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Specimen

1. Introductory Clause

IMPORTANT NOTICE:

THIS IS A CLAIMS MADE AND REPORTED POLICY. THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS AND EVENTS THAT ARE FIRST MADE AND REPORTED TO US DURING THE POLICY PERIOD OR ANY AUTOMATIC OR ADDITIONAL EXTENDED REPORTING PERIOD, IF APPLICABLE, ARISING FROM ANY ACTS, FACTS OR CIRCUMSTANCES THAT TOOK PLACE ON OR AFTER ANY RETROACTIVE DATE SPECIFIED IN ITEM 7 OF THE DECLARATIONS AND BEFORE THE EXPIRATION OF THE POLICY PERIOD OR WERE DISCOVERED DURING THE POLICY PERIOD AS REQUIRED BY THE POLICY.

SOME OR ALL OF THE INSURING AGREEMENTS INCLUDED BELOW HAVE BEEN PURCHASED BY YOU. PLEASE REFER TO THE DECLARATIONS, WHICH IS INCORPORATED INTO THIS POLICY, IN ORDER TO IDENTIFY THE INSURING AGREEMENTS THAT YOU HAVE PURCHASED.

THIS POLICY IS A CONTRACT FOR INSURANCE BETWEEN YOU AND US. THE COVERAGE IS PROVIDED AS DESCRIBED BELOW SUBJECT ALWAYS TO OUR RECEIPT OF THE PREMIUM AND OUR RELIANCE UPON THE STATEMENTS MADE BY YOU IN THE APPLICATION, WHICH FORMS PART OF THIS POLICY AND IS THE BASIS OF YOUR INSURANCE COVER. THE POLICY IS SUBJECT TO THE LIMIT OF LIABILITY, EXCLUSIONS, CONDITIONS AND OTHER TERMS SET FORTH BELOW.

READ THIS POLICY CAREFULLY TO DETERMINE THE EXTENT OF COVERAGE. VARIOUS PROVISIONS IN THIS POLICY RESTRICT YOUR COVERAGE.

Words and phrases that appear in bold print below are defined separately. Whenever a singular form of a word is used, the same shall include the plural when required by context.

2. Insuring Agreements

A. Incident Response

We will pay on **your** behalf **incident response expenses** in excess of **your** Deductible that are reasonable and necessary to pay as a result of an actual or suspected **privacy and network security event, network interruption event** or **cyber-extortion and ransom event** first identified by **you** during the policy period and reported to **us** in writing during the policy period or any Automatic or Additional Extended Reporting Period, if applicable.

However, the deductible will not apply to **first responder services** when responding to a **privacy and network security event, network interruption event** or **cyber-extortion and ransom event** so long as such **first responder services** are for work undertaken by a **designated incident response provider**.

B. Network Interruption and Loss of Income

(i) Direct Network Interruption and Business Income

We shall reimburse **you** for the loss of **business income, restoration expenses** and **business continuity expenses** in excess of **your** Deductible and during the **period of restoration** you incur as a consequence of a **network interruption event** of **your computer system** or a **voluntary shutdown** of **your computer system** where such **network interruption event** or **voluntary shutdown** occurs during the policy period and is reported by **you** to **us** in writing during the policy period.

(ii) Contingent Network Interruption and Business Income

We shall reimburse **you** for the loss of **business income**, **restoration expenses** and **business continuity expenses** in excess of **your** Deductible and during the **period of restoration you** incur as a consequence of a **network interruption event** of the **computer system** of a **service provider** where such **network interruption event** occurs during the policy period and is reported by **you** to **us** in writing during the policy period.

(iii) Bricking

We shall reimburse **you** for the **hardware replacement costs** and **software replacement costs you** incur in excess of your Deductible as a result of a **network interruption event** or **cyber-extortion and ransom event** where such **network interruption event** or **cyber-extortion and ransom event** is first identified by **you** during the policy period and reported by **you** to **us** in writing during the policy period.

(iv) Reputational Business Income

We shall reimburse **you** for the loss of **reputational business income** in excess of **your** Deductible and during the **period of reputational restoration you** incur as a consequence of the **reputational damage** caused by a **privacy and network security event** or a **network interruption event** where such **reputational damage** occurs during the policy period and is reported by **you** to **us** in writing during the policy period.

C. Cyber-Extortion and Ransom

We shall reimburse **you** for **cyber-extortion and ransom expenses** in excess of **your** Deductible and only where insurable by law where such **cyber-extortion and ransom expenses** were incurred with **our** prior written consent, as a consequence of a **cyber-extortion and ransom event** where such **cyber-extortion and ransom event** occurs during the policy period and is reported by **you** to **us** in writing during the policy period.

As a condition precedent to payment by **us**, **you** shall:

- (i) keep the terms of this **cyber-extortion and ransom** coverage confidential, to be shared only with necessary management and potential law enforcement authorities in the course of responding to a **cyber-extortion and ransom event**;
- (ii) take all reasonable steps to terminate a **cyber-extortion and ransom event** by means other than through payment of monies to a third party; and
- (iii) cooperate with outside governmental authorities, where necessary, to effectively mitigate the extent and nature of any **cyber-extortion and ransom expenses**.

D. Regulatory Fines and Penalties

(i) Privacy Regulatory Defense and Penalties

We shall pay on **your** behalf all **privacy regulatory defense and penalties** in excess of **your** Deductible that **you** become legally obligated to pay as a consequence of a **regulatory action** against **you** arising out of **privacy and network security event** first identified by **you** during the policy period and reported by **you** to **us** in writing during the policy period or any Automatic or Additional Extended Reporting Period, if applicable.

(ii) PCI Expenses and Penalties

We shall pay on **your** behalf **PCI expenses and penalties** in excess of **your** Deductible that **you** become legally obligated to pay as a consequence of a **PCI action** against **you** arising out of a **privacy breach** first identified by **you** during the policy period and reported by **you** to **us** in writing during the policy period or any Automatic or Additional Extended Reporting Period, if applicable.

Such **privacy regulatory defense and penalties** and **PCI expenses and penalties** will be paid only where insurable by law and where such payment would not expose **us** or **you** to any sanctions, prohibitions or restrictions under United Nations or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

E. Privacy and Network Security Liability

We shall pay on **your** behalf all **damages** and **claims expenses** in excess of **your** Deductible that **you** become legally obligated to pay as a result of any **claim** first made against **you** and reported by **you** to **us** in writing during the policy period or any Automatic or Additional Extended Reporting Period, if applicable, arising out of an actual or alleged **privacy and network security event** first identified by **you** during the policy period.

F. Multimedia Liability

We shall pay on **your** behalf all **damages** and **claims expenses** in excess of **your** Deductible that **you** become legally obligated to pay as a result of any **claim** first made against **you** and reported by **you** to **us** in writing during the policy period or any Automatic or Additional Extended Reporting Period, if applicable, arising solely out of **your** release or transmission of **multimedia content**, which results in an actual or alleged **multimedia wrongful act** that occurs on or after the **retroactive date** and before the expiration of the policy period.

3. Defense and Settlement of Claims

- A. It is **our** right and duty to defend a **claim** first made against **you** during the policy period seeking **damages** and reported by **you** to **us** during the policy period or any Automatic or Additional Extended Reporting Period, if any, even if such **claim** is groundless or fraudulent, however **our** right and duty to defend **you** under this policy ends when the applicable Limit of Liability has been exhausted by payments of **damages** or **claims expenses**. **We** have no duty to defend any **claim** that does not allege acts, facts or circumstances that come within the coverage of the policy as described in Insuring Agreements E and F.
- B. **We** have the right to appoint service providers and/or legal counsel to represent **your** interests with respect to a **privacy and network security event**, **network interruption event**, and/or a **cyber-extortion and ransom event**. **We** also have the right to select and appoint defense counsel to defend any **claim** notified under this policy. If **you** have appointed any service providers and/or counsel without **our** consent, at **our** request **you** shall instruct them to turn over all their relevant files, materials and work product and cooperate with any service providers and/or counsel who **we** select and appoint to represent **your** interests and/or defend **you**.
- C. The Limit of Liability available to pay **damages** as stated in Item 5 of the Declarations shall be reduced and may be completely exhausted by payment of **covered amounts**. In addition, **covered amounts** shall be applied against the Deductible, Limit of Liability, or any Sub-limit as identified in the Declarations.

- D. **You** may not admit liability, make any payment, assume any obligation, or incur any expense in relation to a **claim** without **our** prior written consent, provided that such consent may not be unreasonably withheld. Only reasonable and necessary costs incurred with **our** prior written consent will be paid.
- E. **We** have the right to investigate any **claim** in the manner and to the extent that **we** believe is necessary, including, without limitation, any investigation with respect to the application and statements made in the application and with respect to coverage. **You** shall sit for an examination by **our** representative under oath, if requested, in connection with all matters relating to this policy.
- F. Under Insuring Agreement E and F, **we** shall have the right to settle any **claim**, subject to **your** consent, which shall not be unreasonably withheld. If **you** refuse to consent to any settlement or compromise recommended by **us** that is acceptable to the claimant and elect to contest the **claim**, **our** total liability for any **damages** and **claims expenses** shall not exceed:
- (i) either seventy per cent (70%) of any **damages** and **claims expenses** incurred after the date such settlement or compromise was recommended to **you** with the remaining thirty per cent (30%) of such **damages** and **claims expenses** to be borne by **you** at **your** own risk and uninsured; or
 - (ii) the applicable Limit of Liability, whichever is less.
- We** shall have the right to withdraw from further defense by tendering control of said defense to **you**.

4. Definitions

- A. **Advertising** means, publicity or promotion, subject to Exclusion (A), of any kind of products or services. **Advertising** does not include:
- (i) films for theatrical release, radio, or television programs;
 - (ii) the operation of a radio station, television station, or cable system; or
 - (iii) books or periodical publications that are independent of and separate from **advertising**.
- B. **Bodily injury** means physical injury, sickness, disease or death of any person and, where resulting from such physical injuries only, mental injury, mental anguish, humiliation, shock, or emotional distress.
- C. **Business continuity expenses** means reasonable and necessary costs incurred with **our** prior written consent to provide a workaround and to continue **your** business operations as a result of a **network interruption event** for:
- (i) The use of rented or leased business equipment;
 - (ii) The costs to rent alternative work space; or
 - (iii) The costs to retain temporary staff.
- D. **Business income** means the net income (net profit or loss before taxes) which would have been earned or incurred had no **network interruption event** occurred. **Business income** does not include **reputation business income**.
- E. **Choice of Law and Jurisdiction** as set forth in Item 12 of the Declarations.
- F. **Claim** means:
- (i) a civil proceeding for **damages** commenced by the filing of a complaint or similar pleading;
 - (ii) an arbitration or mediation proceeding in which **damages** are sought;
 - (iii) a written demand for **damages**;
 - (iv) a cease and desist letter; or
 - (v) a verbal or written request for a tolling agreement.

All **claims** arising out of the same facts, acts, circumstances, events or transactions shall be considered a single **claim** regardless of the number of insured under this policy, **claims**, claimants, defendants or causes of action. The date when any such **claim** is made will be the date that the first **claim** is made.

G. **Claims expenses** means:

- (i) reasonable and necessary fees charged by an attorney designated by **us** and incurred with **our** prior written consent to defend any **claim**, or
- (ii) all other reasonable and necessary fees, costs and expenses incurred in the investigation, adjustment, defense and appeal of a **claim**, suit or proceeding arising in connection therewith, if incurred by **us**, or by **you** but only with **our** prior written consent.

Claim expenses do not include any salaries, overhead or other charges **you** incur for any time **you** spend in cooperating in the defense and investigation of any **claim** or circumstance which might lead to a **claim** under this policy.

H. **Computer system** means electronic, wireless, web or similar systems (including all hardware and software) used to process data or information in an analogue, digital, electronic or wireless format including computer programs, electronic data processing media, electronic data, electronic data communications equipment, operating systems, computer network and networking equipment, firmware, servers, web sites, extranet, and all input, output, processing, storage and on-line or off-line media libraries, music, graphic, entertainment and other content (to the extent that they hold electronic data).

I. **Computer virus** means computer instructions placed on a **computer system** without the owner's or user's knowledge or consent, that are designed to harm, impede, corrupt, erase, remove, disrupt, degrade or destroy the **computer system**, electronic data or software (or any part of them). **Computer virus** includes malicious codes, malware, trojan horses, worms, and time or logic bombs or any mutations of any of the proceeding.

J. **Confidential information** means any non-public information that is not owned by **you**, but is in **your** care, custody or control, provided to **you** under a mutually agreed to written confidentiality or non-disclosure agreement, marked "confidential" or otherwise specifically designated in writing as "confidential" by another party, or is subject to confidentiality provisions of statutes or by common law. **Confidential information** includes, but is not limited to, business plans, products, technical data, product plans, business methods, trade secrets, data, designs, interpretations, forecasts, formula, method, practice, process, record or report.

K. **Covered amount** means **damages, claims expenses, incident response expenses, privacy regulatory defense and penalties, PCI expenses and penalties, business income, restoration expenses, business continuity expenses, hardware replacement costs, software replacement costs or cyber-extortion and ransom expenses** covered by this policy.

L. **Covered matter** means **claims, privacy and network security events, regulatory actions, PCI actions, network interruption events or cyber-extortion and ransom events** covered by this policy.

M. **Crisis management expenses** means any reasonable and necessary fees incurred by **you** with **our** prior written consent for the employment of a public relations consultancy if **you** reasonably consider that action is needed in order to avert or mitigate any material damage to any of **your** brands.

- N. **C-Suite** means any of the Chief Executive Officer, Chief Financial Officer, Chief Information Officer, Chief Operating Officer, Chief Information Security Officer, Chief Technology Officer and all persons serving in a functionally equivalent role for the **Named Insured** or any **subsidiary**.
- O. **Cyber-extortion and ransom event** means any credible threat or series of threats by a third party, other than an employee of **yours** or former employee with prior knowledge of the existence of this coverage for the purpose of demanding monies (including crypto-currencies) from **you**, by communicating the intent, or proving such intent has already been carried out, to:
- (i) release, divulge, disseminate, destroy or use **confidential information**, proprietary information, or personally identifiable information, stored on **your computer system**;
 - (ii) alter, corrupt, damage, manipulate, misappropriate, delete, or destroy data, instructions, or any electronic information transmitted or stored on **your computer system**;
 - (iii) conduct a **denial of service attack**;
 - (iv) introduce an unauthorised **computer virus** or other material for the purpose of denying authorized users access to **your computer system**; or
 - (v) restrict or inhibit access to **your computer system**.
- P. **Cyber-extortion and ransom expenses** means the following amounts incurred with **our** prior written consent:
- (i) monies paid by **you** or on **your** behalf, including payment by crypto-currency to terminate or end a **cyber-extortion and ransom event**; Such monies will not exceed the amount **we** reasonably believe the loss would have been in the absence of **cyber-extortion and ransom event** coverage;
 - (ii) transaction fees paid by you to procure any crypto-currency referenced in paragraph (i) above;
 - (iii) those reasonable and necessary fees and expenses charged by an attorney designated by **us** to assist **you** in the investigation or and response to a **cyber-extortion and ransom event**;
 - (iv) **forensic expenses**; and
 - (v) reasonable and necessary expenses to provide a workaround and to continue **your** business operations as a result of a **cyber-extortion and ransom event** for:
 - i. the use of rented or leased business equipment;
 - ii. the costs to rent alternative work space; and
 - iii. the costs to retain temporary staff.

Reimbursement of **cyber-extortion and ransom expenses** is subject to **your** notification to **us** of the **cyber-extortion and ransom event** as required by Section 6.D. of the policy and is also subject to the Sub-limit stated in the Declarations.

- Q. **Cyber-Terrorism** means any act, including force or violence, or the threat thereof expressly directed against **your computer system** by an individual or group of individuals, whether acting alone, on behalf of or in connection with any organisation to cause unauthorised access to, unauthorised use of, or a targeted **denial of service attack** or transmission of unauthorised, corrupting or harmful software code to **your computer system** for the purpose of furthering social, ideological, religious, economic or political objectives, intimidating or coercing a government or the civilian population thereof or disrupting any segment of its economy.

R. **Damages** means a monetary judgment, award or settlement.

Damages do not include:

- (i) past or future royalties, **your** past or future profits, restitution, disgorgement of profits, or the costs of complying with orders granting injunctive relief or other non-monetary relief, including specific performance, or any agreement to provide such relief;
- (ii) return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
- (iii) taxes;
- (iv) punitive or exemplary damages (unless insurable by the applicable law that most favors coverage for such damages);
- (v) treble or other damages that are assessed in part to punish or to deter others;
- (vi) **privacy regulatory defense and penalties;**
- (vii) **PCI expenses and penalties;**
- (viii) damages, fines or penalties pursuant to federal, state or local statutory law other than:
- (ix) compensatory damages;
- (x) statutory damages assessed in connection with a **privacy breach** or an **employee privacy breach**; or
- (xi) awards under the provisions of the copyright laws for non-wilful violations;
- (xii) liquidated damages;
- (xiii) disgorgement of any remuneration or financial advantage to which **you** are not legally entitled;
- (xiv) unpaid license fees, actual or alleged;
- (xv) the value of or actual coupons, gift cards, promotional gift cards, prizes, awards, or discounts whether in paper, card, electronic or any other form or any other valuable consideration; and
- (xvi) any amounts for which **you** are not liable, or for which there is no legal recourse against **you**.

S. **Data** means machine-readable information irrespective of the way it is used or rendered, including but not limited to text, **digital media content** or images.

T. **Data media** means hardware or any other physical system or device used to store, process, read, amend or control any computer programs, text, digital media, voice or images.

U. **Delivered program** means a program that has passed through **your** software development lifecycle and implementation process including testing and sign-off and has been proven to be successful in daily operations within a live environment.

V. **Denial of service attack** means inability of a third party to gain access to **your computer system** through the internet due to unauthorised attacks or deliberate overloading of bandwidth connections and/or web servers by means of the sending of substantial quantities of repeat or irrelevant communication or **data** with the intent of blocking access to **your computer system**.

W. **Designated incident response provider** means the incident response providers listed in Item 9 of the Declarations.

X. **Digital media content** means corporate data stored and transferred in digital form, including through computers or handheld computer devices, such as tablets, USB drives, compact discs and cellular/smart phones.

Y. **Directors and officers** means all persons who were, or are directors, officers or members of the **c-suite** and all persons serving in a functionally equivalent role for the **Named Insured** or any **subsidiary**.

Z. **Employee** means any individual in the service of the **Named Insured** or a **subsidiary**, including any part-time, seasonal and temporary employee, who is compensated by salary, wages, fees or commissions and over whom the **Named Insured** or a **subsidiary** has the right to direct and control, but excluding any **directors and officers** of the **Named Insured** or a **subsidiary**.

- AA. **Employee privacy breach** means a **privacy breach** involving personal information of **your employee(s)**.
- BB. **First responder services** means the initial contact made to a **designated incident response provider** and includes such services undertaken by the **designated incident response provider**, and other vendors or providers as deemed necessary by the **designated incident response provider**, to determine that additional actions are required. **First responder services** do not mean and will not include any actions beyond this initial determination.
- CC. **Forensic expenses** means those reasonable and necessary expenses incurred with **our** prior written consent of outside computer forensic experts retained to determine the scope, cause, or extent of a **privacy and network security event, network interruption event or cyber-extortion and ransom event**.
- DD. **Hacker attack** means access to **computer systems** by a person not authorized to do so or in an unauthorised manner.
- EE. **Hardware replacement costs** means reasonable and necessary costs incurred with **our** prior written consent to replace all or part of **your computer system** or any of its components (other than **data**) when a **designated incident response provider** determines that the **computer system** or components have been rendered non-functional or unfit for any part of their intended use or purpose by a **network interruption event or cyber-extortion and ransom event**. A **computer system** and its components will be deemed to be non-functional or unfit when:
- (i) they cannot be restored to functionality after reasonable efforts have been made; and
 - (ii) it would be commercially unreasonable to incur cost to restore functionality.
- For purposes of this definition, **your computer system** includes only the equipment and components owned by and under the operation and control of the **Named Insured** or a **subsidiary**.
- FF. **Incident Response Expenses** means **crisis management expenses, forensic expenses and privacy breach expenses**.
- GG. **Multimedia content** means communicative material of any kind or nature for which **you** are responsible, including but not limited to words, pictures, sounds, images, graphics, code or data, regardless of the method or medium of communication of such material and when such material is intended to inform others of **your** products, services and/or activities.
- Multimedia content** does not include any tangible goods or products that are manufactured, produced, processed, prepared, assembled, packaged, labelled, sold, handled or distributed by **you** or others trading under **your** name.
- HH. **Multimedia wrongful act** means the following but only when such conduct arises out of **your** dissemination of **multimedia content**:
- (i) disparagement or harm to the reputation or character of any person or organization, defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress, mental anguish;
 - (ii) plagiarism, piracy or misappropriation of ideas; or
 - (iii) infringement of copyright, domain name, trade dress, title or slogan, or the dilution or infringement of trademark, service mark, service name or trade name; but not actual or alleged infringement of any patent or trade secret.
- II. **Named Insured** means the entity identified as such in Item 2 of the Declarations.

JJ. **Network interruption event** means:

- (i) a **network security breach**;
- (ii) **unauthorised use**;
- (iii) a **denial of service attack**;
- (iv) accidental damage or destruction to **data media** so that stored **data** is not machine readable or accessible;
- (v) **operational error**; or
- (vi) **system failure**;

except, however, for purposes of Insuring Agreement B.(ii), **network interruption event** shall not include **operational error** or **system failure**.

KK. **Network security breach** means the malicious, intentional and wilful misuse of **your computer system** to modify or delete data or deny legitimate user access to **your computer system**; except, however, for purposes of Insuring Agreement B.(ii), **network security breach** shall mean the malicious, intentional and wilful misuse of the **computer system** of a **service provider** to modify or delete data or deny legitimate user access to that **service provider's computer system**.

LL. **Operational error** means the unintentional, accidental, negligent act, error or omission in entering or modifying **data** (including the damage or deletion thereof), or in creating, handling, developing, modifying, or maintaining the **data**, or in the ongoing operation or maintenance of **your computer system**.

MM. **PCI action** means an action brought against **you** by a payment card association for non-compliance with the Payment Card Industry Data Security Standard.

NN. **PCI expenses and penalties** means:

- (i) reasonable and necessary fees and expenses charged by an attorney designated by **us** and incurred with **our** prior written consent to defend any **PCI action**; and
- (ii) fines, penalties, assessments or sanctions imposed against **you** by or on behalf of a payment card association for non-compliance with the Payment Card Industry Data Security Standard and relating to a **privacy and network security event** covered under Insuring Agreement E of this policy.

PCI expenses and penalties does not mean any charge backs, interchange fees, discount fees or prospective services fees, none of which are covered under this policy and **PCI expenses and penalties** does not include **privacy regulatory defense and penalties**.

OO. **Period of restoration** means the period that begins the date on which the **network interruption event** begins and ends one hundred and eighty (180) days after the date on which the **network interruption event** begins or the date on which the restoration is complete, whichever is sooner.

PP. **Period of reputational restoration** means the one hundred and eighty (180) day period that begins on the date the **period of restoration** ends.

QQ. **Privacy and network security event** means:

- (i) **privacy breach**;
- (ii) **employee privacy breach**;
- (iii) **unauthorised use**;
- (iv) negligent and inadvertent transmission by **you** to a third party of any **computer virus**;
- (v) inability of an authorized third party to gain access to **your** services including **denial of service attack**, unless caused by a mechanical or electrical failure;
- (vi) failure to provide opt-out or opt-in notices, or failure to adhere to opt-out or opt-in specifications of customers or consumers;
- (vii) wrongful collection of data; or
- (viii) the unauthorised transmission of any **confidential information**.

RR. **Privacy breach** means a common law breach of confidence, infringement, or violation of any rights to privacy, including but not limited to breach of **your** privacy notice, or breach of a person's right of publicity, false light, intrusion upon a person's seclusion, public disclosure of personally identifiable financial or medical information or misappropriation of a person's picture or name for commercial gain by **you** or others for whom **you** are legally responsible. **Privacy breach** also includes any breach of **privacy regulations**, whether such breach involves information stored in electronic form or in paper form.

SS. **Privacy breach expenses** means:

- (i) privacy legal expenses which are those reasonable and necessary fees charged by an attorney designated by **us** and incurred with **our** prior written consent for the provision of legal advice necessary to respond to or investigate a **privacy and network security event**;
- (ii) customer notification expenses which are those reasonable and necessary expenses, including postage expenses and related advertising expenses, incurred by **you** with **our** prior written consent to notify affected individuals of a **privacy and network security event** that results in the compromise or potential compromise of their personal information maintained by **you** or by a third party on **your** behalf; and
- (iii) customer support and monitoring service expenses which are those reasonable and necessary expenses **you** incur with **our** prior written consent for the establishment of a call center to respond to inquiries by individuals affected by a **privacy and network security event** that results in the compromise or potential compromise of their personal information maintained or otherwise residing on **your computer systems**. Customer support and monitoring service expenses shall also include the provision of credit monitoring and/or identity theft insurance but only where available in the country where the affected individuals reside for individuals affected by a **privacy and network security event** when required by law or by a court judgment or administrative order, or when offered on the advice of counsel or a **designated incident response provider** to mitigate potential loss associated with a **privacy and network security event**.

Privacy breach expenses do not include any salaries or wages of **your employees** or **directors and officers**, **your** overheads, fees of in-house attorneys or other charges **you** incur for any time that **you** spend in cooperating in the defense and investigation of any **privacy breach**, **employee privacy breach**, **claim** or circumstances which might lead to a **claim** under this policy.

TT. **Privacy regulations** are those similar statutes and regulations worldwide that are associated with the control and use of personally identifiable information, including financial or medical information, as they currently exist or amended in the future. **Privacy regulations** shall not include any of the statutes or regulations referenced in Section 5. Exclusions.

UU. **Privacy regulatory defense and penalties** are:

- (i) fees charged by an attorney designated by **us** and incurred with **our** prior written consent to defend a **regulatory action**;
- (ii) all other reasonable and necessary fees, costs and expenses incurred in the investigation, adjustment or appeal of a **regulatory action** if incurred by **us**, or by **you** solely with **our** prior written consent; and
- (iii) fines, penalties or sanctions imposed by a federal, state, or local regulatory body as a result of a **privacy breach** or **employee privacy breach**, but only where insurable by law.

Privacy regulatory defense and penalties does not include **PCI expenses and penalties**.

- VV. **Property damage** means injury to, impairment, destruction, corruption or distortion of any tangible property, including the loss of use thereof or loss of use of tangible property which has not itself been physically impaired, injured or destroyed.
- WW. **Regulatory action** means regulatory actions and investigations commenced by a national, state, province or local regulatory body as a result of an actual or alleged **privacy and network security event** resulting in a **privacy breach** or **employee privacy breach**.
- XX. **Reputational Business Income** means the net income (net profit or loss before taxes) which would have been earned or incurred had no **reputational damage** occurred. **Reputational business income** does not include **business income**.
- YY. **Reputational Damage** means damage to **your** brand or reputation as a result of an adverse media campaign for committing or failing to prevent a **privacy and network security event** or a **network interruption event**.
- ZZ. **Restoration expenses** means the necessary and reasonable expenses paid to a third-party to:
- (i) preserve, minimize or mitigate further on-going impairment to **data**; and
 - (ii) restore **data** that has been impaired to a substantially similar condition as it existed immediately prior to a **network interruption event**, including the recollection and reconstitution of such **data** from non-electronic sources in the event it cannot be restored from back-up or original **data**
- provided however:
- (i) if such **data** cannot be restored as described above, **restoration expenses** shall mean the necessary and reasonable expenses paid to a third-party to attempt restoration as described above and to reach a determination the **data** cannot be restored; and
 - (ii) that **restoration expenses** shall not mean and this policy shall not cover any:
 - (a) research or development expenses;
 - (b) expenses to identify or remediate software program errors or vulnerabilities;
 - (c) expenses to restore, upgrade, replace or enhance security, except as otherwise covered by Insuring Agreement B.(iii);;
 - (d) expenses to restore, upgrade, update, replace or enhance **data** to a condition beyond that which existed prior to the **network interruption event**;
 - (e) the economic or market value of, consequential loss or damages related to, or lost market share, profits or royalties related to such **data**, including without limitation any loss of value with respect to any trade secret or proprietary information, or any erosion of intellectual property rights; or
 - (f) legal costs or legal expenses, or fines, penalties or loss arising out of any liability to third-parties.
- AAA. **Retroactive date** means the date identified in Item 7 of the Declarations.
- BBB. **Service provider** means the entities providing IT services to **you** and as identified on the Service Provider Schedule. In the absence of a Service Provider Schedule **service provider** means all entities providing IT services to **you** under contract; however this shall not include internet service provider, telecommunications provider, utility provider or other public infrastructure provider
- CCC. **Software replacement costs** means the reasonable and necessary costs **you** incur with **our** prior written consent to purchase replacement software licenses when a **designated incident response provider** recommends the replacement of such licenses is necessary to recover from a **network interruption event** or **cyber-extortion and ransom event**.

- DDD. **Subsidiary** shall mean any corporation of which the **Named Insured** owns on or before the inception date of the policy period more than fifty per cent (50%) of the issued and outstanding voting stock either directly or indirectly through one or more of its **subsidiaries**.
- EEE. **System Failure** means any sudden, unexpected and continuous downtime of **your computer system** which renders it incapable of supporting its normal business function and is caused by an application bug, an internal network failure or hardware failure.
- FFF. **Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization committed for political, religious, ideological or similar purposes including the intention to influence any government and/or business and/or to put the public, or any section of the public, in fear.
- GGG. **Theft of data** means the unauthorised taking or misuse of information:
- (i) that exists in electronic form, or which is in the course of transmission to or from a mobile or wireless device that is intended to interact with a **computer system**, while stored in a **computer system** maintained to the minimum standards in respect of security and back up procedures as specified in **your** Application; or
 - (ii) the physical theft of paper documents, hardware or firmware that is owned or controlled by **you** on which information is stored and for which **you** are responsible.
- Theft of data** includes account information, **confidential information**, proprietary information and personal information and also means failure to prevent identity theft and credit or debit card fraud.
- HHH. **Unauthorised use** means **your** failure to prevent a party (including **your** employees who are not **directors and officers**) from obtaining unauthorised access to, using or tampering with **your computer systems** including:
- (i) **hacker attack**;
 - (ii) **computer virus** attack; and
 - (iii) **theft of data**.
- III. **Voluntary shutdown** means a shutdown of all or part of **your computer system** instigated by **you** in an attempt to prevent or mitigate any interruption or degradation of **your computer system** resulting from a **privacy and network security event, network interruption event or cyber-extortion and ransom event**, but only where such shutdown is deemed, in **your** reasonable opinion, appropriate in order to reduce the loss of **business income, restoration expenses or business continuity expenses** due to the interruption or degradation.
- JJJ. **We, us** or **our** means the Underwriters providing this insurance.
- KKK. **You** or **your** or **yours** means:
- (i) the legal entity(s) shown in Item 2 of the Declarations;
 - (ii) any **subsidiary** of **yours**, but only with respect to any circumstances that occur while it is a **subsidiary** and otherwise covered by this policy;
 - (iii) any past or present:
 - (a) **directors and officers**;
 - (b) trustee;
 - (c) **employee**; or
 - (d) in the event that **you** are a partnership, limited liability partnership, or limited liability company, then any general or managing partner or principal, stockholder, owner thereof,
but only while (a) through (d) above were acting within the scope of their duties as such;
 - (i) any agent or independent contractor, including distributors, licensees and sub-licensees, but only while acting on **your** behalf or at **your** direction, and under **your** control; and
 - (ii) any entity whom **you** are required by contract to add as an insured under this policy, but only for **your** actions and with **our** prior consent.

5. Exclusions

We shall not be liable for any **covered matters** or **covered amounts** directly or indirectly arising out of, based upon, or in any way attributable to:

A. Antitrust and unfair competition

any actual or alleged antitrust, restraint of trade, unfair competition, false, deceptive or unfair business practices, violation of consumer protection laws, including violations of any local, state or federal laws regarding the aforementioned conduct other than when asserted as part of a **claim** arising out of a **privacy and network security event**.

B. Bodily injury and property damage

bodily injury or **property damage**; except, however, this exclusion does not apply to:

- (i) the wrongful infliction of mental injury, mental anguish, humiliation, shock, or emotional distress alleged in a **claim** arising out of a **privacy and network security event** under Insuring Agreement E.
- (ii) **hardware replacement costs** covered under Insuring Agreement B(iii).

C. Conformance with Advertising

any actual or alleged failure of any products designed, manufactured, marketed or sold by **you** or on **your** behalf to conform with any advertisements or representations made by **you** or on **your** behalf, or to perform as advertised or promised. However, this exclusion shall only apply to **claims** under Insuring Agreement F.

D. Employment Practices

Any employer-**employee** relations policies, practices, acts, or omissions, any actual or alleged misconduct with regard to **employees**. However, this exclusion shall not apply to **employee privacy breaches**.

E. FCRA

any actual or alleged violation of the Fair Credit Reporting Act, as amended, or any similar federal state or local law.

F. Fraudulent and malicious acts

any **claim** made against **you** arising out of any, willful, malicious, fraudulent, dishonest or criminal act. However, notwithstanding the foregoing, the insurance afforded by this policy shall apply to **claims expenses** incurred in defending any such **claim** or circumstance that might lead to a **claim**, but shall not apply to any **damages** that **you** might become legally obligated to pay; however, upon the determination by a court, jury, or arbitrator, **we** will have the right to recover those **claims expenses** incurred from those parties found to have committed criminal, dishonest, fraudulent or malicious acts. Furthermore, this exclusion shall not apply to any of **you** who did not personally commit or personally participate in committing or personally acquiesce in such conduct, except that the exclusion shall apply if an admission, final adjudication, or finding in a proceeding separate or collateral to the **claim** establishes that any of **your** current principals, partners, or **Directors and Officers** in fact engaged in such conduct.

G. **Fraudulent instructions**

any actual or alleged transfer, payment or delivery of funds, monies or securities from one party to another resulting from:

- (i) any instruction to a financial institution which purports to have been transmitted or issued by **you** (including any of **your employees, directors and officers**), but which was in fact fraudulently transmitted or issued by someone else;
- (ii) any instruction to a financial institution which was originally issued by **you** (including any of **your employees, directors and officers**), but which was subsequently forged or altered by someone else; or
- (iii) the intentional misleading or deception of **you** (including any of **your employees, directors and officers**) by any person falsely purporting to be someone else.

H. **Government mandated shutdown**

any shutdown of all or part of **your computer system** or of **your** business or operations by order of any governmental authority.

I. **Harassment or discrimination**

any actual or alleged harassment or discrimination of any kind, including, but not limited to, age, colour, race, gender, creed, national origin, marital status, sexual preference, disability or pregnancy.

J. **Inaccurate pricing**

the actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products or services; or the quality of goods, products, or services.

K. **Infrastructure**

Based upon or arising out of any actual or alleged failure, interruption or degradation of service provided by an internet service provider, telecommunications provider, utility provider or other public infrastructure provider (i.e. power, satellite, internet and water). However, this exclusion will not apply when arising from:

- (i) infrastructure under **your** direct operational control; or
- (ii) services of **service providers**, however such **service providers** do not include internet service providers, telecommunications providers, utility providers or other public infrastructure providers when acting in those infrastructure capacities.

L. **Insured versus Insured**

any **claim** made by one insured party against another insured party; however, this exclusion does not apply with respect to a **claim** made by a current or former **employee** as a result of an **employee privacy breach**.

M. **Market fluctuations**

any trading losses or trading liabilities (including commissions or fees) resulting from the fluctuation of any stock, share, security or currency on any financial markets or exchanges.

N. **Organized crime**

any actual or alleged violation of the Organized Crime Control Act of 1970 (Racketeer Influenced and Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law.

O. Outside activities

any **covered matter** arising out of **your** activities as a trustee, partner, **director and officer**, or **employee** of any employee trust, charitable organization, corporation, company or business other than that of the **Named Insured** or **subsidiary**.

P. Patent and trade secret

actual or alleged infringement by **you** of any patent or trade secret.

Q. Physical event

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

R. Prior knowledge

any acts, facts or circumstances occurring prior to the inception date of this policy where **your directors and officers** knew or could have reasonably foreseen that such acts, facts or circumstance might be expected to be the basis of a **covered matter**.

S. Prior notification

any **covered matter** or circumstance previously notified to a prior insurer.

T. Prohibited, restricted and regulated activities

the sale, provision or marketing of prohibited, restricted or regulated items, including, but not limited to, alcoholic beverages, firearms, tobacco and related products (including vaping devices and products), or drugs whether considered legal or illegal. However, this exclusion shall only apply to **claims** under Insuring Agreement F.

U. Retroactive date

any facts, acts, circumstances, events or transactions first committed prior to the **retroactive date** of this policy or any interrelated or continuing facts, acts, circumstances, events or transactions where the first such fact, act, circumstance, event or transaction first occurred prior to the **retroactive date** of this policy. However, this exclusion shall only apply to **claims** under Insuring Agreement F.

V. Shareholders and securities

any allegations, demands or lawsuits by **your** current or former shareholders against **you** or **your directors and officers** for any actual or alleged breach of fiduciary duties, or for any actual or alleged violation of any securities laws or regulations.

W. Theft of funds

any actual or alleged loss, theft, or transfer of **your** funds, monies, or securities, of the funds, monies of securities of others in **your** care, custody or control, or in the care, custody or control of any third party for whom **you** are legally liable, including the value of any funds, monies or securities transferred by **you** or others on your behalf.

X. Unsolicited marketing and communications

distribution of unsolicited marketing materials by means of email, direct mail, SMS, chat room postings, bulletin board postings, news group postings, pop-up or pop-under internet advertising, facsimile blasting, direct mailing or telemarketing or any actual or alleged violation of the CAN-SPAM Act 2003 or any subsequent amendments to that act or the Telephone Consumer Protection Act of 1991 or any subsequent amendments to that act or any law, regulation or statute relating to unsolicited communication, distribution, marketing, sending or transmitting of any communication via telephone or any other electronic or telecommunications device.

Y. War and terrorism

- (i) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (ii) any act of **terrorism** regardless of any other contributory cause or event.

This exclusion includes any action taken in controlling, preventing or suppressing (i) or (ii) above. If **we** assert that by reason of this exclusion any liability is excluded the burden of proving to the contrary shall be on **you**. However, this exclusion shall not apply to any act of **cyber-terrorism**. In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

6. General Conditions

A. Limit of Liability

The Limit of Liability set forth in Item 5 of the Declarations or any Sub-limit as identified in the Declarations or the Service Provider Schedule shall be the limit of **our** liability for each **covered matter**, including expenses, where applicable, arising under each Insuring Agreement.

Our maximum aggregate liability for all **covered amounts** on account of all **covered matters** under this policy, shall be the Limit of Liability set forth in Item 5 of the Declarations or any Sub-limit as identified in the Declarations or any Endorsements.

In the event of the exhaustion of the Limit of Liability by payment of **covered amounts**, **we** shall have no further liability whatsoever.

The Limit of Liability for the Automatic and/or Additional Extended Reporting Period, if applicable shall be part of, and not in addition to, the Limit of Liability for the policy period.

Multiple **covered matters** arising from or related to the same or continuing facts, acts, circumstances, events or transactions shall be considered a single **covered matter** for the purposes of this policy. All such **covered matters** shall be deemed to have been made at the time the first such **covered matter** is made.

In the event a **covered matter** attaches to more than one Insuring Agreement of this policy, only one Limit of Liability as set forth in Item 5 of the Declarations or any Sub-limit as identified in the Declarations, the Service Provider Schedule or any Endorsements shall apply. In such event, only the highest of the applicable Limits of Liability or any Sub-limit shall apply.

Any Sub-limit as identified in the Declarations, the Service Provider Schedule or any Endorsements is part of, and not in addition to, the Limits of Liability set forth in Item 5 of the Declarations.

B. Deductible

The Deductible stated in Item 6 of the Declarations or any Deductible identified in the Service Provider Schedule shall be satisfied by payments by **you** and apply to all **covered amounts** or any combination thereof resulting from **covered matters** notified during the policy period and the Automatic or Additional Extended Reporting Period, if any. **We** will only be liable for amounts excess of any Deductible and not exceeding the Limit of Liability, or Sub-limits of Liability, as stated in Items 5 and 6 of the Declarations or the Service Provider Schedule.

Multiple **covered matters** arising from or related to the same or continuing acts, facts, or circumstances shall be considered a single **covered matter** for the purposes of this policy and shall be deemed to have been made at the time the first such **covered matter** was made.

In the event a **covered matter** triggers more than one Insuring Agreement of this policy, only one Deductible as stated in Item 6 of the Declarations or the Service Provider Schedule shall apply. In such event, only the highest of the applicable Deductibles shall apply.

C. Extended Reporting Provisions

Automatic Extended Reporting Period

- (i) If either **you** or **us** shall cancel or non-renew this policy, **you** shall have the right following the effective date of such cancellation or non-renewal, to a period of sixty (60) days in which to give written notice to **us** of any **claim** first made against **you** prior to the end of the policy period, provided that any actual or alleged acts, facts or circumstances occurred prior to the end of the policy period and are otherwise covered by this policy. This provision is not applicable to any **network interruption event** or **cyber-extortion and ransom event**.
- (ii) The Limit of Liability for the Automatic Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability for the policy period.

Additional Extended Reporting Period

- (i) In the event of cancellation or non-renewal of this insurance by **you** or **us** and solely in the event that **you** are not insured under any policy providing the type of coverage(s) **you** had pursuant to this policy, **you** shall have the right, upon payment of an additional premium, to purchase an Additional Extended Reporting Period for twelve (12) months at 100% of the total annual policy premium, twenty-four (24) months for 175% of the total annual policy premium or thirty-six (36) months for 225% of the total annual policy premium for **claims** first made against **you** and notified to **us** during the Additional Extended Reporting Period, committed on or after the **retroactive date** and before the end of the policy period, subject to the conditions set forth herein. In order for **you** to invoke the Additional Extended Reporting Period option, **you** must pay **us** the additional premium in full within thirty (30) days of the non-renewal or cancellation. This provision is not applicable to any **network interruption event** or **cyber-extortion and ransom event**.
- (ii) The Limit of Liability for the Additional Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability for the policy period.
- (iii) **Your** right to the Additional Extended Reporting Period shall not be available where cancellation or non-renewal by **us** is due to non-payment of premium or **your** failure to pay such amounts in excess of the applicable Limit of Liability or within the amount of the applicable Deductible.
- (iv) All notices and premium payments with respect to the Additional Extended Reporting option shall be directed to **us** through the entity named in Item 10 of the Declarations.
- (v) At the commencement of the Additional Extended Reporting Period the entire premium shall be deemed earned; in the event that **you** terminate the Additional Extended Reporting Period for any reason prior to its natural expiration, **we** will not be liable to return any premium paid for the Additional Extended Reporting Period.

D. Notice/Claims Reporting Provisions

- (i) If **you** discover any **privacy and network security event**, **you** shall as soon as practicable notify **us** through the persons named in Item 9 of the Declarations of such **privacy and network security event**.
- (ii) If any **claim** under Insuring Agreements D, E or F is made against **you**, **you** shall as soon as practicable forward to **us** through the person named in Item 9 of the Declarations every letter of claim, demand, notice, summons or other process received by **you** or **your** representative.

- (iii) If **you** discover or learn of any **network interruption event**, **you** shall as soon as practicable notify **us** of the **network interruption event** if:
- (a) **you** intend to retain counsel or any service providers in connection with the **network interruption event**;
 - (b) the **network interruption event** is not resolved within seventy-two (72) hours of its discovery;
 - (c) the **network interruption event** results in a complete failure of **your computer system**; or
 - (d) **you** expect the costs associated with the **network interruption event** to exceed fifty per cent (50%) of **your** Deductible.

You shall provide such notification to **us** through the person named in Item 9 of the Declarations, and **you** shall keep **us** fully informed of all developments concerning such **network interruption event** identified in paragraphs (a) – (d) above.

- (iv) If **you** discover or learn of any **cyber-extortion and ransom event**, **you** must as soon as practicable notify **us** through the person named in Item 9 of the Declarations, but no more than forty-eight (48) hours of any such **cyber-extortion and ransom event**, and keep **us** fully informed of all developments concerning such **cyber-extortion and ransom event**.
- (v) If during the policy period **you** first become aware of any circumstance that could reasonably be the basis for a **covered matter** **you** must provide written notice to **us** through the person named in Item 9 of the Declarations during the policy period of:
- (a) the specific details that could reasonably be the basis for a **covered matter**;
 - (b) the injury or damage which may result or has resulted from the circumstance; and
 - (c) the facts by which **you** first became aware of this.

Any subsequent **covered matter** arising out of such circumstance made against **you** that is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to **us** and will be subject to the Limit of Liability stated in Item 5 of the Declarations or any Sub-limit as identified in the Declarations, the Service Provider Schedule or any Endorsements.

- (vi) A **covered matter** or circumstance shall be considered to be notified to **us** when written notice is first given to **us** through persons named in Item 9 of the Declarations as required by paragraphs (i) – (v) above.

E. **Fraudulent Claims**

If **you** shall make any **claim** or other notification under this policy knowing the same to be false or fraudulent, as regards amount or otherwise, all coverage under this policy for that **claim** or notification shall be forfeited, but only with respect to those of **you** who personally participated in the making the **claim** or notification or had personal knowledge that the **claim** or notification was false or fraudulent.

F. **Your Duties**

- (i) In the event of a **covered matter** or circumstance as covered by this policy, **you** shall at all times cooperate with **us**. At **your** own cost, **you** shall make available **your** employees to assist in the defense or investigation of any **claim** and to reduce or avoid circumstances that might lead to a **covered matter** under this policy.
- (ii) **You** shall at **your** own expense take all reasonable precautions to prevent and thereafter mitigate **covered amounts** at all times.
- (iii) **You** shall not admit liability, make any payment, assume any obligations, incur any **covered amounts**, enter into any settlement, stipulate to any judgment or award or otherwise dispose of or resolve any **covered matter** without **our** prior written consent. Notwithstanding the foregoing, **you** do not need **our** prior written consent for **incident response expenses, claims expenses, or restoration expenses or business continuity expenses** that must be incurred on an emergency basis, provided that such **incident response expenses, claims expenses, restoration expenses or business continuity expenses** were incurred with the guidance or approval of a **designated incident response provider** to defend any **claim** or assist **you** in responding to a **privacy and network security event, network interruption event or cyber-extortion and ransom event**.

Expenses incurred by **you** in assisting and cooperating with **us** as described above do not constitute **covered amounts** under this policy and will not be paid by **us**.

G. **Business income and reputational business income calculation**

The calculation of **business income** and **reputational business income** shall be based on an analysis of **your** revenues and costs generated during each month of the twelve (12) months prior to the loss occurring and will also take into account the reasonable projection of future profitability had no loss occurred and will include all material changes in market conditions that would affect the future profits generated.

Your requests for indemnity shall be accompanied by a computation of the loss of **business income** or **reputational business income**. This shall set out in detail how the loss has been calculated and what assumptions have been made. **You** will produce any documentary evidence, including but not limited to any applicable reports, books, bills, invoices and other vouchers and copies that **we** may require, and **you** will afford every assistance in **our** investigations. **We** have the right to have a loss adjuster, forensic accountant or other consultant review **your** computation.

H. **Other insurance**

The cover provided by this policy shall provide primary coverage for any **privacy and network security event, network interruption event, PCI action or cyber-extortion and ransom event** covered by this policy. The cover provided by this policy shall provide excess coverage over and above any other valid insurance, (including any deductible portion) or agreement of indemnity available to **you** for any **claim** arising out of a **multimedia wrongful act**, the loss of **business income** or the loss of **reputational business income**.

I. **Legal Action Against Us**

No person or organization has a right under this policy to:

- (i) join **us** as a party or otherwise bring **us** into a suit asking for **damages** from **you**; or
- (ii) sue **us** under this policy in the absence of compliance with all of the terms and conditions of this policy by **you**.

A person or organization may sue **us** to recover on an agreed settlement or on a final judgment against **you** obtained after an actual trial, but **we** will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable Limit of Liability. An agreed settlement means a settlement and release of liability signed by **us**, by **you**, and by the claimant or the claimant's legal representative.

J. **Sanctions Limitation**

We shall not provide cover and **we** shall not be liable to pay any **covered amounts** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **covered amount** or provision of such benefit would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

K. Subrogation

In the event **we** are required to make any form of payment under this policy, **we** shall be subrogated to all **your** rights of recovery against any person or organization and **you** must execute and deliver instruments and papers and do whatever else is necessary to secure such rights. **You** must not do anything to prejudice such rights. Subrogation recovery shall reimburse **us** for all **covered amounts**, as well as costs of pursuing the subrogation. Additional amounts, if any, shall be remitted to **you** to the extent of **your damages** paid.

L. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this insurance or stop **us** from asserting any right under the terms of this insurance; nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance, such endorsement signed by **us**.

M. Mergers and Acquisitions

If the **Named Insured** acquires fifty per cent (50%) or more of the issued and outstanding stock of any entity during the policy period that entity shall become a **subsidiary** provided that entity does not represent more than a fifteen per cent (15%) increase in the **Named Insured's** total assets, employee count or gross revenue as of the date of the acquisition. Where such entity represents an increase in the **Named Insured's** total assets, employee count or gross revenue of more than fifteen per cent (15%), that shall be deemed a **subsidiary** but only upon the condition that within thirty (30) days of it becoming a **subsidiary**, the **Named Insured** shall have provided **us** with full particulars of the new **subsidiary** and agree to any additional premium and/or amendment of the provisions of this policy required by **us**. Such amendment may require that **you** pay additional premium and/or provide full and complete underwriting information. Further, coverage as shall be afforded to the new **subsidiary** is conditioned upon the **Named Insured** paying when due any additional premium required by **us** relating to such new **subsidiary**. A corporation becomes a **subsidiary** when the **Named Insured** owns more than fifty per cent (50%) of the issued and outstanding voting stock either directly or indirectly through one or more of its **subsidiaries**, and ceases to be a **subsidiary** at such time when the **Named Insured** ceases to own more than fifty per cent (50%) of the issued and outstanding voting stock.

N. Change in Control

In the event that **you** consolidate, merge or are acquired by another entity, then all coverage under this policy shall terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage under this policy, and **you** have agreed to any additional premium and terms of coverage required by **us**.

O. Assignment

This policy may not be assigned to any party without **our** written consent.

P. Cancellation

- (i) This policy may be cancelled by **you** by surrender thereof to **us** or by mailing to **us** through the entity named in Item 10 of the Declarations written notice stating when thereafter the cancellation shall be effective. **We** may only cancel this insurance because **you** have failed to pay a premium when due and by mailing a written notice of cancellation to **you** via the entity named in Item 10 of the Declarations stating when not less than ten (10) days thereafter such cancellation shall be effective.
- (ii) If **you** cancel this insurance, thirty per cent (30%) of the premium shall be deemed earned upon inception of this policy, and the remaining earned premium shall be computed on a pro-rata basis. Notwithstanding the foregoing, the premium shall be deemed fully earned if any **covered matter** is notified to **us** on or before the date of cancellation.

Q. **Warranty by You**

By acceptance of this policy, **you** agree that the statements contained in any application for insurance and any supplemental materials submitted therewith are **your** agreements and representations, which shall be deemed material to the risk assumed by **us**, and that this policy is issued in reliance upon the truth thereof. The misrepresentation or non-disclosure of any matter by **you** or **your** agent in any application and supplemental materials submitted to **us** will render this policy null and void and relieve **us** from all liability under this policy.

Any application and supplemental materials submitted to **us** are deemed incorporated into and made a part of this policy.

R. **Dispute Resolution**

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this policy or the subject matter hereof promptly by negotiation. If the dispute has not been resolved by negotiation within forty-five (45) days of the disputing party's notice, the parties may submit the dispute to non-binding mediation. All applicable statutes of limitations and defences based upon the passage of time shall be tolled while the procedures specified herein are pending. The parties will take such action, if any, required to effectuate such tolling.

The parties agree that no suit will be filed by either party against the other party seeking resolution of any dispute arising out of or relating to this policy until the parties have attempted to negotiate a resolution and no sooner than thirty (30) days after the conclusion of mediation, if any.

S. **Territory**

Cover is granted under this policy for **covered matters** and **covered amounts** arising within those territories specified in Item 13 of the Declarations.

Specimen

CONFORMITY CLAUSE

Notwithstanding anything to the contrary contained herein it is hereby noted and agreed the following Proviso's are applicable hereto:

Wherever the term "Underwriters", "Company", "Insurers" or "We" appear herein, the same shall be deemed to mean "Underwriters".

Wherever the term "Policy" appears herein the same shall be deemed to mean "Certificate".

Wherever the term "Named Insured" or "Assured" appear, these shall be deemed to mean and read the same.

Wherever "US\$", "\$" or "USD" appear herein the same shall be deemed to mean United States Dollars.

All other terms and conditions remain unaltered.

Specimen

Cyber Insurance – Incident Response Directions

Hamilton Policy Reference:	
Named Insured:	
Policy Period:	Effective from to Both days at 12.01a.m. Local Standard Time

IMPORTANT INFORMATION

IN THE EVENT OF AN INCIDENT AFFECTING THIS POLICY YOU SHOULD

CONTACT HAMILTON'S 24/7 INCIDENT RESPONSE PARTNER

BATES CAREY LLP

AT

+1 312 762 3256 or HAMILTONCYBER@BATESCAREY.COM

AND

QUOTE THE HAMILTON POLICY REFERENCE AND NAMED INSURED ABOVE

(see page 2 for some of the incidents that could affect this policy)

WHAT YOU SHOULD DO

Contact Bates Carey LLP

Quote the Hamilton Policy Reference above

Quote the Named Insured above

State you hold a Hamilton policy

Cooperate fully with Bates Carey LLP

WHAT YOU SHOULD NOT DO

Ignore or do nothing

Contact another incident Response company

Negotiate with cyber criminals

Pay money to anyone

Contact another law firm

Cyber Insurance – Incident Response Directions

**CONTACT BATES CAREY LLP AT
+44 (0) 800 840 4046 or HAMILTONCYBER@BATESCAREY.COM
IN THE EVENT OF A SUSPECTED OR ACTUAL**

Privacy and Network Security Event

This can include a privacy breach, unauthorised use of your computer system such as a hacker attack, computer virus/malware or theft of data, or a denial of service attack.

Network Interruption Event

The failure of your computer system due to unauthorised use of your computer system, a denial of service attack, operational error or system failure.

Cyber Extortion and Ransom Event

A credible threat by a third-party for the purposes of demanding money, including crypto-currency, by communicating the intent to release confidential information, corrupt, change or damage data, conduct a denial of service attack, introduce a computer virus/malware, or restrict or inhibit access to your computer system.

Subject always to the policy terms and conditions

Specimen

Forensic Accounting Expenses Endorsement

It is hereby noted and agreed that for the purposes of this endorsement only the following Insuring Agreements and definition are deleted in their entirety and replaced with:

2. Insuring Agreements

B. Network Interruption and Loss of Income

(i) Direct Network Interruption and Business Income

We shall reimburse **you** for the loss of **business income, restoration expenses, forensic accounting expenses and business continuity expenses** in excess of **your** Deductible and during the **period of restoration you** incur as a consequence of a **network interruption event of your computer system or a voluntary shutdown of your computer system** where such **network interruption event or voluntary shutdown** occurs during the policy period and is reported by **you to us** in writing during the policy period.

(ii) Contingent Network Interruption and Business Income

We shall reimburse **you** for the loss of **business income, restoration expenses, forensic accounting expenses and business continuity expenses** in excess of **your** Deductible and during the **period of restoration you** incur as a consequence of a **network interruption event of the computer system of a service provider** where such **network interruption event** occurs during the policy period and is reported by **you to us** in writing during the policy period.

4. Definitions

K. **Covered amount** means **damages, claims expenses, incident response expenses, privacy regulatory defense and penalties, PCI expenses and penalties, business income, restoration expenses, forensic accounting expenses, business continuity expenses, hardware replacement costs, software replacement costs, cyber extortion and ransom expenses or cybercrime losses** covered by this policy.

It is further noted and agreed that for the purposes of this endorsement only the following Definition is added under this policy:

4. Definitions

Forensic accounting expenses means those reasonable and necessary costs incurred with **our** prior written consent to establish or prove **your** loss of **business income** including those costs connected with preparing a proof of loss statement. All information, outputs and proof of loss statements must be shared with **us** at **our** request. **Our** maximum liability for **forensic accounting expenses** covered under this policy shall not exceed USD 50,000 and are part of and not in addition to the sublimits of liability under Insuring Agreements B (i) and B (ii).

All other terms, conditions and exclusions of the policy remain unchanged

MINIMUM EARNED PREMIUM DEFINITION ENDORSEMENT

Notwithstanding anything to the contrary contained herein, in the event that this Policy is cancelled by the Insured, the Policy premium is subject to a minimum earned premium calculated in accordance with the Short Rate Cancellation Clause as set forth in the certificate provisions.

However, it is understood and agreed that if this policy is cancelled, there will be no return of any premium in the event that the policy suffered a total or constructive total loss resulting from any Covered Cause of Loss.

For the purposes of this policy, total or constructive total loss means a loss that would exceed 80% of the Limit of Liability applicable to the Interest that has sustained loss or damage.

All other terms and conditions of this policy remain unchanged.

Specimen

Telephone Fraud Endorsement

It is hereby noted and agreed that for the purposes of this endorsement only Item 6 SUB-LIMITS OF LIABILITY AND DEDUCTIBLES of the DECLARATIONS is amended to include:

Insuring Agreement	Currency	Sub-Limit	Aggregate Limit	Deductible
Telephone Fraud	USD	250,000	1,000,000	1,000 each and every claim

It is further noted and agreed that for the purposes of this endorsement only the following Insuring Agreement and Definitions are added under this policy:

2. Insuring Agreements

Telephone Fraud

We will reimburse you for **telephone fraud loss** in excess of your Deductible as a consequence of a **telephone fraud event** where such **telephone fraud event** occurs during the **policy period** and is reported by you to us in writing during the **policy period**.

4. Definitions

Telephone fraud means the intentional, unauthorised and fraudulent access to your telephone system by a third party for the purpose of making unauthorised telephone calls.

Telephone fraud event means an incident in the form of a **telephone fraud**.

Telephone fraud loss means charges you incur for unauthorised calls directly resulting from **telephone fraud**.

It is further noted and agreed that for the purposes of this endorsement only the following Insuring Agreement, definition and General Conditions are deleted in their entirety and replaced with:

2. Insuring Agreements

A. Incident Response

We will pay on your behalf **incident response expenses** in excess of your Deductible that are reasonable and necessary to pay as a result of an actual or suspected **privacy and network security event, network interruption event, cyber extortion and ransom event** or **telephone fraud event** first identified by you during the policy period and reported to us in writing during the policy period or any Automatic or Additional Extended Reporting Period, if applicable.

However, the deductible will not apply to **first responder services** when responding to a **privacy and network security event, network interruption event, cyber extortion and ransom event** or **telephone fraud event** so long as such **first responder services** are for work undertaken by a **designated incident response provider**.

4. Definitions

K. **Covered amount** means **damages, claims expenses, incident response expenses, privacy regulatory defense and penalties, PCI expenses and penalties, business income, restoration expenses, business continuity expenses, hardware replacement costs, cyber extortion and ransom expenses** or **telephone fraud losses** covered by this policy.

L. **Covered matter** means **claims, privacy and network security events, regulatory actions, PCI actions, network interruption events, cyber extortion and ransom events** or **telephone fraud events** covered by this policy.

6. General Conditions

C. Extended Reporting provisions

Additional Extended Reporting Period

- (i) In the event of cancellation or non-renewal of this insurance by **you** or **us** and solely in the event that **you** are not insured under any policy providing the type of coverage(s) **you** had pursuant to this policy, **you** shall have the right, upon payment of an additional premium, to purchase an Additional Extended Reporting Period for twelve (12) months at 100% of the total annual policy premium, twenty-four (24) months for 175% of the total annual policy premium or thirty-six (36) months for 225% of the total annual policy premium for **claims** first made against **you** and notified to **us** during the Additional Extended Reporting Period, committed on or after the **retroactive date** and before the end of the policy period, subject to the conditions set forth herein. In order for **you** to invoke the Additional Extended Reporting Period option, **you** must pay **us** the additional premium in full within 30 days of the non-renewal or cancellation. This provision is not applicable to any **network interruption event**, **cyber extortion and ransom event** or **telephone fraud event**.

D. Notice/Claims Reporting Provisions

- (v) If **you** discover or learn of any **telephone fraud event**, **you** must as soon as practicable notify us through the person named in Item 9 of the Declarations, but no more than forty-eight (48) hours of any such **telephone fraud event**.
- (vi) If during the policy period **you** first become aware of any circumstance that could reasonably be the basis for a **covered matter** **you** must provide written notice to **us** through the person named in Item 9 of the Declarations during the **policy period** of:
 - (a) the specific details that could reasonably be the basis for a **covered matter**;
 - (b) the injury or damage which may result or has resulted from the circumstance; and
 - (c) the facts by which **you** first became aware of this.

Any subsequent **covered matter** arising out of such circumstance made against **you** that is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to **us** and will be subject to the Limit of Liability stated in Item 5 of the Declarations or any Sub-limit as identified in the Declarations, the Service Provider Schedule or any Endorsements.

- (vii) A **covered matter** or circumstance shall be considered to be notified to **us** when written notice is first given to **us** through persons named in Item 9 of the Declarations as required by paragraphs (i) – (vi) above.

H. Other insurance

The cover provided by this policy shall provide primary coverage for any **privacy and network security event**, **network interruption event**, **PCI action**, or **cyber extortion and ransom event** covered by this policy. The cover provided by this policy shall provide excess coverage over and above any other valid insurance (including any deductible portion) or agreement of indemnity available to **you** for any **claim** arising out of a **multimedia wrongful act**, the loss of **business income**, the loss of **reputational business income** or any **telephone fraud event**.

All other terms, conditions and exclusions of the policy remain unchanged.

Absolute Professional Services Exclusion

It is hereby understood and agreed that **we** shall have no liability under this Policy for any **covered matter** and will not be liable for any **covered amount** arising out of or in any way connected with any:

1. actual or alleged negligent breach of duty, negligent misrepresentation, or negligent act, error or omission in the rendering professional services; or
2. actual or alleged failure to render professional services.

All other terms and conditions remain unchanged.

Specimen

POLICYHOLDER DISCLOSURE

NOTICE OF TERRORISM

INSURANCE COVERAGE

You are hereby notified that under the Terrorism Risk Insurance Act of 2002, as amended ("TRIA"), that you now have a right to purchase insurance coverage for losses arising out of acts of terrorism, as defined in Section 102(1) of the Act, as amended: The term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security and the Attorney General of the United States, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Any coverage you purchase for "acts of terrorism" shall expire at 12:00 midnight December 31, 2027, the date on which the TRIA Program is scheduled to terminate, or the expiry date of the policy whichever occurs first, and shall not cover any losses or events which arise after the earlier of these dates.

YOU SHOULD KNOW THAT COVERAGE PROVIDED BY THIS POLICY FOR LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM IS PARTIALLY REIMBURSED BY THE UNITED STATES UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THIS FORMULA, THE UNITED STATES PAYS 80% OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURER(S) PROVIDING THE COVERAGE. YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A USD100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS USD100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED USD100 BILLION, YOUR COVERAGE MAY BE REDUCED.

THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

	I hereby elect to purchase coverage for acts of terrorism for a prospective premium of USD 14
	I hereby elect to have coverage for acts of terrorism excluded from my policy. I understand that I will have no coverage for losses arising from acts of terrorism.

Policyholder / Applicant's Signature

Syndicate on behalf of certain

Underwriters at Lloyd's

TBA

Print Name

Policy Number

Date

Data Privacy Notice

This privacy notice is provided by Hamilton Insurance DAC and its London Branch. These firms are collectively referred to as Hamilton, we, our and us throughout this notice. Details on each legal entity is contained within the Companies section below.

Your Personal Information

Hamilton is committed to respecting your privacy and that of the information you provide to us in our business with you. This data privacy notice seeks to provide you with information about how and why we will use your personal data. We keep our data privacy notice under regular review.

When we ask you for your personal data, we will explain why we need it. Reasons we may require your personal data include:

- To perform the contract we have entered into with you.
- To meet our legal obligations.
- For our legitimate interests, where these do not compromise your interests, rights and freedoms.

If we are not being sufficiently clear in our explanation, we invite you to tell us. Where we are required to seek your specific consent to process your personal data we will explain what we are asking you to agree and why. In this situation, you have the choice as to whether to give your consent or not. If you do give consent, you may withdraw it at a later date. Where we require your consent but you choose to withhold or withdraw it, we may not be able to perform the contract we have entered into with you.

When you provide us with your personal data, we will use it only for the purpose you have provided it. We respect your privacy and will protect your data from unintended use in the same way that we protect our own confidential information. We may disclose your personal data in the following circumstances:

- Where we are required to do so by law or regulation.
- To other companies within Hamilton
- Insurance Group to facilitate the effective management of the group of companies.

We will keep your personal data only for so long as is necessary for the purpose it was provided and otherwise in accordance with legal and regulatory requirements. If you would like further information regarding the periods for which your personal information will be stored, please contact us using the details contained within the Contact us section below

Policyholders, Insureds and Claimants Insurance involves the use and disclosure of your personal data by various insurance market participants such as intermediaries, insurers and reinsurers. Our core uses and disclosures are consistent with the London Market Core Uses Information Notice (see londonmarketgroup.Co.Uk/gdpr). We recommend you review this notice.

Business Partners

We have a legitimate interest in data required to facilitate the business arrangement between us and for normal exchanges in the course of business. We may also lawfully process your information to perform the contract agreed between us. Unless you have signed up to receive news updates, we will not send this information to you. You may withdraw your consent to receiving news by using the options in the communication sent to you or by contacting us using the details contained within the Contact us section below.

Prospective Employees

We have a legitimate interest in data required to make contact with you. We may lawfully process data required for pre-employment activities and have a legal obligation to undertake certain checks.

Website Users

When you visit our website (hamiltongroup.com), your internet browser may provide us with some of your personal information, including:

- The time and date you access our website.
- Information about your software and your internet protocol address (ip address).
- Your location.
- The pages you visited.

We use this information to improve the delivery of relevant information to you.

We may also leave a cookie on your internet browser. Hamilton's cookies policy can be found at hamiltongroup.com/cookies-policy.

Data Sharing

We may share your personal data with other companies within the Hamilton Insurance Group, some of whom are based outside of the European Union.

To fulfil the need for which you have provided us with your personal data, we may share your data with

companies based outside of the European Union. Not all countries of the world have data protection standards that are the equivalent of those in Ireland. Where we share your personal data with companies that are based outside of the European Union, we will make sure that your information is protected to an equivalent standard by, for example:

- Contracting with the receiving company with clauses approved by the European Union authorities as providing adequate protection or through the use of Binding Corporate Rules.
- Sharing the data with companies in countries considered by the European Commission as having suitably high standards of data protection legislation. A list of these countries can be found on the European Union website at ec.europa.eu/info/law/law-topic/data-protection.
- Sharing the data with companies that have committed to adequate levels of protection through participation in schemes such as the Privacy Shield agreed between the data protection authorities of the European Union and United States.

Website Users

The website hamiltongroup.com is hosted outside of the European Union by a third party. Your Rights In relation to your personal data, you may have the right to require us to:

- Give further details of the use we make of your personal data
- Give you a copy of your personal data that we have, including in a structured and commonly used format.
- Correct any incorrect personal data that we have.
- Delete any personal data that we have no lawful basis to hold.

Where our processing is based on consent, you may withdraw your consent at any time. You may also object to our processing of your personal data. If you would like to exercise your rights in relation to your personal data, you should contact us using the details contained within the Contact us section below. We will not charge you for exercising your rights, though if your request for access to your personal information is clearly unfounded or excessive we are permitted to charge a reasonable fee or refuse to comply with the request.

Where we require your consent to process your data but you choose to withhold or withdraw it, we may not be able to perform the contract we have entered into with you. Contact Us If you have any questions in relation to this privacy notice or otherwise how Hamilton processes personal data, including requests to exercise a data subject's legal rights, please contact the Data Protection Manager using the details below. +353 (0) 1232 1900, 2 Shelbourne Buildings, Crampton Avenue, Ballsbridge, Dublin 4, Ireland. HIDACComplaints@hamiltongroup.com

Complaint Should you believe we have failed to process your personal information appropriately, you are invited to discuss the matter with Hamilton. Our contact details are at the Contact us section above. You may at any time lodge a complaint with either the Data Protection Commission (DPC) at 21 Fitzwilliam Square South, Dublin 2, D02 RD28, Ireland +353 (0)761 104 800 <https://www.dataprotection.ie/> or the Information Commissioner's Office (ICO), Wycliffe House, Water Lane, Wilmslow Cheshire, SK9 5AF, United Kingdom 0303 123 1113 or +44 (0) 162 554 5700 www.ico.org.uk