which shall not be unreasonably withheld.

D. The **Insurer** shall not settle any **Claim** without the written consent of the **Named Insured**. If the **Named Insured** refuses to consent to a settlement recommended by the **Insurer** and acceptable to the claimant, then the **Insurer's** applicable Limit of Insurance under this **Policy** with respect to such **Claim** shall be reduced to:

1. the amount of **Damages** for which the **Claim** could have been settled plus all **Claims Expenses** incurred up to the time the **Insurer** made its recommendation to the **Named Insured**; plus

2. eighty percent (80%) of all subsequent covered **Damages** and **Claims Expenses** in excess of such amount referenced in paragraph (1) immediately above, which amount shall not exceed that portion of any applicable Limit of Insurance that remains unexhausted by payment of **Costs**, **Damages**, and **Claims Expenses**. The remaining twenty percent (20%) of all subsequent covered **Damages** and **Claims Expenses** shall be borne by the **Insureds** uninsured and at their own risk.

However, this Subsection D does not apply to any potential settlement that is within the Retention.

E. The **Insurer** shall not be obligated to investigate, defend, pay, or settle, or continue to investigate, defend, pay, or settle any **Claim** after any applicable Limit of Insurance has been exhausted by payment of **Costs**, **Damages**, or **Claims Expenses**, or by any combination thereof, or after the **Insurer** has deposited the remainder of any unexhausted applicable Limit of Insurance into a court of competent

jurisdiction. In either such case, the **Insurer** shall have the right to withdraw from the further investigation, defense, payment, or settlement of such **Claim** by tendering control of such **Claim** to the **Insured**.

F. The **Insureds** shall cooperate with the **Insurer** and provide to the **Insurer** all information and assistance which the **Insurer** reasonably requests, including attending hearings, depositions, and trials, and assistance in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and conducting the defense of any **Claim** covered by this **Policy**. The **Insured** shall do nothing that may prejudice the **Insurer's** position. The **Insureds** shall forward to the **Insurer** as soon as practicable, at the address shown in Item 9A of the Declarations, every demand, notice, summons, or other process or pleading received by an **Insured** or its representatives.

G. With the exception of paragraph 6 of the **Cyber Incident Response Expenses** definition, an **Insured** has the right to incur **Cyber Incident Response Expenses** without the **Insurer's** prior consent. However, the **Insurer** shall, at its sole discretion and in good faith, pay only for such expenses that the **Insurer** deems to be reasonable and necessary.

X. PROOF OF LOSS FOR FIRST PARTY INSURING AGREEMENTS

A. Requests for payment or reimbursement of **Costs** incurred by an **Insured** shall be accompanied by a proof of loss with full particulars as to the computation of such **Costs**. Such proof of loss will include in detail how the **Costs** were calculated, and what assumptions have been made, and shall include documentary evidence, including any applicable reports, books of accounts, bills, invoices, and other vouchers or proofs of payment made by an **Insured** in relation to such **Costs**. Furthermore, the **Insureds** shall cooperate with, and provide any additional information reasonably requested by, the **Insurer** in its investigation of any **Incident** and review of **Costs**, including the right to investigate and audit the proof of loss and inspect the records of an **Insured**.

B. In addition to an **Insured's** proof of loss as set forth in Subsection A above, with respect to Insuring Agreement B, the **Business Interruption Loss** or **Contingent Business Interruption Loss** will be determined taking full account and due consideration of such proof of loss and the trends or circumstances which affect the profitability of the business and would have affected the profitability of the business had the **Business Interruption Loss** or **Contingent Business Interruption Loss** not occurred, including all material changes in market conditions or adjustment expenses which would affect the net profit generated. However, the **Insurer's** adjustment will not include the **Insured's** increase in income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of a **Malicious Computer Act** on others.

XI. ALLOCATION

If a **Claim** includes both covered and uncovered matters, then coverage shall apply as follows:

A. **Claims Expenses**: One hundred percent (100%) of **Claims Expenses** incurred by any **Insured** on account of such **Claim** shall be considered covered provided that the foregoing shall not apply with respect to: (i) a **Regulatory Proceeding**; or, (ii) any **Insured** for whom coverage is excluded pursuant to Exclusion III.A.1 or Section XIV, Subsection C. With respect to a **Regulatory Proceeding**, amounts for covered **Claims Expenses** and for uncovered fees, costs, and expenses shall be allocated based upon the relative legal and financial exposures of, and the relative benefits obtained by, the parties to such matters.

B. Loss other than **Claims Expenses**: all remaining loss incurred by such **Insured** from such **Claim** shall be allocated between covered **Damages** and uncovered damages based upon the relative legal and financial exposures of, and the relative benefits obtained by, the parties to such matters.

XII. OTHER INSURANCE

If any **Costs**, **Damages**, or **Claims Expenses** covered under this **Policy** are covered under any other valid and collectible insurance, then this **Policy** shall cover such **Costs**, **Damages**, or **Claims Expenses**, subject

to the **Policy** terms and conditions, only to the extent that the amount of such **Costs**, **Damages**, or **Claims Expenses** are in excess of the amount of such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent, or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Insurance provided by this **Policy**.

XIII. MATERIAL CHANGES IN EXPOSURE

A. ACQUISITION OR CREATION OF ANOTHER ENTITY

If, during the **Policy Period**, the **Named Insured**:

1. acquires voting securities in another entity or creates another entity, which as a result of such acquisition or creation becomes a **Subsidiary**; or
2. acquires any entity by merger into or consolidation with the **Named Insured**;

then, subject to the terms and conditions of this **Policy**, such entity and its natural person **Insureds** shall be covered under this **Policy** but only with respect to **Claims** for **Incidents**, or **Incidents**, as applicable, taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Claims** for **Incidents**, or **Incidents**, as applicable, taking place prior to such acquisition or creation.

B. ACQUISITION OF THE NAMED INSURED

If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
2. the obtaining by any person, entity, or affiliated group of persons or entities, of the right to elect, appoint, or designate at least fifty percent (50%) of the directors, trustees, managers, members of the Board of Managers, management or executive committee members, or equivalent positions of the **Named Insured**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Incidents**, or **Incidents**, as applicable, taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Incidents**, or **Incidents**, as applicable, taking place after such event. This **Policy** may not be cancelled after the effective time of the event, and the entire premium for this **Policy** shall be deemed earned as of such time.

C. TERMINATION OF A SUBSIDIARY

If, before or during the **Policy Period**, an entity ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and any **Insured** (as defined in paragraphs 3, 4, and 5 of such definition) of the **Subsidiary** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Incidents**, or **Incidents**, as applicable, taking place prior to the date such entity ceased to be a **Subsidiary**.

XIV. REPRESENTATIONS

A. In granting coverage to any **Insured**, the **Insurer** has relied upon the declarations and statements in the **Application** for this **Policy**. Such declarations and statements are the basis of the coverage under this **Policy** and shall be considered as incorporated in and constituting part of this **Policy**.

B. The **Application** for coverage shall be construed as a separate **Application** for coverage by each **Insured**. With respect to the declarations and statements in such **Application**, no knowledge possessed by a natural person **Insured** shall be imputed to any other natural person **Insured**.

C. However, in the event that such **Application** contains any misrepresentations made with the actual intent to deceive or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Policy**, then no coverage shall be afforded for any **Incident** or **Claim** based upon, arising from, or in consequence of any such misrepresentations with respect to:

1. any natural person **Insured** who knew of such misrepresentations (whether or not such natural person knew such **Application** contained such misrepresentations); or

2. an **Organization**, if any past or present **Control Group Member** knew of such misrepresentations (whether or not such **Control Group Member** knew such **Application** contained such misrepresentations).

D. The **Insurer** shall not be entitled under any circumstances to void or rescind this **Policy** with respect to any **Insured**.

XV. TERMINATION OF THIS POLICY

A. This **Policy** shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;

2. twenty (20) days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such twenty (20) day period;

3. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or

4. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.

B. If the **Policy** is terminated by the **Named Insured** or the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XVI. TERRITORY AND VALUATION

A. Coverage provided under this **Policy** shall extend to **Incidents** and **Claims** taking place, brought, or maintained anywhere in the universe. Any provision in this **Policy** pertaining to coverage for **Incidents** or **Claims** made, or **Damages** or **Claims Expenses** sustained anywhere outside the United States of America shall only apply where legally permissible.

B. All premiums, limits, retentions, **Costs**, **Damages**, **Claims Expenses**, and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated, or another element of loss under this **Policy** is stated in a currency other than United States of America dollars, or if **Extortion Expenses** are stated in a currency, including Bitcoin or other crypto-currency(ies), other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published by *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon, or the other element of loss is due, respectively, or, if not published on such date, the next date of publication by *The Wall Street Journal*. If there is no applicable rate of exchange published by *The Wall Street Journal*, then payment under this **Policy** shall be made in the equivalent of United States of America dollars at the actual rate of exchange for such currency.

XVII. CYBER INCIDENT RESPONSE FUND AND LOSS MITIGATION SERVICES PROVISIONS

A. With respect to the **Cyber Incident Response Team** or a **Non-Panel Response Provider** providing to an **Insured** the services shown in the definition of **Cyber Incident Response Expenses**:

1. The **Insureds** are under no obligation to contract for services with the **Cyber Incident Response Team**. However, if an **Insured** elects to use any **Non-Panel Response Providers** for any **Cyber Incident Response Expenses**, the applicable Limits of Insurance shown in Item 4A2 of the Declarations will apply.
2. The **Insurer** shall not be a party to any agreement entered into between any **Cyber Incident Response Team** service provider and an **Insured**.
3. **Cyber Incident Response Team** service providers are independent contractors, and are not agents of the **Insurer**. The **Insureds** agree that the **Insurer** assumes no liability arising out of any services rendered by a **Cyber Incident Response Team** service provider. The **Insurer** shall not be entitled to any rights or subject to any obligations or liabilities set forth in any agreement entered into between any **Cyber Incident Response Team** service provider and an **Insured**. Any rights and obligations with respect to such agreement, including billings, fees, and services rendered, are solely for the benefit of, and borne solely by such **Cyber Incident Response Team** service provider and such **Insured**, and not the **Insurer**.
4. The **Insurer** has no obligation to provide any of the services provided by the **Cyber Incident Response Team**.

B. With respect to any other third party vendor, the **Insurer** may provide the **Named Insured** with a list of third-party privacy and network security loss mitigation vendors whom the **Named Insured**, at its own election and at the **Named Insured's** own expense, may retain for cyber risk management to inspect, assess, and audit the **Named Insured's** property, operations, systems, books, and records, including the **Named Insured's** network security, employee cyber security awareness, incident response plans, services provider contracts, and regulatory compliance. Any loss mitigation inspection, assessment, or audit purchased by the **Named Insured**, and any report or recommendation resulting therefrom, shall not constitute an undertaking at the request of, or for the benefit of the **Insurer**.

C. The **Insurer** may also make available third-party privacy and network security loss mitigation services to the **Insureds**, at no additional expense to the **Named Insured**, in order to help the **Insureds** analyze key cyber exposures and limit their exposure to a potential loss during the **Policy Period**. Such services shall be provided by a pre-approved vendor of the **Insurer**.

D. The **Insurer** shall be permitted but not be obligated to make loss control recommendations and provide loss control services to the **Organization** for the **Insurer's** underwriting purposes, following notice and coordination with the **Named Insured**. The **Insurer's** right to make recommendations for, or provide, loss control services is for the exclusive purpose of making an underwriting determination and shall not constitute an undertaking on behalf of or for the benefit of the **Organization** or others. Furthermore, such loss control services are undertaken for the benefit of the **Insurer** and relate only to the insurability of the **Organization** for coverage under this **Policy**, to reduce the severity or frequency of losses, or to determine the premiums to be charged.

XVIII. SUBROGATION

A. The **Insurer** shall have no rights of subrogation against any **Insured** under this **Policy** unless Exclusion III.A.1 or Section XIV, Subsection C, applies.

B. In the event of payment under this **Policy**, the **Insureds** must transfer to the **Insurer** any applicable rights to recover from another person or entity all or part of any such payment. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

C. If prior to the **Incident** or **Claim** connected with such payment an **Insured** has agreed in writing to waive such **Insured's** right of recovery or subrogation against any person or entity, such agreement shall not be considered a violation of such **Insured's** duties under this **Policy**.

XIX. ACTION AGAINST THE INSURER AND BANKRUPTCY

Except as provided in Section XXII, Alternative Dispute Resolution, no action shall lie against the **Insurer**. No person or entity shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of such **Insured**, nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives. Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of its obligations or deprive the **Insurer** of its rights or defenses under this **Policy**.

XX. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving of notice of **Incident** or **Claim**, the giving or receiving of notice of termination or non-renewal, the payment of premiums, the receiving of any premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, consenting to any settlement, exercising the right to the **Extended Reporting Period**, and the giving or receiving of any other notice provided for in this **Policy**, and all **Insureds** agree that the **Named Insured** shall so act on their behalf.

XXI. ALTERATION, ASSIGNMENT, AND HEADINGS

A. Notice to any agent or knowledge possessed by any agent or by any other person, shall not affect a waiver or a change in any part of this **Policy** or prevent the **Insurer** from asserting any right under the terms of this **Policy**.

B. No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**.

C. The titles and headings to the various parts, sections, subsections, and endorsements of the **Policy** are included solely for ease of reference and do not in any way limit, expand, serve to interpret, or otherwise affect the provisions of such parts, sections, subsections, or endorsements.

D. Any reference to the singular shall include the plural and vice versa.

XXII. ALTERNATIVE DISPUTE RESOLUTION

A. The **Insureds** and the **Insurer** shall submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination, or invalidity thereof to the alternative dispute resolution ("ADR") process set forth in this Section.

B. Either an **Insured** or the **Insurer** may elect the type of ADR process discussed below. However, such **Insured** shall have the right to reject the choice by the **Insurer** of the type of ADR process at any time prior to its commencement, in which case the choice by such **Insured** of ADR process shall control.

C. There shall be two choices of ADR process:

1. non-binding mediation administered by any mediation facility to which the **Insurer** and an **Insured** mutually agree, in which such **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility; or

2. arbitration submitted to any arbitration facility to which an **Insured** and the **Insurer** mutually agree, in which the arbitration panel shall consist of three disinterested individuals.

In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding. However, no such judicial proceeding shall be

commenced until at least sixty (60) days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

D. Either ADR process may be commenced in New York or in the state shown in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with any ADR process under this Section.

XXIII. COMPLIANCE WITH TRADE SANCTIONS

This insurance does not apply to the extent that trade or economic sanctions or other similar laws or regulations prohibit the providing of such insurance.