



TOKIO MARINE
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Data Protection &
Network Interruption
Insurance

Policy

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REMOVE AS APPLICABLE

FOR USE ON POLICIES OUTSIDE THE USA

24-Hour Cyber Incident Hotline

This **Policy** has a dedicated 24-hour emergency hotline that the **Insured** can call immediately following the discovery of a cyber incident:

+44 20 7444 5452  NORTON ROSE FULBRIGHT

Calling our 24-hour emergency hotline will give you immediate access to Norton Rose Fulbright, a leading, internationally-recognized cyber incident response company.

Norton Rose Fulbright have experienced data privacy and cybersecurity lawyers in every region who work with a panel of tested vendors to provide clients with an immediate, streamlined response, 24 hours per day, anywhere in the world.

Notification of a suspected or actual data breach to breach counsel (via the hotline or otherwise) does not constitute notification to **Underwriters**. Formal notice to **Underwriters** is required as per the terms and conditions of your **Policy**.

Please note that cover for any costs incurred (whether or not incurred as a result of the recommendations of breach counsel) will be subject to the terms and conditions of your **Policy** and nothing stated herein should be construed as a waiver of any of the terms and conditions of your **Policy**.

FOR USE ON US POLICIES

24-Hour Cyber Incident Hotline

This **Policy** has a dedicated 24-hour emergency hotline that the **Insured** can call immediately following the discovery of a cyber incident:

844-492-3248  BakerHostetler

Calling our 24-hour emergency hotline will give you immediate access to Baker Hostetler, a leading, nationally recognized breach response firm.

Baker Hostetler will initially provide clear advice on any immediate steps that need to be taken. Then, where appropriate, Baker Hostetler will promptly engage first class IT forensic expertise to:

- Establish the precise nature of the incident
- Safeguard your digital assets
- Get your systems back up and running
- Preserve critical evidence, which may be needed to help defend third party claims or regulatory proceedings

Following these initial steps, Baker Hostetler will then be on hand to:

- Ensure compliance with all relevant state privacy and data breach notification laws
- Provide further guidance on how to handle initial enquiries from data subjects, law enforcement and the media
- Robustly defend any resultant third-party claims or regulatory proceedings

Notification of a suspected or actual data breach to breach counsel (via the hotline or otherwise) does not constitute notification to **Underwriters**. Formal notice to **Underwriters** is required as per the terms and conditions of your **Policy**.

Please note that cover for any costs incurred (whether or not incurred as a result of the recommendations of breach counsel) will be subject to the terms and conditions of your **Policy** and nothing stated herein should be construed as a waiver of any of the terms and conditions of your **Policy**.



Norton Rose Fulbright

T 888-389-6414
www.nortonrosefulbright.com
breach.response@nortonrosefulbright.com

"Norton Rose Fulbright's data protection, privacy and access to information practice group concentrates on privacy, data security and information technology legal issues, including compliance and risk management, data transactions, incident response and breach notification, and regulatory response and litigation. We have served a wide range of clients from large Fortune 500 multinationals, retailers, healthcare companies and financial institutions, to sophisticated technology companies, traditional brick-and-mortar companies, energy companies and start-ups."

Ultimately, Tokio Marine Kiln understands that each client's business is unique and, therefore, we like to be as flexible as possible when it comes to service providers.

We will happily consider pre-approving any preferences our clients may have – please just ask your broker to speak with one of our underwriters.

Mullen Coughlin

T 844-614-0202
www.mullen.law
kiln.breachhotline@mullen.law

"We provide legal services designed to assist clients facing data privacy and security issues, such as responding to data breaches or security incidents, and other compliance issues arising from contractual, state, federal and international requirements. We work closely with a client's management team, in-house and outside cyber security experts, law enforcements and governmental regulators to accomplish accurate and timely public reporting as required. When necessary, we are well-equipped to defend litigation, including national consumer class action litigation and regulatory enforcement actions."

Jackson Lewis

T 844-544-5296
www.jacksonlewis.com
breach@jacksonlewis.com

"With 57 offices in the U.S. and our international L&E Global network of firms, we are uniquely positioned to work with clients – regardless of size or industry – to efficiently address their cybersecurity needs. Our cybersecurity attorneys have extensive experience advising clients in all aspects of breach response, including litigation and agency inquiries. We strive to be responsive and understand our client's business needs – especially considering the emergent reputational and financial harm associated with a breach."

Please note that cover for any costs incurred (whether or not incurred as a result of the recommendations of breach counsel) will be subject to the terms and conditions of your policy and nothing stated herein should be construed as a waiver of any of the terms and conditions of your policy.

Notification of a suspected or actual data breach to breach counsel (via the hotline or otherwise) does not constitute notification to Tokio Marine Kiln. Formal notice to Tokio Marine Kiln is required as per the terms and conditions of your policy.

Notice

Coverage under this **Policy** is provided on a claims made and reported basis. This **Policy** applies only to **Claims** first made against the **Insured** during the **Policy Period** and reported to the **Underwriters** during the **Policy Period** or Extended Reporting Period, if applicable, and to **Loss** first discovered by the **Insured** and notified to the **Underwriters** during the **Policy Period** or Extended Reporting Period, if applicable.

Any obligation or payment owed by the **Underwriters** shall in every case be subject to the Limits of Liability as stated in the Schedule. **Defense Expenses** shall reduce the applicable Limits of Liability, subject to any applicable **Retention**, and may completely exhaust the Limit of Liability. This **Policy** only affords coverage under those Insured Coverages below that are indicated as purchased in Item 3 of the **Schedule**.

The singular includes the plural and vice versa, the masculine includes the feminine and neutral, and "entity" includes natural persons. "Including" and "include(s)" mean without limitation.

The descriptions in the headings and subheadings of this **Policy** are solely for convenience and reference and shall not be intended to limit or extend the scope of the provisions.

Terms that appear in bold face type are defined in the Definitions section of this **Policy**. Terms with capitalized first letters are defined in more detail in the Schedule to this **Policy** or as the context requires. Please read this **Policy** carefully.

Data Protection Notice

Tokio Marine Kiln Syndicates Limited and other group companies will use any information given together with other information for the administration of this Policy, the handling of claims and the provision of customer services.

The information may also be disclosed to Tokio Marine Kiln Syndicates Limited's service providers and agents for these purposes. It may also be disclosed to the **Insured's** Insurance Adviser.

The **Insured** has a right to request a copy of the information, to correct any inaccuracies and of erasure in certain circumstances.

If further information is required as to how data is processed by Tokio Marine Kiln Syndicates Limited, or as to the exercise of any rights under any data privacy laws, the **Insured** should read the Tokio Marine Kiln Syndicates Limited Data Protection Policy at: <http://www.tokiomarinekiln.com/privacy>

or contact:

The Data Protection Officer

Tokio Marine Kiln Syndicates Limited, 20 Fenchurch Street, London EC3M 3BY

T: +44 (0)20 7886 9000

dpo@tokiomarinekiln.com

Insuring Agreements

In consideration of the payment of the premium and in reliance upon the **Application**, the **Underwriters** agree to indemnify the **Insured** in excess of the **Retention** (or after the expiration of the **Waiting Period** and in excess of the **Remaining Retention** with respect to Insuring Agreements 1.a. Business Interruption, 1.b. Contingent Business Interruption and 1.d. Reputational Harm), as indicated in Item 3 of the Schedule, for:

- 1 **Loss** first discovered by the **Control Group** during the **Policy Period** and reported to the **Underwriters** during the **Policy Period** or Extended Reporting Period, if applicable, for:
 - a) **Business Interruption**
Gross Earnings and **Extra Expense** incurred during the **Interruption Period** directly as a result of the total, or partial, or intermittent interruption or degradation in service of the **Insured's Computer System** caused directly by a **Security Breach**, **Administrative Error** or **Power Failure**.
 - b) **Contingent Business Interruption**
Gross Earnings and **Extra Expense** incurred during the **Interruption Period** directly as a result of the total, partial, or intermittent interruption or degradation in service of the **Computer System** of an **Outsource Service Provider** caused directly by a **Security Breach** or **Administrative Error** at that **Outsource Service Provider**.
 - c) **Digital Asset Destruction**
Digital Asset Loss incurred as a direct and necessary result of a **Security Breach**, **Administrative Error** or **Power Failure**.
 - d) **Reputational Harm**
Gross Earnings and **Crisis Communications Expenses** incurred during the **Interruption Period** directly as a result of an **Adverse Media Event** arising from a **Privacy Breach**, **Security Breach** or **Administrative Error**.
 - e) **Cyber Extortion**
Extortion Expenses and **Extortion Payment** incurred directly as a result of a **Cyber Extortion Threat**.
 - f) **Incident Response Expenses**
Breach Response Expenses incurred as a result of a **Privacy Breach** or **Security Breach**.

- 2 Amounts which the **Insured** is legally obligated to pay as a result of a **Claim** first made against the **Insured** during the **Policy Period**, and reported to the **Underwriters** during the **Policy Period** or Extended Reporting Period, if applicable, for:
 - a) **Security and Privacy Liability**
Damages and **Defense Expenses** which the **Insured** is legally obligated to pay as a result of a **Claim** arising from a **Privacy Breach**.
 - b) **Regulatory Defense and Penalties**
Regulatory Fines and Penalties and **Defense Expenses** which the **Insured** is legally obligated to pay as a result of a **Claim** arising from a **Privacy Breach**.
 - c) **Multimedia Liability**
Damages and **Defense Expenses** which the **Insured** is legally obligated to pay as a result of a **Claim** arising from **Multimedia Activities**.
 - d) **Payment Card Industry Fines, Assessments and Expenses**
Payment Card Industry Fines and Expenses and **Defense Expenses** which the **Insured** is legally obligated to pay as a result of a **Claim** arising from a **Privacy Breach**.

Exclusions

The **Underwriters** shall not be liable for any **Claim, Damages, Defense Expenses** or **Loss** based upon, arising out of, or in any way attributable to:

1 Betterment

The financial cost of improvements in respect of the **Computer System** following a **Privacy Breach, Security Breach, Administrative Error, Power Failure, or Cyber Extortion Threat** which results in better than like kind or quality of the **Computer System** than that existing at the date of such **Privacy Breach, Security Breach, Administrative Error, Power Failure, or Cyber Extortion Threat**; however, this exclusion is inapplicable if an upgraded system is the only available option, such determination subject to the agreement and written consent of the **Underwriters**;

2 Bodily Injury

Physical injury, sickness, disease, or death sustained by any individual and, where resulting from such physical injury only, mental anguish, mental injury, shock or emotional distress;

3 Breach of Contract, Warranty, Guarantee or Promise and Assumed Liability

Any breach of any express contract, warranty, guarantee or promise, or any liability assumed by the **Insured** under a contract or agreement, unless:

- a) the **Insured** would have been liable in the absence of such contract, agreement, warranty, guarantee or promise;
- b) a **privacy breach** involves the **Insured's** privacy policy; or
- c) unless otherwise covered under Insured Coverage 2.D. Payment Card Industry Fines and Expenses;

4 Description of Price of Goods

Actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products, or services, including cost guarantees, cost representations, contract price, or cost estimates being exceeded;

5 Discrimination

Any actual or alleged discrimination of any kind, including but not limited to age, color, race, gender, religion, creed, national origin, marital status, sexual orientation, sexual preference, disability, marital status, financial condition or pregnancy, including violations of civil rights or discriminatory or retaliatory conduct of any kind. However, this exclusion does not apply to a **Privacy Breach**;

6 Employer-Employee Relations

Any employer-employee relations, policies, practices, acts or omissions, any actual or alleged refusal to employ any person, or any misconduct, including physical or sexual, with respect to **Employees**, including negligent employment, investigation, supervision, hiring, training or retention of any **Employee, Insured** or person for whom the **Insured** is legally responsible. However, this exclusion does not apply to a **Privacy Breach**;

7 Government Intervention

Non-discriminatory measures of a government taken in the public interest for the purposes of ensuring public safety, raising revenues, protecting the environment or regulating economic activities;

8 Infringement of Patents or Theft of Trade Secrets

The actual or alleged:

- a) Infringement of any patent or patent rights or misuse or abuse of a patent; or
- b) The misappropriation, theft, copying, display or publication of any trade secret, unless arising out of a **Privacy Breach** or **Security Breach**;

9 Insolvency or Bankruptcy

The insolvency, liquidation or bankruptcy of any person or entity, including any **Insured** to the extent permitted by law, or the failure, inability, or unwillingness of any person or entity or **Insured** to make payments or perform obligations or conduct business because of insolvency, liquidation, or bankruptcy;

10 Insured Misconduct

The **Insured's** willful, deliberate, malicious, fraudulent, dishonest, or criminal act or violation of law with the knowledge, connivance or acquiescence of any member of the **Control Group**; however, this exclusion shall not apply to **Defense Expenses** incurred in defending any such **Claim** until such time that there is a final admission or final adjudication establishing such conduct, at which time the **Insured** shall reimburse the **Underwriters** for all **Defense Expenses** incurred. Facts or knowledge possessed by the **Control Group** regarding the foregoing conduct shall be imputed to other **Insureds**;

11 Insured versus Insured

Any **Claim** made by or on behalf of an **Insured** against another **Insured**. This exclusion shall not apply to any **Claim** brought by an **Employee** outside of the **Control Group** as a result of a **Privacy Breach** or **Security Breach**;

12 Loss of Funds

- a) Loss, decrease in value or theft of securities or currency;
- b) Trading losses, liabilities or changes in trading account value; or
- c) The value of electronic funds, money, securities or wire transfer;

13 Natural Disasters

Any loss incurred as a result of a natural disaster, including fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail or any other natural physical event however caused;

14 Payment Card Industry

Payment Card Industry Fines and Expenses unless Insured Coverage 2.D. Payment Card Industry Fines and Expenses is included in this policy;

15 Prior Knowledge or Notification

Any act, fact, error, omission, event, incident, occurrence, claim or circumstance likely to give rise to a claim notified to a previous insurer, or which occurred or commenced prior to the inception date of this **Policy** if at the inception date the **Control Group** knew or should reasonably have foreseen the act, fact, error, omission, event, incident, occurrence, claim or circumstance as likely to form the basis for a **Claim** or **Loss** under this **Policy**;

16 Property Damage

Physical injury to, or impairment, destruction or corruption of, any tangible property, including personal property in the care, custody or control of the **Insured**. **Data** and **Digital Assets** are not tangible property;

17 Pollutants

Any actual or alleged or threatened presence, discharge, dispersal, release, escape or failure to detect pollutants or solid, liquid, gaseous or thermal irritant or contaminant of any kind, including smoke, vapor, soot, fumes, other air emission, acids, toxic chemicals, alkalis, mold, spores, fungi germs, odor, waste water, oil or oil product, infectious or medical waste, asbestos or asbestos product, lead or lead product, noise, and electric, magnetic or electromagnetic field chemicals, or waste (including waste material to be recycled, reconditioned or reclaimed), whether or not such presence, discharge, dispersal, release, escape or failure to detect results from the **Insured's** activities or the activities of others, or whether such presence happened suddenly, gradually, accidentally, or intentionally.

18 Satellite, Electrical or Mechanical Failures

Satellite failures; electrical or mechanical failures including spike, brownout or blackout; failures of overhead or subterranean transmission and distribution lines; or outage to utility infrastructure, including gas, water, telecommunications, telephone, internet or cable, unless such infrastructure is under the **Insured's** direct operational control;

19 Specific Legislation

- a) The actual or alleged purchase, sale, offer of, or solicitation of an offer to purchase or sell securities, or violation of any securities law including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002, including 'Blue Sky' laws;
- b) The actual or alleged violation of the Organized Crime Control Act of 1970 ('RICO');
- c) The actual or alleged government enforcement of any state or federal law or regulation including law or regulations promulgated by the United States Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission; however this exclusion does not apply to Insured Coverage 2.B. Regulatory Defense and Penalties;
- d) Any breach or alleged breach of any workers' compensation, unemployment compensation, disability benefits or similar laws, including the Federal Employers Liability Act, the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Worker Adjustment and Retraining Act of 1988, the Certified Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970;
- e) Any violation of any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds, or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974 and/or the Pension Protection Act of 2006;
- f) The violation of, or exposure of the **Insured** or **Underwriters** 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;
- g) The Telephone Consumer Protection Act of 1991 or CAN-SPAM Act of 2003 or any similar state or federal statute, law, regulation or rule with regard to unsolicited distribution of email, text messages, direct mail, facsimiles, spam, actual or alleged wiretapping, audio or video recording, or telemarketing;

20 Terrorism

Any act of terrorism, except for a terrorist event perpetrated by electronic or internet based applications or means;

21 Unauthorized Trading

Any and all trading by an **Insured**, including trade that at the time of the trade is:

- a) In excess of permitted financial limits; or
- b) Outside of permitted product lines;

22 Anti-Trust Laws and Unfair Competition

Any actual or alleged violation of any anti-trust statute, legislation or regulation including the Sherman Anti-Trust Act, the Clayton Act or any similar provisions of any federal, state or local statutory law or common law; or unfair competition, price fixing, deceptive trade practices;

23 Use of Illegal or Unlicensed Programs

Knowing use of illegal or unlicensed programs or software;

24 War or Uprising

Confiscation, nationalization, requisition, strikes, labor strikes or similar labor actions; war, invasion, or warlike operations, civil war, mutiny, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising; military coup or usurped power.

25 Radioactive, chemical, biological, biochemical and electromagnetic contamination

- a) ionizing radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste;
- b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter; or
- e) any chemical, biological, bio-chemical, or electromagnetic weapon.

26 Professional Services

The rendering of, or failure to render, professional services (including technology services), or any error or omission, malpractice or mistake of a professional nature committed by or on behalf of an **Insured** in the conduct of any of the **Insured's** business activities. However, this exclusion does not apply to a **Claim** against an **Insured** alleging a **Privacy Breach**.

27 Unlawful Collection and Use of Biometric Data

The actual or alleged failure to comply with any statute, law, decree, regulation or rule with respect to the unlawful collection, use, handling, storage, retention, processing or destruction of biometric data, biometric information and/or biometric identifiers. However, this exclusion shall not apply to a **Privacy Breach** that directly results from a **Security Breach**.

Definitions

Administrative Error

An error or omission by an **Employee** or member of the **Control Group** in the operation, input or processing of the **Insured's Digital Assets** or the **Insured's Computer System**. With respect to Insured Coverage 1.B Contingent Business Interruption, **Administrative Error** includes error or omission by an employee of an **Outsource Service Provider** in the operation, input or processing of the **Insured's Digital Assets** or the **Outsource Service Provider's Computer System**. **Administrative Errors** do not include errors in software programming or coding.

Adverse Media Event

A report in the media of a **Privacy Breach** or **Security Breach** including via newspapers, radio, television, internet, blogging, vlogging and social media, that has an adverse impact on the **Insured's** business or reputation.

Application

All information provided by or on behalf of the **Insured** to the **Underwriters** as part of any request for this **Policy** (or any renewal or variation) including any application submitted in prior policy periods, and any supplemental material submitted therewith, including all particulars and details of the methodology on the basis of which any estimates within such information were calculated or derived and information and materials contained on any Internet websites maintained by or on behalf of any **Insured** which are actually provided by the **Insured** to the Underwriters prior to formation or renewal or variation of this contract of insurance. All of the above are deemed attached to, material and incorporated into this **Policy**.

Breach Response Expenses

Costs and expenses for the following services provided by one or more Approved Vendors specified in Schedule II:

- a) Costs of an external IT security expert to determine the cause, scope and extent of the **Privacy Breach** or **Security Breach** or any immediate actions necessary to mitigate ongoing harm to the **Insured's Computer System**;
- b) Costs and expenses of a legal firm to determine any actions necessary to comply with **Privacy Regulations**;
- c) Notification costs and related expenses to notify:
 - i. Individuals who are required to be notified in compliance with **Privacy Regulations** mandating notification; or
 - ii. at the **Underwriters'** discretion and pursuant to written consent (consent will not be unreasonably withheld), to individuals residing in states, provinces or countries that do not have mandatory notification laws or regulations;
- d) Costs of setting up a telephone call center in order to support notified individuals and to provide credit file monitoring services and/or identity theft assistance for a maximum of twelve (12) months;
- e) **Crisis Communication Expenses**.

In the event that the **Insured** procures any of the services listed in (a) to (e) above from a service provider not specified in Schedule II, or performs any of the services themselves, then the **Underwriters** shall only reimburse the **Insured** for such costs and expenses:

- i. Where the **Underwriters** have provided prior written consent;
- ii. Where costs incurred by the **Insured** for services performed by themselves are over and above the **Insured's** normal operating expenses; and
- iii. Subject to a maximum reimbursement of the amount that would have been payable had a service provider specified in Schedule II rendered such services. Reimbursement of any services billed by the hour shall be subject to the rate caps stated in Schedule II.

Claim

- a) A written notice received by any **Insured** during the **Policy Period** of an intention to hold the **Insured** responsible for **Damages**, including the service of legal proceedings, the institution of arbitration or mediation, or a written request to toll or waive a statute of limitations against any of the **Insureds**;
- b) A request for information, civil investigative demand, formal civil administrative proceeding or formal regulatory action only to the extent covered by Insured Coverage 2.B. Regulatory Defense and Penalties;
- c) A written demand for **Payment Card Industry Fines and Expenses** received by an **Insured** only to the extent covered by Insured Coverage 2.D. Payment Card Industry Fines and Expenses.

Computer System

A system of interconnected hardware and peripherals, and associated software, operated by the **Insured** or an **Outsource Service Provider**, except only where operated by the **Insured** with respect to Coverage 1.A.

Control Group

Any of the Chief Executive Officer, Chief Financial Officer, Chief Information Officer, Chief Operating Officer, Chief Information Security Officer, Risk Manager or functional equivalent.

Crisis Communications Expenses

Expenses reasonably incurred by the **Insured** and approved in writing in advance by the **Underwriters** for the employment of a public relations consultant if the **Insured** reasonably considers that action is needed in order to avert or mitigate a **Gross Earnings** or **Adverse Media Event**.

Cyber Extortion Threat

A credible threat or series of credible threats that includes a demand for **Extortion Payment** to:

- a) Release, disseminate, destroy or corrupt the **Insured's Digital Assets**;
- b) Introduce **Malicious Code** into the **Insured's Computer System**;
- c) Corrupt, damage or destroy the **Insured's Computer System**;
- d) Electronically communicate with the **Insured's** customers and falsely claim to be the **Insured** or to be acting under the **Insured's** direction in order to falsely obtain personal confidential information of the **Insured's** customers (also known as "pharming," "phishing," or other types of false communications); or
- e) Restrict or hinder access to the **Insured's Computer System**, including the threat of a criminal or malicious **Denial of Service**.

Damages

The amount an **Insured** is legally obligated to pay in respect of a **Claim**, including a monetary judgment, award, or settlement, interest and a claimant's legal costs; punitive and exemplary damages, to the extent such damages are insurable under the law pursuant to which this **Policy** is construed; **Regulatory Fines and Penalties** only to the extent covered by Insured Coverage 2.B. Regulatory Defense and Penalties; and **Payment Card Industry Fines and Expenses** only the extent covered by Insured Coverage 2.D.

Damages shall not include:

- a) Future profits or royalties, restitution, or disgorgement of the **Insured's** profits;
- b) The cost of complying with orders granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief;
- c) Loss of the **Insured's** fees or profits, return or offset of the **Insured's** fees or charges (invoiced or not), or the **Insured's** commissions or royalties provided or contracted to be provided;
- d) Fines, taxes or loss of tax benefits, sanctions unless covered under Insured Coverage 2.B. Regulatory Defense and Penalties and unless covered under Insured Coverage 2.D Payment Card Industry Fines, Assessments and Expenses;
- e) Liquidated damages to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement, unless covered under Insured Coverage 2.D Payment Card Industry Fines, Assessments and Expenses;
- f) Any amount which the **Insured** is not legally obligated to pay; and
- g) Amounts which are uninsurable under the law pursuant to which this **Policy** is construed. For the avoidance of doubt, any **Damages** will be deemed for the purposes of this **Policy** to be insurable unless there is case law, legislation, regulation or an order or judgement from a regulator, legislator or law enforcement agency specifically prohibiting the insurability of the **Damages**.

Data

Information represented, transmitted or stored electronically or digitally including code, or a series of instructions, operating systems programs, software and firmware;

Defense Expenses

Fees charged by an attorney to defend a **Claim** and costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim** incurred with the **Underwriters'** prior written consent, or such fees and costs incurred by an attorney from the 24-Hour Cyber-Incident Hotline or Pre-Approved Vendors specified in Schedule II.

Denial of Service

Unauthorized interference or malicious attack that restricts or prevents access to the **Insured's Computer System** for entities authorized to gain access.

Digital Asset Loss

Expenses incurred to restore or recreate **Digital Assets**. If it is determined that **Digital Assets** cannot be restored or recreated, the **Underwriters** will only reimburse the **Insured's** losses or expenses incurred up to the date of such determination.

Digital Assets

The **Insured's** digital files including data, computer programs, electronic documents and audio content stored on the **Insured's Computer System**.

Employee

Any person hired for a wage, salary, fee or payment to perform work for the **Insured** under a contract of service, whether oral or written, express or implied and whose employment status can be verified by documentation existing at the time of the event giving rise to **Loss** or a **Claim**, including any intern or volunteer, but only while such persons are acting solely within the scope of their duties to the **Insured**.

Extortion Expenses

Reasonable and necessary expenses incurred to avoid a **Privacy Breach, Security Breach** or the disruption or failure of the **Insured's Computer System**, resulting directly from a **Cyber Extortion Threat**.

Extortion Payment

The payment of a ransom demand to avoid a **Privacy Breach, Security Breach** or the disruption or failure of the **Insured's Computer System**, resulting directly from a **Cyber Extortion Threat**. The **Insured** must report any payments to local or federal law enforcement authorities as soon as practicable.

For the avoidance of doubt, any **Extortion Payment** will be deemed for the purposes of this **Policy** to be insurable unless there is case law, legislation, regulation or an order or judgement from a regulator, legislator or law enforcement agency specifically prohibiting the insurability of the **Extortion Payment**.

Extra Expense

Reasonable and necessary extra costs incurred by the **Insured** to temporarily continue as nearly normal as practicable in the conduct of the **Insured's** business during the **Interruption Period**, less any value remaining at the end of the **Interruption Period** for property or services obtained in connection with such costs. Costs and expenses incurred by the **Insured** in issuing goodwill coupons, rebates, discounts or promotions to its clients or customers are not recoverable as an **Extra Expense** under this **Policy**.

'Normal' shall mean the condition that would have existed had no **Privacy Breach, Security Breach, Administrative Error** or **Power Failure** occurred.

Gross Earnings

- a) The loss of Gross Earnings; less all charges and expenses that do not necessarily continue during the interruption of production or suspension of business operations or services; plus the loss of all other earnings derived from the operation of the business; and
- b) Such expenses as are necessarily incurred for the purpose of reducing loss of **Gross Earnings**, but in no event shall the aggregate of such expenses exceed the amount by which the loss under the **Policy** is thereby reduced.

Provided, however, there is recovery of **Gross Earnings** only to the extent that the **Insured** is:

- i. Wholly or partially prevented from producing goods or continuing business operations or services;
- ii. Unable to make up lost production within a reasonable period of time, not limited to the **Interruption Period**;
- iii. Unable to continue such operations or services during the **Interruption Period**; and
- iv. Able to demonstrate a loss of sales for the operations, services or production prevented.

'Gross Earnings', as used in item a. shall mean:

- a) For manufacturing operations: the net sales value of production less the cost of all raw stock, materials and supplies used in such production; or
- b) For mercantile or non-manufacturing operations: the total net sales less cost of merchandise sold, materials and supplies consumed in the operations or services rendered by the **Insured**.

This **Policy** does not provide coverage under Gross Earnings for:

- a) fines or damages for breach of contract or for late or non-completion of orders;
- b) penalties of any nature; or
- c) any other consequential or remote loss.

Insurance Policy or Insurance or Policy

This contract of insurance including the **Application**, any Declarations and Schedules, and any endorsements or variations, all material to and forming part hereof.

Insured

- a) The entity specified in Item 1 of the Schedule;
- b) Any **Subsidiary** but only during the time period such qualifies as a **Subsidiary**;
- c) Any past, present, or future officer, director, trustee, or **Employee** of any of (a) and (b) above, but only while acting solely within the scope of their duties as such;
- d) Any general or managing partner, principal, stockholder, or owner of any of (a) and (b) above, but only while acting solely within the scope of their duties as such;
- e) Any legal entity required by contract to be named as an **Insured** under this **Policy** if agreed in advance and in writing by the **Underwriters**, but only for the acts of any above parties (a) through (d), as detailed under the relevant Coverage 1. A through F and 2. A through D; and
- f) Any agent or independent contractor, including distributors, licensees, and sub-licensees, but only while acting on behalf of, at the direction of, or under the control of any party of (a) through (e) above; however, not including any **Outsource Service Provider**.

Interruption Period

Under Insured Coverage 1.A. Business Interruption and Insured Coverage 1.B. Contingent Business Interruption, the period of time that commences when the partial or complete interruption, degradation or failure of the **Computer System** begins, and ends on the earlier of:

- a) the date of full system restoration of the **Computer System** plus up to 30 days thereafter if necessary to allow for restoration of the **Insured's** business; or
- b) the maximum indemnity period as stated in Item 5 of the Schedule.

Under Insured Coverage 1.D. Reputational Harm, the period of time that commences on the date of the earliest **Adverse Media Event** and ends after the maximum indemnity period as stated in Item 5 of the Schedule.

Loss

Breach Response Expenses, Crisis Communications Expenses, Digital Asset Loss, Extortion Expenses, Extra Expense, Extortion Payment and Gross Earnings.

Malicious Code

Software intentionally designed to damage **Digital Assets** or a **Computer System** by a variety of forms including, but not limited to, virus, worm, Trojan horses, spyware, dishonest adware, ransomware and crimeware.

Multimedia Activities

The release or display of any electronic media on the **Insured's** website or print media of the **Insured** that is under the direct sole control of the **Insured** or content generated by the **Insured** on a social media platform and directly results in any of the following:

- a) Defamation, libel, slander, product disparagement or trade libel;
- b) Infringement, interference, or invasion of an individual's right of privacy or publicity, including false light, intrusion upon seclusion, commercial misappropriation of likeness, and public disclosure of private facts;
- c) Plagiarism, piracy or misappropriation of ideas under an implied contract;
- d) Infringement of copyright, trademark, trade name, trade dress, title, slogan, service mark or service name; or
- e) Domain name infringement or improper deep-linking or framing.

For the avoidance of doubt, this **Policy** shall not provide coverage for a **Claim** arising from the actual or alleged infringement of third party intellectual property rights with respect to the manufacture, import, design, package or trade dress of goods or services sold by, or on behalf of, any **Insured**.

Named Insured

The entity specified in Item 1 of the Schedule.

Outsource Service Provider

An independent service provider that provides information technology services, including hosting, security management, co-location, and data storage, for the benefit of the **Insured** under a written contract with the **Insured**.

Payment Card Industry Fines and Expenses

Payment card industry forensic investigation costs, fines or penalties, assessments, including fraud loss recoveries and card replacement costs, and administrative costs that the **Insured** is legally obliged to pay under the terms of a merchant services agreement as a result of the **Insured's** actual or alleged non-compliance with payment card industry data security standards. **Payment Card Industry Fines and Expenses** does not include any ongoing obligation or audit following the imposition of an assessment, fine or penalty.

Policy Period

The period of time between the Inception Date and Time and the Expiration Date and Time specified in Item 2 of the Schedule unless terminated earlier, and specifically excluding any Extended Reporting Period.

Power Failure

Failure in electrical power supply directly caused by a **Security Breach**, but only where such power is under the direct operational control of the **Insured** or the equipment necessary to supply the power is under the direct operational control of the **Insured**.

Privacy Breach

An actual or suspected breach of confidentiality, or infringement or violation of any right to privacy, or a breach of the **Named Insured's** privacy policy or of **Privacy Regulations**.

Privacy Regulations

Statutes, laws and regulations associated with the confidentiality, access, control, and use of personally identifiable, non-public information including:

- a) Health Insurance Portability and Accountability Act of 1996 (Public Law 104- 191);
- b) Gramm-Leach-Bliley Act of 1999, also known as the Financial Services Modernization Act of 1999;
- c) State and federal statutes and regulations regarding the security and privacy of consumer information;
- d) Governmental privacy protection regulations, statutes or laws associated with the control and use of personal information;
- e) Privacy provisions of consumer protection laws, including the Federal Fair Credit Reporting Act;
- f) Children's Online Privacy Protection Act;
- g) The EU General Data Protection Regulation (GDPR)

Regulatory Fines and Penalties

Civil fines, monetary penalties payable or a monetary amount which the **Insured** is legally obligated to deposit in a fund as equitable relief imposed by a governmental agency or regulatory authority as a result of a breach of the **Privacy Regulations**.

For the avoidance of doubt, any **Regulatory Fines and Penalties** will be deemed for the purposes of this **Policy** to be insurable unless there is case law, legislation, regulation or an order or judgement from a regulator, legislator or law enforcement agency specifically prohibiting the insurability of the relevant category of **Regulatory Fines and Penalties**.

Remaining Retention

The **Retention** amount specified in Item 3 of the Schedule less the amounts incurred by the **Insured** during the **Waiting Period** attributable to a **Loss**.

If the amounts attributable to a **Loss** that are incurred by the **Insured** during the **Waiting Period** are greater than the applicable **Retention** amount specified in Item 3 of the Schedule, then the **Remaining Retention** is zero.

Retention

The figure specified in Item 3 of the Schedule that is payable by the **Insured** in respect of every **Claim** and **Loss**.

Security Breach

- a) The use of the **Computer System** by an unauthorized person or persons, or by an authorized person in an unauthorized manner, including social engineering techniques;
- b) **Denial of Service** attack or DDoS;
- c) **Malicious Code**;
- d) The failure to prevent or hinder participation in a **Denial of Service** from a **Computer System**.

A series of continuing **Security Breaches**, or related or repeated **Security Breaches** arising from the same sequence of events, shall be considered a single **Security Breach** and be deemed to have occurred at the time of the first such **Security Breach**.

Subsidiary

Any corporation, limited liability company, or partnership while more than 50% of the outstanding voting securities or shares that represent the present right to vote for the election or appointment or designation of such entity's directors, managers or equivalent that are directly owned or controlled by the **Insured**; or any joint venture while the **Named Insured** has managerial control, or while it has the right to elect or designate or otherwise appoint or directly control the appointment of more than 50% of such entity's directors, trustees, managers or equivalent.

Underwriters

The entity specified in Item 12 of the Schedule.

Waiting Period

Under Insured Coverage 1.A. Business Interruption and Insured Coverage 1.B. Contingent Business Interruption, the period of time that commences when the partial or complete interruption, degradation or failure of the **Computer System** begins, and expires after the number of hours specified in Item 3 of the Schedule.

Under Insured Coverage 1.D. Reputational Harm, the period of time that commences when the **Adverse Media Event** occurs and expires after the number of days specified in Item 3 of the Schedule.

Gross Earnings incurred during the Waiting Period are uninsured.

Claims Conditions

1 Subrogation

If any payment is made under this **Policy**, the **Insured** shall maintain all rights of recovery against any third party. The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights, and shall do nothing to prejudice such rights. Any recoveries shall be applied first in payment of the **Underwriters'** subrogation expenses, secondly to **Loss, Damages, Defense Expenses**, or any other amounts paid by the **Underwriters**, thirdly to any uninsured amount, and lastly to the **Retention**. Any additional amounts recovered shall be paid to the **Insured**.

2 Notice of Claim, Loss or Circumstance

- a) If, during the **Policy Period**, the **Control Group** becomes aware of a **Claim** or **Loss**, the **Insured** must forward details to the **Underwriters** as soon as practicable during the **Policy Period** or the Extended Reporting Period, if applicable, through the persons named in the Schedule. The **Insured** must report a **Claim** or **Loss** regardless of whether the **Claim** or **Loss** arises out of any previously reported incidents, circumstances, acts, errors or omissions, or related **Claim** or **Loss**.
- b) If during the **Policy Period**, the **Control Group** becomes aware of any incidents, circumstances, acts, errors or omissions that could reasonably result in a **Claim** or **Loss**, the **Insured** must forward details to the **Underwriters** as soon as practicable during the **Policy Period** or the Extended Reporting Period through the persons named in the Schedule. Any **Claim** or **Loss** arising out of such reported incidents, circumstances, acts, errors or omissions will be deemed to have been made or incurred when the **Underwriters** first received notice complying with this paragraph.
- c) Any **Loss, Claim** or incidents, circumstances, acts, errors or omissions that could reasonably result in **Loss** or a **Claim** shall be considered properly reported to the **Underwriters** when notice is first given to the persons named in the Schedule.

3 Dispute resolution

- a) No legal action shall be instituted by any **Insured** against the **Underwriters** in any court in respect of any alleged defense expenses or indemnity payable by the **Underwriters** in respect of any **Claim** unless, as a condition precedent thereto, there has been full compliance with all the terms of the **Policy** and the amount of the **Insured's** obligation to pay the relevant third party claimant shall have been finally determined either by judgment or award against the **Insured** after actual trial or arbitration, or by written agreement of the **Insured**, the claimant, and the **Underwriters**.
- b) Any person or organization or the legal representative thereof who has secured such judgment, award, or written agreement shall thereafter be entitled to make a claim under this **Policy** to the extent of the insurance afforded by this **Policy**. No person or organization shall have any right under this **Policy** to join the **Underwriters** as a party to an action or other proceeding against the **Insured** to determine the **Insured's** liability, nor shall the **Underwriters** be impleaded by the **Insured** or the **Insured's** legal representative. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the **Underwriters** of their obligations hereunder.
- c) Mediation. If any dispute arises between any **Insured** and the **Underwriters** involving **Loss** or a **Claim** under this **Policy**, such dispute shall be referred by the parties to a qualified mediator to negotiate a resolution of the dispute in good faith, prior to the initiation of any arbitration or other judicial proceedings. The party electing to mediate shall provide written notice to the other party of its request to mediate with a brief statement regarding the issue to be mediated. The persons named in Item 11 of the Schedule are authorized and directed to accept such Notice of Mediation on behalf of the **Underwriters**. The **Named Insured** is authorized and directed to accept such Notice of Mediation on behalf of any **Insured**.
- d) In the event that non-binding Mediation does not resolve or settle the dispute between any **Insured** and the **Underwriters**, after 30 days from the date of the Mediation, either party may:
 - 1) commence a judicial proceeding; or
 - 2) seek agreement to submit the matter to final and binding arbitration before either a single mutually agreed arbitrator or a three arbitrator panel whereby the **Insured** selects one arbitrator, the **Underwriters** select one arbitrator and the two selected arbitrators agree upon the selection of the third arbitrator.

4 Defense, Settlement and Investigation of Claims

- a) The **Underwriters** shall have the right and duty to defend any **Claim** against the **Insured**, even if any of the allegations of the **Claim** are groundless, false, or fraudulent, subject to the Limit of Liability, Exclusions, and other terms and conditions of this **Policy**.
- b) Unless defense counsel or breach counsel is chosen from the 24-Hour Cyber Incident Hotline panel or the Pre-Approved Vendors specified in Schedule II, defense counsel or breach counsel shall be appointed with the **Underwriters'** prior consent. Such consent shall not be unreasonably withheld. However in the absence of agreement the **Underwriters'** decision shall be final.
- c) The **Underwriters** shall have the right to make any investigation they deem necessary including with respect to the **Application** or to coverage.
- d) If the **Insured** refuses to consent to a settlement that the **Underwriters** recommend and that the claimant will accept, the **Insured** must then defend, investigate or settle the **Claim** at the **Insured's** own expense. As a consequence of the refusal to settle as per **Underwriter's** recommendation, Underwriter's liability for any **Claim** shall not be more than the amount of the initial recommended settlement plus up to 50% of any

additional costs incurred by the **Insured** above this amount in order to settle this matter, subject always to the limit of the **Policy**.

- e) No **Insured** may incur any **Defense Expenses, Payment Card Industry Fines and Expenses**, or admit liability for, or settle, or offer to settle, any **Claim**, without the Underwriters' written consent, which shall not be unreasonably withheld. Provided that, if a proposed settlement amount, when combined with any **Defense Expenses or Payment Card Industry Fines and Expenses** incurred, does not exceed 50% of the applicable **Retention** set forth in the Schedule, the **Insured** may settle a Claim, or accept an offer of settlement without the prior written consent of the **Underwriters**. Such settlement must fully resolve the **Claim** with respect to the **Insured** and the **Underwriters**.

5 Non-Admitted Insurance

The **Named Insured** on behalf of all **Insureds** acknowledges and recognises by accepting this contract of insurance that it is possible that not all entities and/or persons named as or falling within the definition of **Insured** within this **Policy** may be capable of enforcing this contract of insurance, or in respect of which there may be regulatory or other adverse impact by reason of the **Underwriters'** lack of a license in one or more particular territories or by the choice of the **Named Insured**. Such entities and/or persons are hereafter referred to as a "Local Entity or Person".

Such Local Entity or Person is not a party to or insured under this contract of insurance and cover in respect of such Local Entity or Person shall be provided to the **Named Insured** in respect of its insurable financial interest in such Local Entity or Person if the **Named Insured** benefits financially from the continued operation and preservation of the Local Entity or Person and its assets and/or would suffer a detriment by reason of any loss, damage, impairment or liability sustained by such Local Entity or Person.

Where this contract constitutes non-admitted insurance permissible under applicable law, the **Underwriters** shall only be responsible for providing any locally required bonds, local fiscal charges, certificates of insurance or any other documents as evidence of insurance if and to the extent that its provision of such documentation and cover is locally authorised, permissible and lawful.

Where loss or damage of the financial interest of the **Named Insured** in respect of any Local Entity or Person is indemnified under this contract, the **Underwriters** shall be subrogated to all rights and remedies of the **Named Insured**. If requested by the **Underwriters**, the **Named Insured** shall:

- a) Report fully and fairly on all causes of action which the Local Entity or Person may have against the third party arising out of the facts and circumstances which gave rise to its loss;
- b) Procure that the Local Entity or Person shall take all appropriate steps in respect of any potential recovery including litigation against any such third party (including any insurer(s) issuing a policy to that Local Entity or Person):
 - i. in the name of that Local Entity or Person or any plaintiff with the appropriate right to bring such a claim in the relevant court or arbitral forum;
 - ii. in respect of which claim the relevant claimant shall effect the directions and instructions of the **Underwriters** through the **Named Insured**, including the investigation, adjustment and defence of any loss which might be recoverable with access to books, records, bills invoices, vouchers and other relevant information, the reasonable costs of which shall be paid by the **Underwriters** in accordance with the terms and limits of this **Policy** save that where the sum claimed exceeds the indemnity provided by this clause the **Underwriters** shall only make a proportionate contribution to such costs in the ratio of the indemnified loss to the total claim;

The **Named Insured** shall procure that the Local Entity or Person assigns to the **Named Insured** the benefit of any cause of action it may have against any such third party (including any insurer issuing a policy to the Local Entity or Person). If other **Insureds** or the **Named Insured** subsequently recover any sum from a third party in respect of such cause of action the **Named Insured** shall repay the corresponding amount to **Underwriters** hereon.

Any misrepresentation, failure to disclose material information, false statement, fraudulent or exaggerated claim made by or on behalf of a Local Entity or Person shall be treated as made by the **Named Insured**.

General Conditions

The **Underwriters** have no duty to provide coverage under this **Policy** unless there has been full compliance with all the conditions contained in this **Policy**. Any clause designated as a condition precedent shall require the entity to which it applies to comply specifically and completely with it and any breach or failure to do so shall entitle the **Underwriters** to reject all or part of the **Claim, Damages, Defense Expenses** or **Loss** or any related claim or loss whether or not such breach or failure causes loss, prejudice or damage.

1 Policy Limits

The Aggregate Limit specified in Item 3 of the Schedule shall be the maximum liability of the **Underwriters** under this **Policy**. The sublimits for each **Insured Coverage** specified in Item 3 of the Schedule form part of, and are not in addition to, such Aggregate Limit.

After the **Policy** Limit of Liability has been exhausted, the **Underwriters** have no obligation to pay any **Damages, Defense Expenses, Loss** or any other amounts under the **Policy**, and shall have the right to withdraw from the defense.

2 Retention, Remaining Retention and Waiting Period

The **Retention** amount specified in Item 3 of the Schedule for each Insuring Agreement shall apply separately to each and every **Loss** and **Claim** and shall be satisfied in full by the **Insured's** monetary payments of **Loss, Damages, or Defense Expenses**. The **Underwriters** shall only be liable for amounts in excess of the **Retention**, subject to the Limit of Liability.

For Insuring Agreements subject to a **Waiting Period**, the **Underwriters** shall only be liable for amounts in excess of the **Remaining Retention** that an **Insured** incurs after the expiration of the **Waiting Period**.

Any **Loss** incurred during the **Waiting Period** is uninsured.

If a **Claim** or **Loss** attaches to more than one Insuring Agreement, only the highest **Retention** will apply to that **Claim** or **Loss**; however, any **Loss** incurred during the **Waiting Period** shall remain uninsured.

The **Insured's** payment of the applicable **Retention** is a condition precedent to the payment by the **Underwriters** of any amounts covered under the **Policy**. The **Insured** shall make direct payments within the **Retention** to the appropriate parties as designated by the **Underwriters**.

3 Related Claims and Loss

All **Claims** and **Loss** arising out of the same related or continuing acts, facts, circumstances or events shall be considered a single **Claim** or **Loss**, without regard to the number of **Insureds, Claims** or claimants. All such **Claims** or **Loss** shall be deemed to have been made at the time of the first such **Claim** or **Loss**.

4 Cancellation

If this **Policy** is cancelled by the **Named Insured**, the **Underwriters** will refund the unearned premium computed at pro-rata premium for the period for which the policy is in force. No premium will be refunded where any **Claim** or circumstance has been notified under this **Policy**, whether or not it has been accepted for coverage.

5 Other insurance

This **Policy** shall apply in excess of any other valid and collectible insurance (or other indemnity) available to the **Insured**, including any retention or deductible portion thereof, unless such other insurance is specifically written as excess insurance over the Limit of Liability or Aggregate Limit of this **Policy**.

6 Inspection and audit

The **Underwriters** shall be permitted, but not obligated, to inspect any of the **Insured's** property, operations, or records and take copies of same at any time at the **Insured's** cost.

7 Mergers and acquisitions

If any **Named Insured** completes the legal acquisition of another entity during the **Policy Period**, then that acquired entity will automatically be included as an **Insured** but only with respect to **Claims** or **Loss** sustained or occurring after the date of the acquisition and otherwise qualifying for coverage under this **Policy**, unless:

- a) that acquired entity has an annual revenue of more than 20% of the **Named Insured's** annual revenue (evaluated according to the last set of audited accounts formally filed by that entity against the information provided by the **Named Insured** when applying for this **Policy**); or
- b) unless that acquired entity stores a total number of unique, personally identifiable records that are in excess of 20% of the total unique, personally identifiable records that the **Named Insured** stores (as at the date of completion of such acquisition).

If the above cover is not automatically provided to the newly acquired entity, to obtain cover the **Named Insured** must notify and obtain the written consent of the **Underwriters** prior to the acquisition, and agree to pay any additional premium required.

8 Assignment

The interest hereunder is not assignable by any **Insured**.

9 Innocent Insured

- a) Whenever coverage under this **Policy** would be excluded, suspended, or lost owing to non-compliance with Claims Conditions 2. Notice of claim or circumstance, with respect to which any other **Named Insured** shall be in default solely as a result of such non-compliance, then such insurance as would otherwise be afforded under this **Policy** shall cover and be payable to those **Insureds** who did not personally commit or personally participate in committing or personally acquiesce in such failure to give notice, provided that the **Insured** entitled to the benefit of this provision shall comply with Claims Conditions 2. Notice of Claim or Circumstance promptly after obtaining knowledge of the failure of any other **Insured** to comply therewith.

Any insurance afforded by this provision shall not cover a **Claim** if a member of the **Control Group** knew or should reasonably have known of a **Claim** or circumstance that could reasonably form the basis of a **Claim** or **Loss** and failed to give notice as required by Claims Conditions 2.

Notwithstanding the above, the reporting of any such **Claim** or **Loss** must be made during the **Policy Period** or Extended Reporting Period, if applicable.

- b) Whenever coverage under this **Policy** would be excluded, suspended, or lost because of the Insured Misconduct Exclusion, then such insurance as would otherwise be afforded under this **Policy** shall cover and be payable with respect to those **Insureds** who did not personally commit, personally participate in committing, personally acquiesce, or remain passive after having personal knowledge thereof, provided that that the **Insured** entitled to the benefit of this provision shall comply with Claims Conditions 2. Notice of Claim or Circumstance promptly after obtaining knowledge of the failure of any other insured to comply therewith.

10 Extended Reporting Period

- a) Automatic Extended Reporting Period

The **Named Insured** shall have a period of sixty (60) days following the Expiry Date, specified in Item 2 of the Schedule, in which to give written notice to the **Underwriters** of **Claims** or **Loss**, but only in respect of any **Claim** first made during the **Policy Period** or **Loss** that is first discovered during the **Policy Period** and is otherwise covered by this **Policy**.

- b) Extended Reporting Period

In the event of cancellation or non-renewal of this **Policy**, the **Named Insured** shall have the right, upon payment in full and not proportionally or otherwise in part of 100% of the premium specified in Item 4 of the Schedule, to notify the **Underwriters** in writing within thirty (30) days of such cancellation or non-renewal that it requires, and the **Underwriters** shall provide, an Extended Reporting Period of twelve (12) months commencing on the date of such cancellation or non-renewal in which to report any **Claim** first made during the **Policy Period** or **Loss** that is first discovered during the **Policy Period** and is otherwise covered by this **Policy**. The payment of the additional premium for the Extended Reporting Period must be paid to the **Underwriters** within thirty (30) days of the non-renewal or cancellation.

- c) The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability for the **Policy Period**.
- d) The right to the Extended Reporting Period shall not be available to the **Insured** where cancellation or non-renewal by the **Underwriters** arises through non-payment of premium or the **Insured's** failure at any time to pay amounts within the applicable **Retention**.

11 Change of Control

In the event of the **Named Insured's** acquisition by or merger into another entity, or the **Named Insured's** liquidation or dissolution, the **Named Insured** may notify the **Underwriters** within thirty (30) days of the actual change of control of the **Named Insured's** election for an Extended Reporting Period of twelve (12) months from the date of such change of control. Such Extended Reporting Period shall cover **Claims** reported or **Loss** notified to the **Underwriters** during this change of control Extended Reporting Period, but only in respect of any **Claim** made during the **Policy Period** or **Loss** incurred during the **Policy Period** which is otherwise covered by this **Policy**.

12 Assistance and cooperation

- a) The **Insured** shall cooperate with the **Underwriters** in all investigations relating to this **Policy**. The **Insured** shall execute or cause to be executed all documents and papers and render all assistance as requested by the **Underwriters**, including providing copies of a third party's system security and event logs.
- b) Upon the **Underwriters'** request, the **Insured** shall assist in making settlements, in the conduct of all third party dispute resolution procedures and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** with respect to which insurance is afforded under this **Policy**, and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses at the **Insured's** own cost.
- c) It is a condition precedent to the **Underwriters'** liability that the **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award, or dispose of any **Claim** without the **Underwriters'** prior written consent. However, the prompt public admission of a **privacy breach** potentially impacting non-public personally identifiable information as required by governmental privacy legislation or credit card association operating requirements will not be considered as an admission of liability requiring the **Underwriters'** prior consent.
- d) The **Underwriters** shall have the right to make any investigation they deem necessary with respect to coverage including the **Application**.
- e) The **Insured** shall submit for examination under oath by the **Underwriters'** representative, if requested, in connection with all matters relating to this **Policy**.

13 Warranty by Named Insured

By acceptance of this **Policy**, all **Insureds** agree that the statements in the **Application** are their agreements and representations, which shall be deemed material to the risk, and that this **Policy** is issued in reliance upon the truth thereof. The misrepresentation or non-disclosure in the **Application** of any material matter by the **Insured** or its agent will render the **Policy** null and void and relieve the **Underwriters** from all liability under the **Policy**.

14 Forfeiture

Any:

- a) action or failure to act by the **Insured** with the intent to defraud the **Underwriters**; or
- b) material misrepresentation or non-disclosure of any material fact or claims by the **Insured** in the application or in any supplemental materials submitted to the **Underwriters**;

shall render this **Policy** null and void, and all coverage hereunder shall be forfeited.

15 Service of suit clause (U.S.A.)

- a) Subject to the application of Claims Condition 3, it is agreed that in the event of the **Underwriters'** failure to pay any amount claimed to be due under this **Policy**, the **Underwriters** herein, at the **Named Insured's** request, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this clause constitutes or should be understood to constitute a waiver of the **Underwriters'** rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or seek a transfer of a case to another court as permitted by the laws of the United States or any state in the United States. It is further agreed that service of process in such suit may be made upon the **Underwriters'** representative, designated in Item 11 of the Schedule, and that in any suit instituted against any one of them upon this contract the **Underwriters** will abide by the final decision of such court, or of any appellate court in the event of an appeal.
- b) The **Underwriters'** representative designated in Item 11 of the Schedule is authorized and directed to accept service of process on the **Underwriters'** behalf in any such suit and/or upon the **Named Insured's** request to give a written undertaking to the **Named Insured** that they will enter a general appearance upon the **Underwriters'** behalf in the event such a suit shall be instituted.
- c) Pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the **Underwriters** hereby designate the Superintendent, Commissioner, or Director of Insurance or other officer specified for that purpose in the statute, or his successor in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on the **Named Insured's** behalf or any beneficiary hereunder arising out of this **Policy**, and the **Underwriters** hereby designate the **Underwriters'** representative listed in Item 11 of the Schedule as the person to whom the said officer is authorized to mail such process or a true copy thereof.

16 Construction and Interpretation

- a) Any reference to legislation, statute, regulation, or law includes any similar or related law, statute, ordinance, or regulation, any amendments, and any rules or regulations or executive orders promulgated thereunder, or by federal, state, local or other agencies or similar bodies thereof. Any reference to a regulatory or investigative or other state or local governmental body includes any similar, subsidiary or related agency or body.
- b) All or part of any provision of this **Policy** which is or becomes void or illegal, invalid or unenforceable by a court or other competent body under the law of any applicable jurisdiction shall be deleted. The parties shall use their best efforts to agree a replacement for the provision deleted which achieves as far as possible the same effect as would have been achieved by the deleted provision had it remained enforceable.

Empowered Expertise

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