



**DUAL Cyber & Tech Form
2023 Edition**

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1. Introduction

The **Policy** is an insurance contract between the **Insured** and the **Insurer**. It is comprised of this document, the **Schedule** and any endorsements. All of these documents should be read in their entirety and together. The **Policy** is a legal document and should be read carefully.

There are certain sections within the **Policy** which require that the **Insured** obtain the consent of the **Insurer** before the **Insured** incurs costs. The **Policy** explains when the **Insured** must contact **Insurers** to obtain the **Insurer's** consent before costs are incurred. The **Insurer's** consent to costs shall not be unreasonably withheld or delayed. The **Insured** has access to a **Cyber Response Team** which can be contacted 24 hours-a-day, 7 days per week on the telephone number or via the monitored email address shown in the **Schedule**.

Terms shown herein in bold font and with capital letters have a specific meaning in this **Policy**. Those meanings will be explained in Section 4 of the **Policy** ("Policy Definitions"). Pressing on a defined term within this **Policy** will take you to that specific definition with Section 4 of the **Policy**.

Cover under some or all of the **Insuring Clauses** listed in Section 2 have been purchased by the **Insured**. The **Schedule** will show whether cover under an **Insuring Clause** has been purchased and the **Limit** or **Sub-Limit** and **Deductible** applicable to that **Insuring Clause**. If cover under an **Insuring Clause** has not been purchased, then that section of the **Policy** shall not apply.

WITH REGARD TO INSURING CLAUSES G, H, I, J, K, L & M THIS IS A CLAIMS MADE AND REPORTED POLICY. PLEASE READ IT CAREFULLY.

2. Insuring Clauses

The **Insurer** agrees to pay on behalf of the **Insured** the following **Damages** and to reimburse the **Insured** for the following **Losses** or **Defence Costs**:

- (a) **Breach Expenses** and **Forensic Expenses** arising from a **Data Breach, Security Breach, or Privacy Breach**;
- (b) **Business Interruption Losses, Extra Expenses** and **Forensic Expenses** arising from **Operational or Administrative Error, Cyber Attack, System Failure, Data Breach, Security Breach or Privacy Breach**;
- (c) **Dependent Business Interruption Losses, Extra Expenses** and **Forensic Expenses** arising from **Operational or Administrative Error, Cyber Attack, System Failure, Data Breach, Security Breach or Privacy Breach**;
- (d) **Cyber Theft Loss** arising from a **Cyber Attack** or **Social Engineering Event**;
- (e) **Data Recovery Expenses, Special Expenses** and **Forensic Expenses** arising from **Operational or Administrative Error, Cyber Attack, Data Breach, Security Breach or Privacy Breach**. Where **Data Recovery Expenses, Special Expenses** and **Forensic Expenses** arise from **Operational or Administrative Error** or **Cyber Attack**, these may include **Bricking Costs** resulting from damage to **Hardware**;
- (f) **Extortion Monies and Expenses** arising from an **Extortion Threat**;
- (g) **Damages** and **Defence Costs** as a result of a **Claim** arising from a **Data Breach, Security Breach or Privacy Breach**;
- (h) **Regulatory Fines and Penalties** and **Regulatory Investigation Costs** as a result of a **Claim** arising from a **Data Breach, Security Breach or Privacy Breach**;
- (i) **PCI Fines, Penalties and Assessments** and **PCI DSS Claim Expenses** as a result of a **Claim** arising from a **PCI Breach**;
- (j) **Damages** and **Defence Costs** as a result of a **Claim** arising from a **Media Event**;
- (k) **Losses** arising from a **Telecommunications Phreaking Event**;
- (l) **Losses** arising from a **Cryptojacking Event**;
- (m) **Reputational Harm Losses** arising from a **Data Breach, Security Breach or Privacy Breach**.
- (n) **Damages** and **Defence Costs** as a result of a **Claim** arising from a **Technology Event**;

The **Insurer** will pay the **Insured** up to the **Limit** and in excess of the **Deductible** as stated in the **Schedule** subject to the terms and conditions of this **Policy**.

The **Insured** must first **Discover** the **Insured Event, Loss** or **Claim** during the **Policy Period** or applicable **Extended Reporting Period**. For Insuring Clauses (a), (d), (g), (h), (i), (j), (k), (l) and (m) the specified **Insured**

Event must have occurred on or after the **Retroactive Date**. The **Insurer** must be notified of any **Loss, Claim** or **Insured Event** as per the terms and conditions of this **Policy**.

3. Exclusions

The **Insurer** shall not be liable for:

Acts or Omissions Outside of Cover

Any **Insured Event**, including related or continuing **Insured Events**, which:

- a) Were notified prior to the inception of this **Policy** under any other insurance policy that the **Insured** had; or
- b) The **Insured** first **Discovered** (but did not disclose to the **Insurer**) prior to the commencement of the **Policy Period**; or
- c) Was **Discovered** after the **Policy Period** or applicable **Extended Reporting Period** has expired.

Acts of Terrorism

Losses or **Claims** relating to, arising from or alleged to be related to or arising from any **Act of Terrorism**, however this shall not apply to **Cyber Terrorism**.

Bodily Injury and Property Damage

Losses or **Claims** relating to, arising from, or alleged to be related to or arising from **Bodily Injury** or **Property Damage**. However, this exclusion shall not apply to emotional distress or mental anguish caused by a **Data Breach, Security Breach, Privacy Breach** or **Media Event**.

Contractual Liability

Losses or **Claims** relating to, arising from or alleged to be related to or arising from any contractual liability, guarantee or obligation or any breach of contract or agreement, in either oral or written form; provided, however, this exclusion shall not apply to:

- a. The **Insured's** liability that would have existed in the absence of such contract or agreement; or
- b. The **Insured's** contractual indemnification of a customer or client for a **Security Breach, Data Breach, Privacy Breach** or **Media Event**; or
- c. Breach of a **Merchant Services Agreement** covered under **Insuring Clause (i)**; or
- d. Breach of the **Insured's** privacy or security policy.
- e. **Damages** and **Defence Costs** as a result of a **Claim** arising out of a **Technology Event** where covered under **Insuring Clause (n)**.

Employment Related Liability

Losses or **Claims** relating to, arising from or alleged to be related to or arising from any liability to any **Employee**, former **Employee** or prospective **Employee** in respect of any harassment, unfair or wrongful

dismissal, wrongful disciplinary action, defamation, humiliation, discrimination, deprivation of career opportunity, refusal to employ or promote, or repudiate or breach of any employment contract, or any liability arising or alleged to have arisen from any employee benefit plan or pension plan, including but not limited to the Employee Retirement Income Security Act of 1974 (ERISA).

This exclusion does not apply to the **Insured's** obligations to **Employees** under **Privacy Regulations** or a **Claim** brought against the **Insured** by an **Employee** as a result of an otherwise covered **Data Breach, Privacy Breach** or **Security Breach**.

Fair Credit Reporting

Losses or **Claims** relating to, arising from or alleged to be related to or arising from any actual or alleged violation of the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, or any amendment of or addition to such laws or any other local, state, federal or foreign act, statute, rule or common law, except to the extent covered under **Insuring Clause (h)**.

False Advertising

Losses or **Claims** relating to, arising from or alleged to be related to or arising from any false advertising by the **Insured** or by a third party on behalf of the **Insured**.

Force Majeure

Losses or **Claims** relating to, arising from or alleged to be related to or arising from fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other similar physical event howsoever caused or from any consequential losses arising or alleged to have arisen therefrom.

Government Action

Losses or **Claims** relating to, arising from or alleged to be related to or arising from any confiscation, seizure, requisition, restriction of use, or operation, destruction or damaging of the **Insured's** or **Outsourced Service Provider's Computer System** by the order of any rightful or de factor government or any civil or military authority.

This exclusion shall not apply to such actions by a governmental authority acting in its law enforcement or regulatory capacities for the purposes of preservation of evidence.

Inaccurate Description of Goods, Products or Services

Losses or **Claims** relating to, arising from or alleged to be related to or arising from any inaccurate, inadequate or incomplete description of or the price of the **Insured's** goods, products or services, or cost guarantees, cost representations, contract price or estimates of probable costs or costs estimates being exceeded.

Insolvency

Losses or **Claims** relating to, arising from or alleged to be related to or arising from the **Insured's** insolvency or bankruptcy.

Insured vs Insured

Any payment for any **Loss** or **Claim** which is made by or on behalf of any **Insured** against any other **Insured**. This exclusion shall not apply to:

- a. Any **Claim** brought by an **Employee**; or

- b. Any **Claim** arising out of that part of any **Claim** which emanates from an independent third party.

Intentional Acts

Losses or **Claims** which arise from the actual or alleged wilful, deliberate, intentional, malicious, reckless, dishonest, fraudulent or criminal acts or omissions of the **Insured**.

This exclusion will not apply when the wilful, deliberate, intentional, malicious, reckless, dishonest, fraudulent or criminal acts or omissions were committed without the knowledge or consent of any **Member of the Control Group**.

This exclusion shall not apply to **Losses** or **Claims** which arise from the actual or alleged wilful, deliberate, intentional, malicious, reckless, dishonest, fraudulent or criminal acts or omissions of one of the **Insured's Outsource Service Providers** if the **Members of the Control Group** were unaware of the actual or alleged act which has caused the **Loss** or **Claim**. Where any **Member of the Control Group** was aware of the actual or alleged act of the **Outsource Service Provider**, then this exclusion will apply. This does not affect the **Insured's** rights to subrogate against the **Insured's Outsource Service Providers**.

Investment Advice, Financial Advice or Finance, Credit or Leasing agreements

Losses or **Claims** relating to, arising from or alleged to be related to or arising from the provision or arrangement by the Insured or on the **Insured's** behalf of any investment advice, financial advice, or any finance, credit or leasing agreement.

Law/Regulation

Any amount the **Insurer** is prohibited from covering as a result of applicable law or regulation at an applicable venue that would most favour coverage.

Licensing Fees or Royalty Payments

Losses or **Claims** relating to, arising from or alleged to be related to or arising from any actual or alleged obligation to pay licensing fees or royalty payments, including but not limited to late payment of these.

Loss of Funds/Trading Liability

Claims relating to, arising from or alleged to be related to or arising from or **Losses** for any:

- a. Loss, theft of, the decrease in value, or the actual value of any currency, electronic fund transfer, securities or any equivalents thereof (including e-certificates, coupons, gift cards and vouchers), except where specifically covered under **Insuring Clause (d)**; or
- b. Trading losses or liabilities (including commissions or fees) resulting from the fluctuation of any stock, share, security or currency on any financial markets or exchanges; or
- c. Any valuable consideration given in excess of the total contracted or expected amount, including but not limited to over-redemption of the face value of coupons, price discounts, prizes or awards.

Mechanical, Electrical or Infrastructure Failure

Losses or **Claims** relating to, arising from or alleged to be related to or arising from any failure, interruption or degradation of :

- a. Power or utility services including any electrical disturbance, brownout, blackout, short circuit, induction, voltage fluctuation or any outages unless such power or utility services are in the direct operational control of the **Insured** or an **Outsource Service Provider**; or

- b. Satellites; or
- c. Telecommunication or internet services unless such services are in the direct operation control of the **Insured** or an **Outsource Service Provider**; or
- d. Any nationwide telecommunication or power infrastructure, regardless of operational control.

Opioids

Losses or **Claims** arising out of, based upon, attributable to or in any way connected with:

- a. The manufacture, marketing, distribution or sale of any **Opioid**.
- b. Medical malpractice, including but not limited to, the rendering of or failure to render medical professional services, treatment or advice.

Patent and Trade Secret

Losses or **Claims** related to, arising from or alleged to be related to or arising from infringement of any patent or the misappropriation of any trade secret. However, this exclusion shall not apply to the misappropriation of a trade secret as the result of a **Media Event** or the theft of a third party's trade secret arising from a **Data Breach**, **Security Breach** or **Privacy Breach**.

Pollutants

Losses or **Claims** relating to, arising from or alleged to be related to or arising from an actual, alleged or threatened presence, discharge, dispersal, release, or escape of a **Pollutant**; or a governmental or regulatory directive or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralise a **Pollutant**, or in any way respond or assess the effects of a **Pollutant**.

Product Recall

Any costs or expenses relating to or incurred by any person or entity to withdraw or recall any product including any technology product from the market place or from loss of use arising out of such withdrawal or recall.

Radioactive Contamination

Loss, damage, liability or expense directly or indirectly caused by or contributed to, by or arising from:

- a. Ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or
- b. The radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or
- c. Any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
- d. The radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes; or
- e. Any chemical, biological, bio-chemical or electromagnetic weapon.

Regulatory Enforcement

Losses or **Claims** relating to, arising from or alleged to be relating to or arising from any action to comply with government enforcement of any state or federal regulatory security obligations, except this exclusion shall not apply to the extent specifically and expressly covered by **Insuring Clause (h)**, or any **Claim** brought by a governmental body in its capacity as a customer of the **Insured** expressly covered under **Insuring Clause (k)**.

RICO

Losses or Claims relating to, arising from or alleged to be related to or arising from any failure to comply with the Racketeer Influenced and Corrupt Organization Act or equivalent legislation under state, federal or international law.

Sanctions

Any **Claim, Loss** or provision of any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that **Insurer** 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.

Securities / Directors' and Officers' Liability

Losses or Claims relating to, arising from or alleged to be related to or arising from the purchase, sale, offer of, or solicitation of an offer to purchase or sell securities including any actual or alleged violation of the Securities Act of 1933 or the Securities Exchange Act of 1934 (including any subsequent amendments or any rules or regulations promulgated thereunder), or any other similar law (including common law), regulation, or statute whether enacted at the local, state or federal level or by a foreign jurisdiction; or any shareholder demand or shareholder derivative lawsuit complaining of a breach of duties by any of the **Insured's** directors or officers, or seeking access to books, records or other information.

Unfair Trade Practices

Losses or Claims relating to, arising from or alleged to be related to or arising from any actual or alleged antitrust violation, restraint of trade, unfair competition or false, deceptive, or unfair trade practices except this exclusion shall not apply to a **Claim** specifically covered under **Insuring Clause (j)** relating to **Media Events** a) and d).

Unjust Enrichment

Losses or Claims relating to, arising from or alleged to be related to or arising from the **Insured's** gaining of profit, remuneration or financial advantage to which the **Insured** was not legally entitled except for amounts paid to the **Insured** or on the **Insured's** behalf by the **Insurer** under the **Policy** incurred until such time as there is a decision or determination by any court, arbitration panel or arbitrator, or governmental, regulatory or administrative body finding that the **Insured** was not so entitled, or the **Insured** admits that it was not so entitled. If this occurs, the **Insured** are obliged to reimburse the amount paid to the **Insured** or on the **Insured's** behalf by the **Insurer**.

Unsolicited Communications

Losses or Claims relating to, arising from or alleged to be related to or arising from the unsolicited distribution, transmission or posting of any online, social media, or mobile advertisements, emails, texts, advertisements or other communications including but not limited to telemarketing, robocalls, eavesdropping, wiretapping or audio or video recording. This exclusion shall not apply to an otherwise covered claim under point d) of **Extortion Threat**.

War and Cyber Operation Exclusion

Losses, Claims or damage resulting:

- 1.1. directly or indirectly from **War**;
- 1.2. from a **Cyber Operation** that is carried out as part of a **War**; or
- 1.3. from a **Cyber Operation** that causes a sovereign state to become an **Impacted State**.

Provided, however, paragraph 1.3 shall not apply to the direct or indirect effect of a **Cyber Operation** on a **Computer System** used by the Insured or its third party service providers that is not physically located in an **Impacted State** but is affected by a **Cyber Operation**.

Wrongful Collection

Losses or **Claims** relating to, arising from or alleged to be related to or arising from any actual or alleged unlawful processing, collection, storage or use of **Personal Data**.

4. Policy Definitions

Act of Terrorism

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(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or put any public, or any section of the public, in fear.

Aggregate Limit of Liability

The maximum amount payable by the **Insurer** to the **Insured** within the **Policy Period**. The **Aggregate Limit of Liability** is stated in the **Schedule**.

Application

The material submitted to the **Insurer** by the **Named Insured** or on the **Named Insured's** behalf in connection with the underwriting of this **Policy**. The **Application** is deemed attached to and incorporated into this **Policy**.

Bodily Injury

Death or any physical injury or illness to a person.

Breach Expenses

- a. **Notification Expenses;**
- b. **Legal Expenses;**
- c. **Call Centre Expenses;**
- d. **Credit Monitoring Expenses;**
- e. **Public Relations Expenses.**

Breach Expenses do not include:

Salaries, overhead expenses, or other internal charges or costs that the **Insured** incurs for any time that the **Insured** or the **Insured's Employees** spend cooperating with any investigations or responding to any customer complaints following the specified **Insured Event**.

Bricking Costs

The costs associated with replacing or repairing any **Hardware** on which damaged **Data** exists but only where:

- (i) The **Firmware** embedded within the **Hardware** has been re-programmed or damaged as the direct result of a **Cyber Attack** rendering such **Hardware** non-functional for its intended purpose without causing any physical damage;
- (ii) The replacement or repair of such **Hardware** is reasonable and necessary to restore, recreate or replace such **Data**;
- (iii) The cost to replace or repair such **Hardware** is less than the costs to restore, recover or replace the damaged **Data**.

The cost to replace or repair such **Hardware** will be limited to the lesser of:

- (i) the cost to purchase replacement **Hardware** that is identical to the **Hardware** being replaced;
- (ii) the cost to purchase replacement **Hardware** that is the most functionally equivalent to that being replaced, even if such **Hardware** has technological advantages and/or represents an improvement in functionality.

Business

The commercial activities undertaken by the **Insured** including the offering of any products, services or activities carried on in the course of trade and commerce.

Business Interruption Losses

Loss of Income as a direct result of **Disruption** to the **Insured's Computer System**. **Loss of Income** will only be recoverable where the **Disruption** to the **Insured's Computer System** lasts longer than the **Waiting Period**.

Call Centre Expenses

Reasonable and necessary expenses incurred with the **Insurer's** prior written consent arising from the provision of a call centre service to respond to inquiries from affected or potentially affected **Data Subjects**.

Claim

Any of the following made against the **Insured**:

- a. A demand in writing to cease and desist, for compensation, **Damages** or injunctive relief; or
- b. A notice in writing of an intention to commence legal, arbitration, mediation or adjudication proceedings; or
- c. The commencement of legal, arbitration or adjudication proceedings, an invocation of a pre-action protocol; or
- d. A request to toll or waive any applicable statute of limitations; or
- e. A **Regulatory Action** but only with respect to **Insuring Clause (h)**; or
- f. The commencement of an investigation, proceeding or other legal action or similar proceeding initiated by the Payment Card Industry Security Standards Council, card brand, payment processor or other acquiring bank directly resulting from a **PCI Breach** but only with respect to **Insuring Clause (i)**.

Computer System

Interconnected electronic, wireless, web or similar systems used to process **Data** or information in analogue, digital, electronic or wireless format including, but not limited to, computers, computer devices, data storage devices, back-up facilities, operating systems, control systems, network systems, **Hardware**, websites, email systems, intranet, Industrial Control Systems, SCADA Systems and mobile devices.

Confidential Information

Confidential commercial or corporate information, whether printed or digital.

Credit Monitoring Expenses

Reasonable and necessary expenses incurred with the **Insurer's** prior written consent for up to twelve (12) months' credit monitoring services (or such longer period as may be required under relevant legislation or by a regulator) offered by the **Insured** to the **Data Subjects**. **Credit Monitoring Expenses** shall include identity theft protection insurance, identity protection and restoration services (including medical identity restoration services) and credit consultation services where reasonable and necessary.

Cryptojacking Event

The unauthorized access or use of a **Computer System** to mine for digital currency that directly results in additional costs incurred by the **Insured** for electricity, natural gas, oil, or internet (the "Utilities"); provided, however, that such additional costs for the Utilities are:

- (a) incurred pursuant to a written contract between the **Insured** and the respective utility provider, which was executed before the Cryptojacking first occurred;

- (b) billed to the **Insured** by statements issued by the respective utility provider, which include usage or consumption information;
- (c) not charged to the **Insured** at a flat fee that does not scale with the rate or use of the respective utility; and incurred pursuant to statements issued by the respective utility provider and due for payment during the Policy Period.

Cyber Attack

Any unauthorised access or usage of the **Insured's** or **Outsource Service Provider's Computer Systems** (including but not limited to malicious code and denial of service attacks) whether as part of a specifically targeted attack or a generally distributed attack including as a result of **Cyber Terrorism**.

Cyber Operation

The use of a **Computer System** by, at the direction, or under the control of a sovereign state to disrupt, deny, degrade, manipulate or destroy information in a computer system of or in another sovereign state.

Cyber Response Team

The advisors who will assist the **Insured** if an **Insured Event** occurs or is alleged to have occurred. The contact details are stated in the **Schedule**.

Cyber Terrorism

The use of disruptive activities impacting a **Computer System** operated by the **Insured** or for the **Insured** by an **Outsource Service Provider**, by an individual or group of individuals, or the explicit threat by an individual or group of individuals to use activities, with the intention to cause harm to further social, ideological, religious, political or similar objectives, or to intimidate any person(s) in furtherance of such objectives. **Cyber Terrorism** does not include any such activities excluded under the War and Cyber Operation Exclusion.

Cyber Theft Loss

The transfer, disbursement, alteration, corruption or loss of money, securities, assets or tangible goods belonging to the **Insured** or from an account that is in the trust or control of the **Insured**.

Damages

Any financial award or settlement to a third party, including pre-judgement interest, post-judgement interest and claimant's legal costs that the **Insured** is held liable to pay. **Damages** do not include any:

- a. Criminal fines or penalties; or
- b. Aggravated, punitive and exemplary damages unless insurable by the law of an applicable venue that would most favour coverage; or
- c. Past or future royalties or profits, restitution or disgorgement of the profits of the **Insured**; or
- d. Unpaid license fees; or
- e. Liquidated damages where the amount of liquidated damages for which the Insured is liable (as agreed under contract) exceeds the amount for which the **Insured** would have been liable were it not for such contractual agreement;
- f. Any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**; or
- g. Cost of complying with orders granting injunction or non-monetary relief; or
- h. Return or offset of the **Insured's** fees, charges or commissions for goods or services already provided or contracted to be provided; or
- i. **Regulatory Fines and Penalties**; or

j. **PCI Fines, Penalties and Assessments.**

Data

Information which is stored electronically on a **Computer System** including computer programs, **Software** and **Firmware**. **Data** does not include **Hardware**.

Data Breach

Any actual or suspected loss, theft, destruction, corruption, encryption or unauthorised disclosure of or access to **Personal Data** or **Confidential Information**. **Data Breach** shall include the misuse of **Personal Data** or **Confidential Information**.

Data Recovery Expenses

The reasonable and necessary costs incurred by the **Insured** with **Insurer's** prior written consent, in relation to the recovery, restoration or replacement of the **Insured's** damaged **Data** to ensure that the **Insured's Data** is in the same or substantially the same condition that it was prior to the damage. Where the **Insured's Data** cannot be restored from back-up files or other storage, the **Insurer** shall pay the reasonable costs of recreating the **Data**.

These costs will be payable by the **Insurer** following the **Discovery** of the damage and will be capped at the re-purchase price of **Data**. If any computer programs, **Software** or **Firmware** are no longer available for sale in the open market, then an equivalent where available can be purchased up to the cost of the original purchase price. If it is determined that the **Data** cannot be replaced, restored or recreated then the **Insurer** will only reimburse the **Insured's** reasonable and necessary costs incurred until that determination occurs.

Data Subject

An individual whose **Personal Data** has been or may have been compromised as a result of a **Data Breach**.

Deductible

The amount to be paid by the **Insured** before the **Insurer** will make any payments under the **Policy**. The **Deductible** is stated in the **Schedule**.

Defence Costs

The reasonable and necessary legal costs and expenses (excluding the **Insured's** internal costs and expenses) incurred with the **Insurer's** prior written consent in relation to the investigation, defence or settlement of any **Claim**.

Defence Costs do not include **Regulatory Investigation Costs**, **PCI DSS Claim Expenses**, salaries, overhead expenses, or other internal charges or costs that the **Insured** incurs for any time that the **Insured** or the **Insured's Employees** spend cooperating with any investigations or responding to any customer complaints.

Dependent Business Interruption Losses

Loss of Income as a direct result of **Disruption** to a **Computer System** operated by an **Outsource Service Provider** for the **Insured**. **Loss of Income** will only be recoverable where the **Disruption** to the **Computer System** operated by an **Outsource Service Provider** for the **Insured** lasts longer than the **Waiting Period**.

Discovered

Discovered by a **Member of the Control Group**.

Disruption

Total or partial interruption or degradation in service.

Employees

An individual contracted to work for the **Insured** under a contract of service in a permanent, part time, or fixed term basis (excluding partners or directors), or any individual who is working on the **Insured's** behalf, at the **Insured's** direction and/or under the **Insured's** direct control. It includes individuals undertaking work experience or internship (paid or unpaid).

Essential Service

A service that is essential for the maintenance of vital functions of a sovereign state including but not limited to financial institutions and associated financial market infrastructure, health services or utility services.

Extended Reporting Period

The additional period of time in which the **Insured** may notify the **Insurer** of a **Claim** or a **Loss** after the **Policy Period** has expired. The **Insured** has the right in the event of cancellation or non-renewal of the **Policy**, and where no replacement of this **Policy** is put into effect, to a period of 60 days within which to comply with the Notification provisions under Section 6 (i) with regard to an **Insured Event** that occurred prior to the expiry of the **Policy**. This period of time may be extended upon the payment of an additional premium, as stated in the **Schedule**, by the **Insured** within 30 days of the date of cancellation or non-renewal of the **Policy**.

The **Extended Reporting Period** only applies to those **Insuring Clauses** as shown in the **Schedule**. The **Aggregate Limit of Liability** for the **Extended Reporting Period** shall be part of, and not in addition to the, **Aggregate Limit of Liability** for the **Policy Period**. At the commencement of the **Extended Reporting Period** the entire premium shall be deemed earned and in the event the **Insured** terminates the **Extended Reporting Period** for any reason prior to its natural expiration, the **Insurer** will not be liable to return any premium paid for the **Extended Reporting Period**. All notices and premium payment with respect to prolonging the **Extended Reporting Period** should be directed to **Insurers** through the entity named in the **Schedule**.

Extortion Monies and Expenses

Reasonable and necessary monies, property, online credit or other cryptocurrency payable by the **Insured** and expenses incurred by the **Insured** with the **Insurer's** prior written consent in order to meet, eliminate or remove an **Extortion Threat**.

Extortion Threat

A threat that is both real and immediate from a third party or **Employee** against the **Insured** to:

- a. Release, divulge, disseminate, destroy or use the **Personal Data** or **Confidential Information** acquired by unauthorised access or unauthorised use of the **Insured's** or **Outsource Service Provider's Computer Systems**; or
- b. Introduce malicious code or ransomware into the **Insured's** or **Outsource Service Provider's Computer Systems**; or
- c. Corrupt, damage or destroy the **Insured's** or **Outsource Service Provider's Computer Systems**; or
- 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 Data** or **Confidential Information** from 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** or **Outsource Service Provider's Computer Systems**, including the threat of a denial of service attack; or
- f. Release, divulge, disseminate, destroy or use the **Insured's Data**; or
- g. Deface the **Insured's** website.

Extra Expenses

The **Insured's** reasonable and necessary expenses incurred to:

- a. Avoid or minimize the suspension or deterioration in its **Business**, which it would not have incurred if the specified **Insured Event** had not occurred, including but not limited to: the cost of renting or leasing equipment, expense of moving to temporary premises and the rental expenses of these premises, consultancy fees and third party services, substitute work or production

procedures, extra labour costs and expenses for special advertising; and/or to

- b. Minimize or avoid any specified **Insured Event** to enable the **Insured's Business** to continue operating.

The total expenses incurred under a) and b) above combined shall not exceed the amount by which the **Insured's Loss of Income** is reduced by such expenses. The **Insurer** shall only reimburse the **Insured** for those **Extra Expenses** incurred during the **Period of Restoration**.

Extra Expenses do not include any **Breach Expenses** or **Forensic Expenses**.

Firmware

Software that is embedded within a piece of **Hardware** owned or under the control of the **Insured** (providing low-level control for the specific piece of **Hardware**).

Fixed Expenses

All charges and expenses that do not cease or reduce during the **Period of Restoration**.

Forensic Expenses

Reasonable and necessary expenses incurred with the **Insurer's** prior written consent associated with computer forensic analysis performed by outside experts to investigate the source, scope and cause of, provide confirmation of or respond to the specified **Insured Event**. These expenses also include costs incurred to preserve critical evidence of criminal activity or malicious wrongdoing. I

Under **Insuring Clauses b) and c)**, the **Insurer** shall only reimburse the **Insured** for those **Forensic Expenses** incurred during the **Period of Restoration**.

Forensic Expenses do not include:

Salaries, overhead expenses, or other internal charges or costs that the **Insured** incurs for any time that the **Insured** or the **Insured's Employees** spend cooperating with any investigations or responding to any customer complaints following the specified **Insured Event**.

Gross Earnings

Means for manufacturing operations: the **Net Sales** value of production less the cost of all raw stock, materials and supplies used in such production; or

Means for mercantile or non-manufacturing operations: the total **Net Sales** less the cost of merchandise sold, materials and supplies consumed in the operations or services rendered by the **Insured**.

Gross Profit

The amount produced by adding to the **Net Profit** the amount of **Fixed Expenses**. If there is no net operating profit, the amount of net operating loss will be deducted from the **Fixed Expenses**.

Hardware

The physical components of a **Computer System**. **Hardware** shall include **IoT (Internet of Things) Devices**.

Impacted state

A sovereign state where a **Cyber Operation** has had a major detrimental impact on the functioning of that sovereign state due to disruption to the availability, integrity or delivery of an essential service in that sovereign state; and/or the security or defense of that sovereign state.

Incident Manager

The individual leading the **Cyber Response Team** as identified in the **Schedule**.

IoT (Internet of Things) Devices

Any physical devices which have been embedded with technology so they can be used to interact via the internet.

Insured Event

Operational or Administrative Error, Cyber Attack, System Failure, Extortion Threat, Data Breach, Security Breach, Privacy Breach, PCI Breach, Social Engineering Event, Media Event, Telecommunications Phreaking Event or Technology Event

The **Schedule** specifies whether the **Insured** has coverage for each of the types of **Insured Event** (see **Insuring Clauses**). The **Policy** shall only respond to an **Insured Event** where coverage has been given for that type of **Insured Event** in the **Schedule** and the specific **Loss** or **Claim** satisfies the specific definition given for that type of **Insured Event** in the **Policy**.

Insurer(s)

The Company subscribing to this **Policy**.

Insured(s)

The:

- a. **Named Insured**; or
- b. Any **Subsidiary**; or
- c. Any **Employee**, director or officer of the **Named Insured** or **Subsidiary** but only in respect of acts, errors or omissions committed, or alleged to have been committed in their capacity as such; or
- d. Any agent or independent contractors, including distributors, licensees and sub-licensees but only whilst acting on behalf or at the direction or under the control of the **Named Insured** or a **Subsidiary**; or
- e. If the **Named Insured** or any **Subsidiary** is a partnership, limited liability partnership or limited liability company then any general or managing partner, principal, stockholder or owner thereof but only in respect of acts, errors or omissions committed, or alleged to have been committed in their capacity as such; or
- f. Any entity required by contracts to be named as an **Insured** under this **Policy** but only with the prior written consent of the **Insurer** and only for the acts of any party described above for which insurance is otherwise covered by this **Policy**.

Insuring Clauses

The coverage sections purchased by the **Insured** as outlined in the **Schedule**.

Legal Expenses

Reasonable and necessary expenses incurred with the **Insurer's** prior written consent in appointing a legal advisor to assist the **Insured** in handling the **Insured's** direct response to an **Insured Event**.

Limit(s)

The maximum amount payable by the **Insurer** for each **Insuring Clause** listed in the **Schedule**. The **Limits** are stated in the **Schedule**.

Loss/Losses

Any **Breach Expenses, Forensic Expenses, Business Interruption Losses, Dependent Business Interruption Losses, Extra Expenses, Data Recovery Expenses, Special Expenses, Cyber Theft Loss, Extortion Monies and Expenses, Regulatory Fines and Penalties, Regulatory Investigation Costs, PCI Fines, Penalties and Assessments, PCI Claims Expenses and Reputational Harm Losses** but does not include:

- a. Any costs that result in any **Computer System** having a higher level of functionality than it did prior to the specified **Insured Event**; or
- b. Any costs incurred to identify, patch or remediate **Software** program errors or vulnerabilities of the **Computer System** except following the specified **Insured Event**.

Loss of Income

The decrease in income that is suffered by the **Insured** calculated in accordance with Section 7.

Media Event

The actual or suspected occurrence of any of the following in the **Insured's** provision of **Media Services**:

- a. Infringement of intellectual property rights including copyright, title, slogan, trademark, trade name, trade dress, service name, database rights, domain name, deep-linking or framing but not including patent infringement; or
- b. Plagiarism, piracy, violation of moral rights, passing off, misappropriation of property rights, ideas or information; or
- c. Any form of invasion, infringement or interference with rights of privacy or publicity, including, but not limited to false light, public disclosure of private facts, intrusion and commercial appropriation of name, persona or likeness; or
- d. Any form of defamation or other tort related to disparagement or harm to character, reputation or the feelings of any person or entity, including, but not limited to, libel, slander, product disparagement, and trade libel; or
- e. Wrongful entry or eviction, trespass, eavesdropping or other invasion of the right to private occupancy; or
- f. False arrest, detention or imprisonment, abuse of process, or malicious prosecution;
- g. Improper linking or framing; or
- h. The infliction of emotional distress or mental anguish as a direct result of acts (a)-(g) above.

Media Services

The creation, display, broadcast, dissemination, distribution or release of any media content to the public by the **Insured** and/or the collection of media content by the **Insured** for inclusion in any display, broadcast, dissemination or release in the course of the **Insured's Business. Media Services** do not include the design or manufacture of the **Insured's** goods, products or services.

Member of the Control Group

The **Insured's** Chief Executive Officer, Chief Information Officer, Chief Technology Officer, Chief Security Officer, Chief Privacy Officer, General Counsel, Risk Manager or their functional equivalents.

Merchant Services Agreement

An agreement between the **Insured** and a financial institution, credit or debit card company, credit or debit card processor or independent service operator enabling the **Insured** to accept credit card, debit card, pre-paid card or other payment cards for payments or donations.

Named Insured

The entity designated as such in the **Schedule**.

Net Profit

The net operating profit (or net operating loss) resulting from the **Business** of the **Insured** after due provision has been made for all **Fixed Expenses** and other expenses, including depreciation, but before the deduction of any taxes on profits.

Net Sales

The gross **Sales** less discounts, returns, allowances for damage or missing goods, bad debts, and prepaid freights, if any of those items are included in the gross **Sales** figures.

Notification Expenses

Reasonable and necessary expenses incurred with the **Insurer's** prior written consent to comply with any statutory or regulatory notification requirements, including drafting of appropriate notification letters to both the regulator and those allegedly and actually affected. These expenses shall extend to voluntary notification if agreed upon by the **Insurer**.

Operational or Administrative Error

An accidental, unintentional or negligent act, error or omission in the operation or maintenance of a **Computer System** or the entry, creation, modification or handling of **Data** by an **Insured** or **Outsource Service Provider**.

Opioid

Any opioid or opiate substance, including but not limited to codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, oxycodone, OxyContin, buprenorphine/naloxone or any:

- (a) generic substitute or alternative;
- (b) derivative thereof;
- (c) narcotic with a similar chemical formula, structure or function; or
- (d) degradation by-product.

Outsource Service Provider

Any third party contractor or company employed by the **Insured** by written contract to provide information technology services to the **Insured** or on behalf of the **Insured**. **Outsource Service Provider** shall include cloud service providers but not internet service providers.

PCI Breach

Any actual or suspected breach of standards, requirements and procedures imposed by the Payment Card Industry Security Standards Council that are in place at the time of the actual or suspected breach.

PCI DSS Claim Expenses

Reasonable and necessary legal costs and expenses (excluding the **Insured's** internal costs and expenses) incurred with the **Insurer's** prior written consent in relation to the investigation, defence, mitigation or settlement of any **PCI Breach**. These shall include the costs of appointing a PCI Forensic Investigator to conduct a Payment Card Industry Forensic Investigation.

PCI Fines, Penalties and Assessments

Fines, penalties, assessments or payments that the **Insured** is contractually obligated to pay under its **Merchant Services Agreement** (s) as a result of any **PCI Breach**.

Period of Restoration

The time period starting when the **Disruption** to the **Computer System** began and ending 180 days later.

Personal Data

Information, whether printed or digital, which relates to an individual (referred to as a **Data Subject**) and by virtue of which an individual can be identified, located or contacted.

Policy

This document, the **Schedule** and any endorsements agreed between the **Insured** and the **Insurer**.

Policy Period

The set of dates in which the **Policy** is effective as stated in the **Schedule** or as modified by an earlier cancellation date.

Pollutant

Any pollutant or contamination of any kind, including:

- a. Smoke, vapour, soot, fumes, acid, alkali, chemicals or waste;
- b. Ionizing radiation or contamination by radioactivity from nuclear fuel, or nuclear waste from the combustion of nuclear fuel' or the radioactive, toxic or explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

- c. Mould, mildew, spores, fungi, mycotoxins, organic pathogens, or other micro-organisms;
- d. An electromagnetic field, electromagnetic radiation or electromagnetism;
- e. Asbestos, asbestos fibers or asbestos dust; or
- f. Any solid, liquid, gaseous or thermal irritants or contaminants.

Privacy Breach

Any actual or suspected:

- a. Failure to implement, maintain or comply with the **Insured's** privacy or security policy; or
- b. Failure to notify **Data Subjects** or any other affected individuals of a **Data Breach** or **Security Breach**; or
- c. An infringement or violation of any rights to privacy or confidentiality; or
- d. Breach of any requirements relating to the disposal of **Personal Data** or **Confidential Information**; or
- e. Failure to comply with **Privacy Regulations**.

Privacy Regulations

Statutes, regulation and legislative instruments at either state, federal or international level which are associated with protecting the confidentiality, control, use of and access to personally identifiable information including financial and medical information as that information exists now and in the future. These include but are not limited to the following (as currently enacted or as amended in the future):

- a. California Security Breach Notification Act;
- b. California Consumer Privacy Act 2018;
- c. Data Protection Act 2018;
- d. General Data Protection Regulation;
- e. Fair and Accurate Credit Transactions Act 2003;
- f. Gramm-Leach-Bliley Financial Services Modernization Act of 1999;
- g. The Health Insurance Portability and Accountability Act of 1996 and Health Information Technology for Economic and Clinical Health Act;
- h. New York Cybersecurity Regulation;
- i. Privacy Act 1974.

Property Damage

Physical injury to, impairment, destruction or corruption of any tangible property including loss of use of such property. **Data** is not considered to be tangible property. Loss of use of **Hardware** as a direct result of the re-programming of **Firmware** that renders such **Hardware** non-functional for its intended purpose but does not cause any physical damage shall not be considered **Property Damage**.

Public Relations Expenses

Reasonable and necessary costs and expenses incurred with the **Insurer's** prior written consent in appointing public relations consultants to assist the **Insured** in mitigating the reputational damage caused by a **Data Breach**, **Security Breach** or **Privacy Breach**.

Rate of Gross Profit

The rate of **Gross Profit** earned on **Sales** during the twelve full calendar months immediately before the date of the loss, corresponding with the **Period of Restoration** adjusted for trend so that the rate of **Gross Profit** reflects the rate of **Gross Profit** that would have been experienced if the specified **Insured Event** had not occurred.

Regulatory Action

An investigation, inquiry or a proceeding by a regulator alleging any failure to maintain the security of **Personal Data**, or to comply with the requirements of any **Privacy Regulations**.

Regulatory Fines and Penalties

Fines, penalties or any other financial imposition or penalty where insurable by law which the **Insured** is obliged to pay based upon an order or requirement or demand from a regulator. However, these do not include any criminal fines, penalties or sanctions issued by any regulatory agency or **PCI Fines, Penalties and Assessments**.

Regulatory Investigation Costs

Means reasonable and necessary legal costs and expenses (excluding the **Insured's** internal costs and expenses) incurred with the **Insurer's** prior written consent in relation to the investigation, defence, mitigation or settlement of any **Regulatory Action**.

Reputational Harm Losses

Loss of Income as a direct result of the reputational damage caused by an allegation made in the public domain or the release of information in the public domain alleging that the **Insured** or any third party acting on their behalf, committed or failed to prevent a **Data Breach, Security Breach** or **Privacy Breach**.

Reputational Harm Period of Restoration

The time period starting when the allegation is first made in the public domain or the release of information is first made in the public domain alleging that the **Insured** or any third party acting on their behalf, committed or failed to prevent a **Data Breach, Security Breach** or **Privacy Breach** and ending 12 months later.

Retroactive Date

The date specified as such in the **Schedule**.

Sales

The money paid or payable to the **Insured** for goods sold and delivered and/or for services rendered in the conduct of its **Business**.

Schedule

Means the document which confirms the coverage which is available to the **Insured** under the **Policy**. The **Schedule** states the **Limit(s)**, the **Retroactive Date** and the **Deductible** amongst other information.

Security Breach

Any actual or suspected unauthorised access or usage of the **Insured's** or **Outsource Service Provider's Computer Systems** as a result of which:

- a. The **Insured** is unable to gain access to its **Data** or **Computer Systems** (including a Denial of Service attack); or
- b. Malicious code is transmitted from the **Insured's Computer Systems** to the **Computer Systems** of a third party; or
- c. **Data** is damaged, altered, corrupted or destroyed; or
- d. Attempted or actual cryptocurrency mining occurs

Security Breach shall include such actions resulting from both a **Social Engineering Event** and **Cyber Terrorism**.

Social Engineering Event

The manipulation of the **Insured** by a third party, either by use of a website or electronic communication, in an attempt to obtain **Confidential Information** or **Personal Data** from the **Insured** or to elicit the transfer of funds by the **Insured**.

Software

Computer programs or electronic instructions (including but not limited to applications, data, information and scripts) used by a computer or device.

Special Expenses

Reasonable and necessary costs that the **Insured** incurs with the **Insurer's** prior consent to prevent, preserve, minimize, or mitigate any further damage to **Data**, including purchasing replacement licenses for programs because the copy protection system and/or access control software was damaged or destroyed by an **Insured Event**. **Special Expenses** shall also include the reasonable and necessary costs and expense incurred with the **Insurer's** prior written consent to repair or install replacement **Hardware**

Standard Sales

An approximate **Sales** projection calculated based on the **Sales** during the twelve month period immediately preceding the date of the loss adjusted to reflect trends affecting the **Insured's Business**. This projection should be approximately equivalent to the **Sales** which the **Insured** would have made had the **Insured Event** not occurred.

Sub-Limits

The individual limit stated within the **Schedule** for a particular **Insuring Clause**. The **Sub-Limit** will be lower than the **Aggregate Limit of Liability** stated in the **Schedule**.

Subsidiary

Any company in respect of which the **Named Insured**:

- a. Holds more than half of the issued share capital; or
- b. Controls more than half of the voting power; or
- c. Otherwise controls the composition of the board of directors;

at the inception date of this **Policy** or is subsequently included subject to Section 8 (iv).

Where a **Subsidiary** is subsequently included subject to Section 8 (iv), coverage is only extended to such **Subsidiary** for any **Claim** or **Loss** or any other notification under this **Policy** that arises out of any **Insured Events**, acts, errors, or omissions first committed or first occurring after the entity becomes a **Subsidiary**.

System Failure

Any unintentional or unplanned outage of the **Insured's** or **Outsource Service Provider's Computer System**.

Technology Event

An actual or suspected negligent act, error, omission, breach of duty or unintentional breach of contract in the **Insured's** provision of **Technology Services**.

Technology Services

The provision of technology services and products for the **Insured's** clients by the **Insured** in the course of its **Business**.

Telecommunications Phreaking Event

The unauthorised access or misuse of the **Insured's** telecommunications system by a third party.

The **Insurer's** liability for direct monetary loss arising from a **Telecommunications Phreaking Event** shall be sub-limited as outlined in the schedule.

Waiting Period(s)

The period of time stated in the **Schedule** that the **Disruption** of a **Computer System** must last for, before coverage will be provided under **Insuring Clauses b) or c)**. For the avoidance of doubt the **Deductible** will apply to these **Insuring Clauses** from the commencement of the **Period of Restoration**.

War

The use of physical force by a sovereign state against another sovereign state, or as part of a civil war, rebellion, revolution, insurrection, or military or usurped power, whether war be declared or not.

5. Defence and Settlements

The **Insurer** shall have the right and duty to defend any **Claim** brought against the **Insured** (with the exception of a **Regulatory Action**) regardless of whether the **Claim** is groundless, fraudulent or false. The **Insured** shall not admit or assume liability, make a payment, enter into a settlement agreement or consent to a judgment without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld or delayed.

The **Insurer** shall have the right, but not the duty, to defend the **Insured** in respect of any **Regulatory Action**.

If the **Insured** refuses to consent to a settlement which is recommended by the **Insurer** and the **Insured** insists on contesting the **Claim**, the **Insurer's** total liability for any **Damages, Defence Costs** or other expenses under this **Policy** shall not exceed:

- a. The amount for which the **Claim** could have been settled plus the **Damages, Defence Costs** and other expenses incurred up until the date when the **Insured** refused to agree to the settlement recommended by the **Insurer** (the **Deductible** to be deducted from the amount payable by the **Insurer**); and
- b. Seventy percent (70%) of any **Damages, Defence Costs** or other expenses recoverable under this **Policy** after the date upon which the **Insured** refused to agree to the settlement recommended by the **Insurer**. The remaining thirty percent (30%) shall be payable by the **Insured** and uninsured under this **Policy**.

6. Conditions

(i) Claim Notification & Breach Response

The **Insured** must provide notice to the **Insurers** as soon as reasonably practicable after the **Discovery** of an **Insured Event**, or becomes aware of any act, fact or circumstance which may result in a **Loss** or a **Claim**. Notice must be provided by contacting the **Incident Manager**. The **Incident Manager** will assist the **Insured** in the handling of the **Insured Event**. The **Cyber Response Team** can be contacted 24 hours-a-day, 7 days per week on the telephone number or via the monitored email address shown in the **Schedule**. The **Incident Manager** will arrange for the **Insured** to receive appropriate services via the **Cyber Response Team** depending on the nature of the **Insured Event** that has occurred or is suspected to have occurred.

Subject to the terms and conditions of the **Policy**, the **Insurer** will cover the costs of the **Cyber Response Team** up to the **Aggregate Limit of Liability** as stated in the **Schedule**. The costs incurred by the **Cyber Response Team** will be subject to the **Deductible**.

(ii) **Claims Assistance, Cooperation and Conduct**

The **Insured** must provide assistance to or cooperate with the **Insurer** or representatives appointed on the **Insurer's** behalf. This includes cooperation and assistance in the investigation, production or preservation of documentation, information or other physical evidence about an **Insured Event**.

The **Insured** must provide such information, respond to all relevant correspondence, communication, demand, claim for, adjudication notice, referral, statement of case, submission, notice of hearing, order or other correspondence from the resolution process (including communication from a court, arbitrator, mediator, adjudicator) in a timely manner. The **Insured** may also be required by the **Insurer** to provide a position statement, witness statement, expert report, legal or quasi legal paper or report.

(iii) **Fraud**

If the **Insured** notifies a **Loss** believing the same to be false or fraudulent with respect to the amount claimed or otherwise, **Insurers** at their sole discretion may treat this **Policy** as void ab initio and the **Insured** shall forfeit all benefit under it. **Insurers** may alternatively at their sole discretion elect to give notice to the **Insured** that the **Policy** remains in full force and effect, but no indemnity or any other payment will be made for any **Claim** or **Loss** based upon, directly or indirectly arising out of, or in any way involving the circumstance that entitled **Insurers** to avoid this **Policy**.

(iv) **Representation**

The **Insured** accepts that this **Policy** has been issued in reliance that the agreements and representations contained within the **Application** are true and complete. The misrepresentation or non-disclosure of any material facts or material statements within the **Application** will render the **Policy** null and void with respect to any **Insured** who knew of such misrepresentation or non-disclosure and with respect to the **Insured** if a **Member of the Control Group** knew of such misrepresentation or non-disclosure.

(v) **Reimbursement of Costs**

Where expenses are incurred after there is a judgment or arbitrator's decision finding that the **Insured** was not entitled to coverage under this **Policy**, then the **Insured** shall reimburse to the **Insurer** any **Defence Costs** or other expenses paid to the **Insured** or on the **Insured's** behalf by the **Insurer**.

If the **Insurer** pays to the **Insured** an amount (including **Defence Costs**) in respect of a **Claim** or a **Loss** and later there is a determination or decision from any court, arbitration panel or arbitrator, or governmental, regulatory or administrative body finding any such intentional, wilful, deliberate, criminal, dishonest, fraudulent or malicious acts, errors or omissions by the **Insured** or intentional violations of law by the **Insured**, or the **Insured** admits to such an acts or omissions, then the **Insured** must reimburse to the **Insurer** any money that has been paid to the **Insured** or on the **Insured's** behalf by the **Insurer**.

(vi) **Material Changes**

The **Insured** must advise the **Insurer** as soon as practicable of information of which the **Insured** becomes aware deemed to be material to the risk. The **Insurer** reserves the right to amend the terms and conditions of this **Policy** and to charge an additional premium because of the change.

7. How Much the Insurer Will Pay to the Insured

The **Schedule** states:

- a. Whether the **Insured** has purchased cover for each of the **Insuring Clauses**; and
- b. The **Limit** and **Deductible** applicable to each of the **Insuring Clauses**.
- c. The **Waiting Period** applicable to **Insuring Clauses b) and c)**.

All payments that are made to the **Insured** under this **Policy** shall reduce and may exhaust the **Limit(s)**, **Sub-Limits** and **Aggregate Limit of Liability**. Any payment will be subject to the terms and conditions contained within the **Policy**.

The **Insurer** will only pay that portion of any **Loss** or **Claim** which exceeds the **Deductible**. The **Insurer** can reduce payment of any covered amount owed by the **Insurer** to the **Insured** by the **Deductible**. The value of the **Deductible** does not reduce the applicable **Limit**.

Before **Insurers** will pay any **Loss** under **Insuring Clauses b) or c)** the **Waiting Period** must have been exceeded. The **Deductible** will apply to these **Insuring Clauses** from the commencement of the **Period of Restoration**.

The **Limit** or **Sub-Limit** applicable to each **Insuring Clause** is the maximum amount the **Insurer** will pay under this **Policy** including expenses where applicable, regardless of the number of **Insured Events, Claims** or **Losses**. Any **Limit** or **Sub-Limit** is part of and not in addition to the **Aggregate Limit of Liability**.

The maximum amount that the **Insurer** will pay to the **Insured**, or on the **Insured's** behalf, in the aggregate, under this **Policy** shall be the **Aggregate Limit of Liability** stated in the **Schedule** regardless of the number of **Insured Events, Claims** or **Losses**.

(i) Aggregation and Allocation

In the event that a **Loss** or **Claim** arises from more than one **Insured Event**, only one **Deductible** shall apply. The highest of any applicable **Deductibles** which apply to the relevant **Insured Event** will be the amount payable by the **Insured**.

(ii) Related Matters

Any **Losses, Claims** or **Insured Events** that arise out of the same, related or continuing acts, facts, incidents, circumstances, errors or omissions shall be treated as a single event and will be deemed to have occurred when the first such related act, fact, incident, circumstance, error or omission occurred.

(iii) Loss of Income

In order to calculate the **Insured's Loss of Income**, the **Insurer** will adopt one of the following three methods as chosen by the **Insured**:

- (A) Loss of Gross Profit – The amount payable as indemnity hereunder shall be:

The **Insurer** will take the **Insured's** reduction in **Sales**, which is the figure produced by applying the **Rate of Gross Profit** to the amount by which **Sales** during the **Period of Restoration** or **Reputational Harm Period of Restoration** (where applicable), are less than **Standard Sales** as a result of the specified **Insured Event**, and reduce this figure by any amount that the **Insured** saved during the **Period of Restoration** or **Reputational Harm Period of Restoration** (where applicable), due to any charges or expenses (paid out of **Gross Profit**) which cease/are reduced during the **Period of Restoration** or **Reputational Harm Period of Restoration**.

- (B) Loss of Gross Earnings – The amount payable as indemnity hereunder shall be:

The **Insurer** will take the **Insured's Gross Earnings** and all other earnings that would have been earned during the **Period of Restoration** or **Reputational Harm Period of Restoration** (where applicable), if the specified **Insured Event** had not occurred. The **Insurer** will reduce that figure by all charges and

expenses that cease/are reduced during the **Period of Restoration** or **Reputational Harm Period of Restoration** (where applicable).

It is hereby understood and agreed that where there is a loss of production, but no materially lower or zero loss of **Sales**, then due account shall be taken when quantifying the loss payable under this **Policy** in order to indemnify the **Insured** for the actual loss sustained.

(C) Loss of Net Income – The amount payable as indemnity hereunder shall be:

The **Insurer** will take the **Insured's** net income before tax that would have been achieved during the **Period of Restoration** or **Reputational Harm Period of Restoration** (where applicable), if the specified **Insured Event** had not occurred. The **Insurer** will add to that figure, the **Insured's** continuing normal operating expenses (including but not limited to payroll, rent and utility bills) which are redundant because of the **Insured Event** (to the extent that the **Insured** must continue to pay these expenses during the **Period of Restoration** or **Reputational Harm Period of Restoration** (where applicable)).

In the event that, during the **Period of Restoration** or **Reputational Harm Period of Restoration** (where applicable), goods are sold or services are rendered by means of alternative methods, facilities or personnel, the money which is paid or payable for these goods or services shall be taken into account by the **Insurer** when it calculates the **Insured's Loss of Income** (by any of the three methods referred to above).

In the course of calculating the **Insured's Loss of Income**, the **Insurer** shall make adjustments as required to allow for trends, changes in circumstances or variations affecting the **Insured's Business** before or after the specified **Insured Event** occurred or which would have affected the **Insured's Business** had the specified **Insured Event** not occurred.

Once the **Insurer** has completed its adjustment of the figures by one of the methods described above, the final figure shall represent as closely as possible, the results which the **Insured** would have obtained during the **Period of Restoration** or **Reputational Harm Period of Restoration** (where applicable) had the specified **Insured Event** not occurred.

(iv) Proof of Loss

The **Insured** shall provide as soon as practicable, but in any event no later than 180 days after a loss is **Discovered**, a proof of loss detailing the **Loss** for which it is seeking coverage under this **Policy**, including as may be appropriate:

- a. Information and evidence known to the **Insured** of the facts relating to the **Insured Event**, threat, or failure, the amount of the **Loss**;
- b. A description of the incident and any **Data**, programs and equipment involved;
- c. Identification of involved personnel;
- d. Copies of available system and security logs, and any reports of outside experts and consultants; and
- e. Any other information as reasonably requested by the **Insurer's** representatives.

The **Insured** may provide an interim proof of loss and request interim payment from **Insurers** if the loss is incapable of being fully quantified.

(v) Claims Preparation Costs

This **Policy** provides coverage for reasonable and supportable costs incurred by the **Insured** (including the cost of utilizing external consultants) for preparation, presentation, certification and/or verification of any proof of loss under **Insuring Clauses (b), (c) or (e)**. A 50% co-insurance will be applied to this clause, whereby the **Insured** must contribute 50% towards any costs provided for under this clause, with **Insurers'** maximum liability under this clause capped at USD 50,000 or currency equivalent. Such amount shall be part of and not in addition to the **Aggregate Limit of Liability** in the **Schedule**.

8. Other Information

(i) Assignment

The **Insured** interest under this **Policy** cannot be assigned in whole or in part without the **Insurer's** prior written consent.

(ii) Insolvency

If the **Insured** becomes bankrupt or subject to insolvency proceedings, this will not automatically terminate or relieve the **Insurer** of obligations owed under this **Policy**.

(iii) Cancellation

The **Insured** can cancel this **Policy** at any time during the **Policy Period** by providing written notice to the **Insurer** specifying when such cancellation is to take effect (the date must be after the **Insurer** receives written notice). If notifying the **Insurer** by post, receipt will be deemed to have occurred on the third day after mailing.

The **Insurer** can cancel this **Policy** on fourteen (14) calendar days' notice in the event of non-payment of the premium by providing written notification to the **Insured** at the address stated in the **Schedule**. Such cancellation will take effect on the fourteenth (14) day after the **Insured's** receipt of the **Insurer's** written notification. If notifying by post, receipt will be deemed to have taken place on the third (3rd) calendar day after mailing.

In the event of cancellation as above, provided that the **Insured** has not notified any actual or potential **Loss** or **Claim**, the **Insured** will be entitled to a pro-rata refund of premium. No premium will be refunded to the **Insured** if any actual or potential **Loss** or **Claim** has been notified prior to cancellation.

(iv) Mergers and Acquisition and Change of Control

If, during the **Policy Period**, the **Insured** or any **Subsidiary** of the **Insured** acquires another entity the acquired entity shall automatically be considered as a **Subsidiary** under the **Policy** unless:

- That entity increases the **Insured's** revenue by more than 15% from the prior year revenue figure provided in the **Application**; and/or
- That entity stores a total number of unique, personally identifiable records, at the date of the completion of such acquisition, that is more than 20% of the total unique, personally identifiable records that the **Insured** declared within the **Application**;

In such cases, the acquired entity shall only be considered as a **Subsidiary** under the **Policy** if the **Insurer** receives prior written notice and sufficient details (regarding the acquisition) within thirty (30) days. The **Insured** must also agree to pay any resulting additional premium that the **Insurer** deems appropriate in order for the new acquisition to be considered a **Subsidiary** under the **Policy**.

The **Insurer** will only provide coverage to any new **Subsidiary** for a **Claim** or **Loss** which arises out of an **Insured Event** which first occurred after the new acquisition became a **Subsidiary** under the **Policy**.

If, during the **Policy Period**, the **Insured** is acquired by another entity, merged with another entity, sold, dissolved or liquidated, any cover under this **Policy** terminates on the date of the merger or acquisition. Subject to the terms and conditions contained herein, the **Policy** shall respond to any **Claims** or **Losses** that arise from **Insured Events** that occurred before the date of acquisition or merger.

The **Insurer** shall not provide any coverage for the **Insured** after the date of acquisition or merger unless the **Insured** provides the **Insurer** with prior written notice of the forthcoming acquisition, merger, sale,

dissolution or liquidation and has agreed to pay any additional premium required by the **Insurer**. In these circumstances, the **Insurer** shall issue an endorsement extending the coverage under the **Policy**.

(v) **Law & Jurisdiction**

This **Policy** is subject to the law and jurisdiction as stated in the **Schedule**. The courts stated in the **Schedule** shall have exclusive jurisdiction to resolve any disputes arising in connection with this **Policy**.

(vi) **Administration of the Policy**

The **Named Insured** shall act on behalf of each and every **Insured** for all purposes including but not limited to negotiation of terms and conditions of the **Policy**, exercising all the **Insured's** rights under the **Policy**, paying applicable premiums and **Deductibles**, any notice (including cancellation and receipt and acceptance of any endorsements).

(vii) **Other Insurance**

The coverage afforded by this **Policy** shall apply in excess of any other valid and collectible insurance available to the **Insured**, including any retention or equivalent portion thereof, unless such other insurance is written only as specific excess insurance over the **Limit** of this **Policy**. This **Policy** shall be specifically excess of any insurance contract providing a duty to defend the **Insured** and shall be excess of amounts paid by any Directors & Officers Liability Insurance, Employment Practices Liability Insurance, and Commercial General Liability Insurance. If any portion of **Defence Costs** incurred by the **Insured** are covered under any other valid and collectible insurance, this **Policy** shall be responsible only for the portion of such **Defence Costs** not paid under any other insurance policy.

Notwithstanding the foregoing, this **Policy** shall recognize payment by the **Insured** of applicable retentions in other insurance and apply such payment against any applicable **Deductible** under this **Policy**.

However, this **Policy** shall act as primary insurance in respect of the following **Insuring Clauses; (a), (f), (g) and (h)**.

This clause shall not be interpreted to prejudice the defence or settlement of any **Claim** or **Loss**. In the event that an insurer providing coverage to which this **Policy** is excess fails to pay covered losses, the **Insurer** shall advance and indemnify such covered losses unless and until such other insurance pays. If and to the extent the **Insurer** pays covered losses covered by other insurance to which this **Policy** is excess, the **Insurer** shall be subrogated to the **Insured's** rights of recovery under such other insurance and the **Insured** will comply with Section (x) Subrogation to secure such rights.

(viii) **Subrogation**

If any payment is made under this **Policy** and there is available to the **Insurer** any of the **Insured's** rights of recovery against any third party, then the **Insurer** shall maintain all such rights of recovery. The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages, Defence Costs**, or any other amounts paid by the **Underwriters**, and lastly to the **Deductible**. Any additional amounts recovered shall be paid to the **Insured**. Notwithstanding the foregoing, there shall be no subrogation against the specific critical vendors, clients, or other parties scheduled by endorsement (if any).

(ix) **Innocent Insured Provision**

Whenever coverage under this **Policy** would be excluded, suspended, or lost because of non-compliance with Section 6 (i) relating to providing notice of a **Claim** or any **Loss** to **Insurers**, with respect to which any other **Insured** shall be in default solely because of the failure to give such notice or concealment of such failure by one or more **Insureds**, then such insurance as would otherwise be afforded under this **Policy** shall cover and be paid with respect to those **Insureds** who did not personally commit, 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 Section 6 (i),

promptly after obtaining knowledge of the failure of any other **Insured** to comply therewith. Notwithstanding the foregoing, the reporting of any such **Claim** or **Loss** must be made during the **Policy Period** or **Extended Reporting Period**, if applicable.

Whenever coverage under this **Policy** would be excluded, suspended, or lost because of Exclusion: Intentional Acts, relating to any deliberate, intentional, malicious, criminal, unlawful, fraudulent, or dishonest act by any **Insured**, then such insurance as would otherwise be afforded under this **Policy** shall cover and be paid with respect to those **Insureds** who did not personally commit, personally participate in committing, personally acquiesce, or remain passive after having personal knowledge thereof.

(x) Dispute Resolution

In the event of any dispute between the **Insured** and **Insurer** involving this **Policy** or a **Claim** or **Loss** hereunder, the parties shall attempt in good faith to resolve any dispute or controversy by negotiation. If the dispute has not been resolved by negotiation within thirty (30) days of the disputing party's notice, the dispute shall be referred to non-binding mediation. Unless both parties agree otherwise, any non-binding mediation shall be administered by the American Arbitration Association.

(xi) Privacy and Data Notice

Who we are

We are the Lloyd's underwriter(s) identified in the contract of insurance and/or in the certificate of insurance.

The basics

We collect and use relevant information about you to provide you with your insurance cover or the insurance cover that benefits you and to meet our legal obligations.

This information includes details such as your name, address and contact details and any other information that we collect about you in connection with the insurance cover from which you benefit. This information may include more sensitive details such as information about your health and any criminal convictions you may have.

In certain circumstances, we may need your consent to process certain categories of information about you (including sensitive details such as information about your health and any criminal convictions you may have). Where we need your consent, we will ask you for it separately. You do not have to give your consent and you may withdraw your consent at any time. However, if you do not give your consent, or you withdraw your consent, this may affect our ability to provide the insurance cover from which you benefit and may prevent us from providing cover for you or handling your claims.

The way insurance works means that your information may be shared with, and used by, a number of third parties in the insurance sector for example, insurers, agents or brokers, reinsurers, loss adjusters, sub-contractors, regulators, law enforcement agencies, fraud and crime prevention and detection agencies and compulsory insurance databases.

We will only disclose your personal information in connection with the insurance cover that we provide and to the extent required or permitted by law.

Other people's details you provide to us

Where you provide us or your agent or broker with details about other people, you must provide this notice to them.

Want more details?

For more information about how we use your personal information please see our full privacy notice(s), which is/are available online on our website(s) or in other formats on request.

Contacting us and your rights

You have rights in relation to the information we hold about you, including the right to access your information. If you wish to exercise your rights, discuss how we use your information or request a copy of our full privacy notice(s), please contact us, or the agent or broker that arranged your insurance.

(xii) Complaints

The **Insurer** aims to provide the highest quality of service. However, if the **Insured** feels that the level of service it has received falls short of the standard that it expects, please let the **Insurer** know immediately. If the **Insured** has a complaint the **Insured** has the right to raise its complaint with its broker, intermediary or agent. Alternatively, the **Insured** can write to:

The Compliance Manager
Floor 29,
22 Bishopsgate,
London,
EC2N 4BQ
Email: LDNComplaints@CMAL.com
Telephone: +44 (0) 203 943 4400

If the **Insured** remains dissatisfied, the **Insured** may refer its complaint to Lloyd's who will investigate and provide a response. See: www.lloyds.com/complaints

Ultimately, if the **Insured** remains dissatisfied it may, in writing, refer its complaint to the Financial Ombudsman Service (FOS). See: www.financial-ombudsman.org.uk