

I. INSURING AGREEMENTS

IMPORTANT NOTICE:

THE LIABILITY COVERAGES OF THIS POLICY PROVIDE CLAIMS-MADE COVERAGE, WHICH APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD AND REPORTED TO THE UNDERWRITER NO LATER THAN THIRTY (30) DAYS AFTER THE POLICY PERIOD OR THE EXPIRATION OF ANY APPLICABLE EXTENDED REPORTING PERIOD, IF PURCHASED, FOR ANY WRONGFUL ACT FIRST COMMITTED OR CYBER INCIDENT FIRST OCCURRING AFTER THE RETROACTIVE DATE BUT BEFORE THE END OF THE POLICY PERIOD.

THE FIRST PARTY CYBER COVERAGES OF THIS POLICY, APPLY ONLY TO CYBER INCIDENTS FIRST DISCOVERED, AND REPORTED TO THE UNDERWRITERS DURING THE POLICY PERIOD.

AMOUNTS INCURRED AS DEFENSE COSTS UNDER THIS POLICY SHALL REDUCE AND MAY EXHAUST THE APPLICABLE LIMIT OF INSURANCE AND WILL BE APPLIED AGAINST ANY APPLICABLE RETENTION. IN NO EVENT WILL THE UNDERWRITERS BE LIABLE FOR DEFENSE COSTS OR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT IN EXCESS OF THE APPLICABLE LIMIT OF INSURANCE.

In consideration of the payment of the premium and in reliance upon the **application**, including all statements made in and information and documents furnished to the **underwriters** in connection with the **application**, and subject to all terms, conditions, exclusions, limitations and other provisions of this **policy**, the **insured** and the **underwriters** agree as follows:

Coverage is afforded by this **policy** only with respect to those Coverages purchased by the **insured**, as shown in Item 8. of the Policy Declarations.

ERRORS & OMISSIONS LIABILITY

A. Technology Products and Services Liability Coverage

The **underwriters** will pay, on behalf of the **insured**, **defense costs** and **damages** resulting from a claim first made against the **insured** or an **indemnitee**, during the **policy period**, or the **extended reporting period**, if applicable, for a **technology products and services wrongful act** first committed on or after the **retroactive date** and prior to the end of the **policy period**.

MEDIA LIABILITY

B. Media Liability Coverage

The **underwriters** will pay, on behalf of the **insured**, **defense costs** and **damages** resulting from a claim first made against the **insured** during the **policy period**, or the **extended reporting period**, if applicable, for a **media wrongful act** first committed on or after the **retroactive date** and prior to the end of the **policy period**.

I. INSURING AGREEMENTS

CYBER LIABILITY

C. Privacy and Network Security Liability Coverage

The underwriters will pay, on behalf of the insured, defense costs and damages resulting from a claim first made against the insured during the policy period, or the extended reporting period, if applicable, arising from a data breach incident, privacy violation incident, or network security incident that first occurs on or after the retroactive date and prior to the end of the policy period.

D. Privacy Regulatory Coverage

The underwriters will pay, on behalf of the insured, defense costs, privacy regulatory fines, and consumer redress funds, resulting from a privacy regulatory claim first made against the insured during the policy period, or the extended reporting period, if applicable, arising out of a data breach incident that first occurs on or after the retroactive date and prior to the end of the policy period.

E. PCI Liability Coverage

The underwriters will pay, on behalf of the insured organization, PCI assessments and penalties and any directly related defense costs, resulting from a claim first made against the insured during the policy period, or the extended reporting period, if applicable, arising out of a data breach incident that first occurs on or after the retroactive date and prior to the end of the policy period.

FIRST PARTY CYBER

F. Data Breach Incident Response Coverage

The underwriters will pay data breach incident response costs incurred by the insured organization resulting from an actual or reasonably suspected data breach incident of which a control group member first becomes aware during the policy period.

G. Network Business Interruption Coverage

The underwriters will pay loss of income and extra expenses incurred by the insured organization during the restoration period, directly resulting from a network security incident of which a control group member first becomes aware during the policy period that directly causes an interruption in service that first occurs during the policy period.

H. Digital Data Recovery Coverage

The underwriters will pay digital data recovery costs incurred by the insured organization directly resulting from a network security incident of which a control group member first becomes aware during the policy period.

I. Cyber Extortion and Ransomware Coverage

The underwriters will pay cyber extortion and ransom costs incurred by the insured organization directly resulting from a cyber extortion or ransomware demand first made during the policy period.

II. EXCLUSIONS

The underwriters shall not be liable for or have any obligation to pay for **liability loss** or **first party loss** on account of any claim or **cyber incident**:

A. Prior Proceedings, Prior Notice, and Prior Knowledge

based upon, arising from or in consequence of:

- 1) any demand, suit, litigation, claim, arbitration, mediation, administrative, regulatory or other proceeding, or administrative or regulatory investigation made, filed, or commenced against an **insured**; or any order, decree or judgment entered against an **insured**, on or prior to the Inception Date stated in Item 2. of the Policy Declarations, or derived from the same or substantially the same claim, act, omission, fact, matter, situation, circumstance, transaction, incident or event underlying or alleged in any of the preceding;
- 2) any claim, act, omission, fact, matter, situation, circumstance, transaction, incident or event that has been included in any written notice given under any other policy before the Inception Date stated in Item 2. of the Policy Declarations, whether such other policy was issued by the **underwriters** or any other insurer; or
- 3) any act, omission, fact, matter, situation, circumstance, transaction, incident or event committed or occurring prior to the **first inception date** if any member of the **control group** on or before **first inception date** knew or could have reasonably foreseen that such act, omission, fact, matter, situation, circumstance, transaction, incident or event might be expected to be the basis of a **claim** or **first party loss**.

B. Contracts

based upon, arising from or in consequence of any actual or alleged breach of any contract, warranty, promise or guarantee, including any liability assumed by contract; provided however, this Exclusion does not apply to:

- 1) any **liability loss** to the extent that an **insured** would have been liable in the absence of such contract;
- 2) solely with respect to coverage under Insuring Agreement A. Technology Products and Services Liability:
 - a. any **claim** brought by a customer or client of the **insured** alleging a breach of a contract between such customer or client and the **insured**, if the alleged breach was unintentional by the **insured**;
 - b. an unintentional failure of any **technology product** or **technology service** to perform in accordance with the terms and conditions of a written contract; or
 - c. any liability assumed under any written indemnification agreement for or on behalf of an **indemnitee**, where a **claim** is brought by a third party against such **indemnitee** for a **wrongful act** that takes place after the execution of such written indemnification agreement;
- 3) solely with respect to coverage under Insuring Agreement C. Privacy and Network Security Liability, that part of any **claim** arising out of any contractual obligation to maintain the confidentiality or security of **corporate information**; or
- 4) any **claim** with respect to coverage under Insuring Agreement E. PCI Liability Coverage.

C. PCI Liabilities

based upon, arising from or in consequence of any actual or alleged breach, liability or obligation under a **merchant services agreement**; provided however, this Exclusion does not apply to:

- 1) any **claim** with respect to coverage under Insuring Agreement E. PCI Liability Coverage; or
- 2) Legal Costs and Forensic and Investigation Costs under Insuring Agreement F. Data Breach Incident Response Coverage.

D. Bodily Injury

based upon or arising from or in consequence of any actual or alleged bodily injury, sickness, disease or death, mental injury, mental anguish, humiliation, emotional distress, pain and suffering, or shock of any person; provided however, this Exclusion does not apply to a **claim** for mental anguish, emotional distress, or pain and suffering:

- 1) solely with respect to coverage under Insuring Agreement B. Media Liability Coverage, arising out of a **media wrongful act**; or

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- 2) solely with respect to coverage under Insuring Agreement C. Privacy and Network Security Liability Coverage, arising out of a **cyber incident**.

E. Property Damage

based upon or arising from or in consequence of actual or alleged physical damage to or destruction of any real or tangible property, including loss of use thereof, provided that for purposes of this Exclusion, real or tangible property does not include electronic data.

F. Patent, Trade Secrets or Software

based upon, arising from or in consequence of actual or alleged:

- 1) patent infringement, theft, misappropriation, violation, dilution or misuse of any patent or trade secret; any inducement to infringe a patent or wrongfully obtain, misappropriate, or violate a patent or trade secret; or
- 2) infringement of copyright arising from or related to software code or software products, or knowing use of illegal or unlicensed software that is in violation of the provisions or laws referring to software protection.

G. Pollution and Nuclear

based upon, arising from or in consequence of actual, alleged or threatened:

- 1) emission, discharge, dispersal, seepage, release or escape of pollutants, or testing for, monitoring, removal, containment, treatment, detoxification, neutralization or cleanup of any pollutants; or
- 2) nuclear, radiation or asbestos related contamination or effects thereon, including radiation, electromagnetic fields and silica.

H. Infrastructure

based upon, arising from or in consequence of any actual or alleged electrical, mechanical, Internet, telecommunications, cable or satellite failure, fluctuation or outage, however caused, including any electrical power interruption, short-circuit, surge, brownout or blackout, unless such infrastructure is fully under the direct operational control of the **insured organization**.

I. War

based upon, arising from or in consequence of war, invasion, acts of foreign enemies, terrorism, hijacking, hostilities or warlike operations, military or usurped power, civil commotion assuming the proportions of or amounting to an uprising, strike, lock-out, riot, civil war, rebellion, revolution or insurrection; provided however, this Exclusion does not apply to an act of **cyber terrorism**.

J. Misconduct or Illegal Profit

based upon or arising from or in consequence of:

- 1) any intentional or knowing wrongful, fraudulent, criminal, or malicious acts or intentional or knowing violations of any law, statute or regulation, by an **insured**; or
- 2) the gaining in fact, of any profit, remuneration, or financial or non-financial advantage to which the **insured** is not legally entitled,

provided however, this Exclusion does not apply to **defense costs** or the **underwriters'** duty to defend, until there is an admission, final judgment or adjudication in any underlying action or proceeding, or related declaratory judgment, or in binding arbitration against, or an admission by an **insured**, as to such conduct; which in the event of such, and at such time, the **insured** shall reimburse the **underwriters** for any **defense costs** paid by the **underwriters**.

As respects the application of this Exclusion:

- 1) no conduct pertaining to any **insured person** shall be imputed to any other **insured person**; and

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2) any conduct pertaining to any past, present, or future, **control group member**, shall be imputed to any **insured organization**.

K. Other Insureds and Related Entities

brought or maintained by or on behalf of an **insured**, or any entity that has greater than twenty percent (20%) interest or control in the **named insured**, or a successor, receiver, trustee, or assignee of an **insured organization**. Provided however, this Exclusion does not apply, solely with respect to coverage under Insuring Agreement C. Privacy and Network Security Liability Coverage, to a claim brought by or on behalf of an **insured person** arising out of a **data breach incident**.

L. Consumer Protection Laws

based upon, arising from or consequence of actual or alleged consumer fraud or violation of consumer protection statutes, including any violation of the Truth in Lending Act, Fair Debt Collection Practices Act, or the Fair Credit Reporting Act (FCRA) or any amendment thereto or any rules or regulations promulgated thereunder. Provided however, this Exclusion does not apply to a **claim** arising out of a **data breach incident** solely with respect to coverage under Insuring Agreement C. Privacy and Network Security Liability Coverage or Insuring Agreement D. Privacy Regulatory Coverage.

M. Unlawful Collection or Use

based upon, arising from or in consequence of actual or alleged unauthorized or unlawful collection, acquisition, gathering, taking, or use of **personal information** or any third party commercial information by an **insured**.

N. Unsolicited Communications

based upon, arising from or in consequence of any actual or alleged distribution of unsolicited communications, whether email, text messages, direct mail, facsimiles, wiretapping, audio or video recording, telemarketing, or any other form of communication, including actions brought under the Telephone Consumer Protection Act, the CAN-SPAM act of 2003 or other analogous federal, state or local statute, law, regulation or common law.

O. Antitrust or Unfair Business Practices

based upon, arising from or consequence of actual or alleged antitrust violations, restraint of trade, price fixing, monopolization, unfair, deceptive or fraudulent trade or business practices, or unfair competition.

P. False Advertising or Pricing and Cost Representations

based upon, arising from or in consequence of actual or alleged false advertising, misrepresentation in advertising, or any unfair or deceptive practices with respect to the advertising or sale of goods, products, or services; or any actual or alleged inaccurate, inadequate or incomplete description of the price of any goods, products or services; or any failure of such goods, products or services to conform with advertised quality or performance; or as a result of the **insured's** pricing guarantees, cost guarantees, costs, cost representations, or cost estimates being exceeded; or related to any chargebacks or chargeback fees.

Q. Discrimination

based upon, arising from or in consequence of any actual or alleged discrimination, humiliation, harassment or misconduct that relate to an individual's race, creed, color, age, sex, national origin, religion, handicap, marital status or sexual preference.

R. Employment Related

based upon, arising from or in consequence of any employment related practices, policies, acts, omissions or decisions; any employment related relationship or employment related allegations or contracts; any employee

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classification or misclassification, labor relations, hiring, benefits due, or actual or alleged wage and hour obligations; provided however, this Exclusion does not apply with respect to coverage under Insuring Agreement C. Privacy and Network Security Liability Coverage for that part of a claim arising out of a data breach incident involving personal information of the insured organization's employees.

S. Securities

- 1) brought or maintained by a securityholder of, or investor in the insured organization solely in their capacity as such; or
- 2) based upon, arising from or in consequence of the actual or alleged purchase, sale, or offer or solicitation of an offer to purchase, sell or solicit securities; or
- 3) based upon, arising from or in consequence of any violation of a securities law, including the Securities Act of 1933, the Securities Exchange Act of 1934, or any federal, state, or local securities law, whether such law is statutory, regulatory, or common law, and any amendments thereto or any regulations promulgated thereunder, or amendments thereof of any of the foregoing.

T. ERISA

based upon, arising from or in consequence any actual or alleged breach of fiduciary duty, responsibility, or obligation in connection with any employee benefit or pension plan, including violations of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 (ERISA), or any analogous federal, state or local statutory or common law; provided however, this Exclusion does not apply with respect to coverage under Insuring Agreement C. Privacy and Network Security Liability Coverage for a claim arising out of a data breach incident involving personal information of the insured organization's employees.

U. Regulatory or Governmental Authority

brought or maintained by any state or federal regulator or governmental authority; provided however, this Exclusion does not apply:

- 1) solely as respects to coverage under Insuring Agreement A. Technology Products and Services Liability Coverage, for any claim brought by such state or federal regulator or governmental authority if the claim is made in their capacity as a customer or client of the insured organization; or
- 2) solely as respects Insuring Agreement D. Privacy Regulatory Coverage, any privacy regulatory claim.

V. Loss of Funds

based upon, arising from or in consequence of any actual or alleged loss, theft or transfer of or failure to transfer the insured's funds, money or securities; or the funds, money or securities of others in the care, custody or control of the insured, including the value of any funds, money or securities transferred by the insured or by others on the insured's behalf.

W. Delay in Delivery or Performance or Ceasing Support

solely with respect to coverage under Insuring Agreement A. Technology Products and Services Liability Coverage, based upon, arising from, or in consequence of any actual or alleged:

- 1) delay in delivery of or failure to deliver any technology product or delay in performance of, or failure to begin any technology service; or
- 2) any decision by any insured not to provide or support to cease to provide or support, in whole or in part at any time, for any content, good, information, material, product, property or service that any insured is obligated to provide or support.

X. Contest or Game of Chance

solely with respect to coverage under Insuring Agreement A. Technology Products and Services Liability Coverage, based upon, arising from, or in consequence of actual or alleged gambling, contest, lottery, price

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discount, prize, award, game of chance or skill, or promotional games, including tickets, price discounts, coupons or the over-redemption related thereto.

Y. **Natural and Physical Perils**

solely with respect to coverage under Insuring Agreement G. Network Business Interruption Coverage and Insuring Agreement H. Digital Data Recovery Coverage, based upon, arising from or in consequence of fire, smoke, explosion, lightning, wind, flood, water, earthquake, volcanic eruption, tidal wave, landslide, hail, acts of God, nature or any other physical event, however caused and whether contributed to, made worse by, or in any way resulting from any such events. This Exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently with or in any sequence to any **first party loss** on account of such.

Z. **Governmental Action**

solely with respect to coverage under Insuring Agreement G. Network Business Interruption Coverage and Insuring Agreement H. Digital Data Recovery Coverage, based upon, arising from or in consequence of any action of a public or governmental authority, including the seizure, confiscation, nationalization, requisition, or destruction of an **insured's system or digital data**.

Specimen

III. TERMS AND CONDITIONS

A. Reporting of Claims and Cyber Incidents, Proof of Loss, and Other Notices

1) Cyber Incident Crisis Hotline

As a benefit of this **policy**, the **underwriters** provide the **insured** with urgent cyber crisis management assistance available at the hotline number stated in the Policy Declarations. Use of these services by the **insured** is encouraged in the event of a potential, suspected, or actual **claim** or **cyber incident**, but optional. Any call to the crisis hotline does not constitute notice under this **policy** of a **claim**, **cyber incident**, circumstance or potential claim. Notice of any **claim**, **cyber incident**, potential claim or circumstances under this **policy** must be given in accordance with and subject to paragraphs 2), 3), 4), 5) and 6) below of this Section III.A.

2) Notice of Cyber Incidents under First Party Cyber Coverages

As a condition precedent to any available rights under this **policy** or the obligations of the **underwriters** under this **policy**, as respects any **first party cyber coverage**, the **insured** shall give written notice of any **cyber incident** to the email address designated in Item 4. of the Policy Declarations, as soon as practicable but no later than thirty (30) days after a **control group member** first becomes aware of such **cyber incident**, and in no event later than thirty (30) days after the end of the **policy period**. Written notice of the **cyber incident** shall include, at a minimum, a timeline of relevant events, the date the incident was first discovered, how the incident was discovered, and by whom.

3) Proof of Loss under Insuring Agreement G. Network Business Interruption Coverage

As a condition precedent to any right of reimbursement for **loss of income** and **extra expenses** under Insuring Agreement G. Network Business Interruption Coverage, the **insured** must submit to the **underwriters**, a signed Proof of Loss. The Proof of Loss must detail the **insured's** calculation of the **loss of income** and **extra expenses**, and must include:

- a) the amounts and types of loss;
- b) description of all data, software and equipment involved;
- c) itemized details of and explanation for **extra expenses**;
- d) copies of available system and security logs;
- e) any statements of work and any reports of outside experts and consultants; and
- f) any underlying materials that reasonably relate to or form part of the basis of the proof of such **loss of income** and any **extra expenses**.

4) Proof of Loss under Insuring Agreement H. Digital Data Recovery Coverage

As a condition precedent to any right of reimbursement for **digital data recovery costs** under Insuring Agreement H. Digital Data Recovery Coverage, the **insured** must submit to the **underwriters**, a signed Proof of Loss. The Proof of Loss must detail the **insured's** calculation of the **digital data recovery cost**, and must include:

- a) details of the damaged or destroyed **digital data**;
- b) the types and amounts to update, replace, restore or repair;
- c) any reports of outside experts and consultants; and
- d) any underlying materials reasonably related to or form part of the basis of the proof of such **digital data recovery costs**.

5) Notice of Claims under Liability Coverages

As a condition precedent to any available rights under this **policy** or the obligations of the **underwriters** under this **policy**, as respects any **liability coverage**, the **insured** shall give written notice of any **claim** to the email address designated in Item 4. of the Policy Declarations, as soon as practicable but no later than thirty (30) days after the end of the **policy period** or if applicable, the expiration of the **extended reporting period**.

III. TERMS AND CONDITIONS

6) Notice of Circumstances under Liability Coverages

Solely with respect to the liability coverages, if during the policy period, the insured first becomes aware of any circumstance that may lead to a claim, and if the insured, during the policy period, gives written notice to the underwriters of:

- a) the circumstances, including the names of the parties involved;
- b) the specific details of the wrongful act;
- c) the injury or damage which may result or has resulted from the circumstance; and
- d) the facts by which the insured first became aware of such;

then any claim subsequently brought against the insured arising out of such circumstances, shall be deemed for the purposes of this policy to have been first made on the date such circumstances were first reported to the underwriters. This policy does not apply to, and the underwriters shall have no obligation to pay, any costs incurred prior to the time such circumstances become a claim.

7) All Other Notices and Correspondence

All other notices to and correspondence with the underwriters or with respect to this policy shall be sent to the Coverholder's email address designated in Item 5. of the Policy Declarations.

B. Limits of Insurance

1) Policy Aggregate Limit of Insurance

The amount set forth in Item 7. of the Policy Declarations, is the underwriters' aggregate limit of liability, combined, for all liability loss and first party loss, resulting from all claims and cyber incidents under this policy, regardless of the number of liability coverages or first party cyber coverages purchased, the number of claims or cyber incidents, or the number of persons or entities making claims. Any liability loss or first party loss incurred will reduce the Policy Aggregate Limit of Insurance.

2) Each Claim, Related Matters, and Coverage Aggregate Limits of Insurance

Each respective amount set forth in Item 8. of the Policy Declarations for each liability coverage or first party cyber coverage, if purchased, is the underwriters' maximum limit of insurance for all liability loss and first party loss, resulting from all claims or cyber incidents, under this policy, incurred in the aggregate under such Insuring Agreement. In the event multiple claims or cyber incidents are part of the same related matter, the maximum limit of insurance for all liability loss and first party loss resulting from all such claims or cyber incidents in the aggregate, will be the amount of the largest of the applicable Coverage Aggregate Limits.

Each Coverage Aggregate Limit of Insurance is part of, and not in addition to, the Policy Aggregate Limit of Insurance, as stated in Item 7. of the Policy Declarations. Any payments made under any Coverage Aggregate Limit of Insurance, shall reduce both the amount of remaining Policy Aggregate Limit of Insurance as well as the applicable Coverage Aggregate Limit of Insurance.

Provided any Coverage Aggregate Limit of Insurance is subject to any applicable sub-limit outlined in Section III.B.3) Sub-Limits immediately below.

3) Sub-Limits

Each sub-limit of insurance described in a) and b) below, is part of and not in addition to, the applicable Coverage Aggregate Limit of Insurance, and any payments made thereunder shall reduce both the amount of the remaining Coverage Aggregate Limit of Insurance and the Policy Aggregate Limit of Insurance.

III. TERMS AND CONDITIONS

a) **Indemnitees**

Solely as respects any **defense costs** and **damages** incurred by an **indemnitee** under Insuring Agreement A. Technology Products and Services Liability Coverage, the maximum amount payable by the **underwriters** (the sub-limit) as respects a **claim** made against such **indemnitee**, shall be the lesser of the amount of limit of insurance the **insured organization** is obligated to provide on behalf of the **indemnitee** or the amount the insured is contractually obligated to indemnify such **indemnitee** for the applicable **technology products and services wrongful act**, pursuant to the terms and conditions of the written agreement between the **indemnitee** and an **insured organization**.

b) **Assumed Liability**

Solely as respects any **defense costs** or **damages** under Insuring Agreement B. Media Liability Coverage, incurred by the **insured organization** for any liability assumed on behalf of a third party, the maximum amount payable by the **underwriters** (the sub-limit) shall be the amount of indemnify the **insured organization** is contractually obligated to pay under written agreement between the **insured organization** and the third party.

4) **Exhaustion of Limits**

The **underwriters** are not liable to pay **liability loss** or **first party loss**, or continue the defense of any **claim** after either the Policy Aggregate Limit of Insurance is exhausted, the applicable Coverage Limit of Insurance is exhausted, or any applicable sub-limit pursuant to [Section III.B.3\) Sub-Limits](#) is exhausted, whichever is first. The **underwriters'** payment of **defense costs** reduces and may totally exhaust the Policy Aggregate Limit of Insurance or any applicable Coverage Aggregate Limit of Insurance and sub-limit.

5) **Related Matters and Single Event**

All **claims** and **cyber incidents** arising from the same **related matter**, shall be deemed a single event, and for purposes of this **policy**, any of such **claims** will be deemed first made, and any of such **cyber incidents** will be deemed to have first occurred, on the earliest of:

- a) the date the first of such **claims** was made;
- b) the date the first related **cyber incident** first became aware to a **control group member**; or
- c) the date circumstances were first reported and accepted pursuant to [Section III.A.6\) Notice of Circumstances under Liability Coverages](#).

C. **Retentions**

1) **Application of Retentions**

The **underwriters'** liability under any **liability coverage** or **first party cyber coverage**, shall apply only to that part of each **liability loss** or **first party loss**, which is excess of the applicable Retention amount set forth in Item 7. of the Policy Declarations for such **liability coverage** or **first party cyber coverage**. The Retention shall be borne by the **insured** uninsured and at the **insured's** own risk. Any payments made to satisfy the retention or deductible amount under another policy of insurance shall not satisfy or apply towards the applicable Retention, or any portion thereof, of this **policy**. Solely as respects Insuring Agreement G. Network Business Interruption Coverage, the Retention amount for any **loss of income** and **extra expenses** begins to incur after the **waiting period**.

2) **Multiple Retentions**

If more than one **liability coverage** and/or **first party coverage** applies to a single **claim** or **cyber incident**, then the applicable Retention shall apply to any **liability loss** or **first party loss**, provided that the sum of such Retentions applied, shall not exceed the largest applicable Retention. Provided as respects to any **first party loss** under Insuring Agreement G. Network Business Interruption Coverage, the **waiting period**

III. TERMS AND CONDITIONS

Retention always applies, and is separate and in addition to the application of any Retention under any other liability coverage or first party cyber coverage.

D. Defense and Settlement under Liability Coverages

1) Defense

The **underwriters** have the right and duty to defend any covered claim under any liability coverage. The **underwriters** have the sole right to select and appoint counsel to represent the **insured** with respect to any claim to which this policy applies. The **underwriters'** duty to defend shall cease upon exhaustion of the lesser of either the applicable Coverage Aggregate Limit, any applicable sub-limit pursuant to [Section III.B. 3\) Sub-Limits](#), or the remaining Policy Aggregate Limit of Liability.

2) Investigation of Claims

The **underwriters** shall have the right and sole discretion to conduct any investigation they deem necessary, including, without limitation, any investigation with respect to the **application** and any statements made in the **application**.

3) Settlement

The **insured** shall not incur any **defense costs**, engage in settlement negotiations, enter into any settlement agreement, make any payment, admit any liability, or assume any obligation without the prior written consent of the **underwriters**, which shall not be unreasonably withheld. The **underwriters** shall not be liable for any element of **liability loss**, or any other loss, settlement, expense, assumed obligation or admission to which they have not given their prior written consent.

The **underwriters** may, with the consent of the **insured**, such consent not to be unreasonably withheld, settle any claim they deem reasonable and necessary. If the **insured** refuses to consent to any settlement recommended by the **underwriters** and acceptable to the claimant, then the **underwriters'** liability for such claim shall not exceed:

- a) the amount of the recommended settlement plus **defense costs** incurred up to the date of the **insured's** refusal to consent to the recommended settlement; and
- b) fifty percent (50%) of any **liability loss** incurred by the **insured** after the **underwriters** have made their settlement recommendation, subject always to all other applicable terms conditions, limitations, exclusions and other provisions of this policy. The remaining fifty percent (50%) of any **liability loss** in excess of the amount referenced in paragraph (a) above shall be the sole responsibility of and be paid by the **insured**.

E. Insured's Duty to Assist and Cooperate

The **insured** must cooperate with the **underwriters** and their representatives and, upon the **underwriters'** request, shall:

- 1) submit to examination and interrogation by a representative of the **underwriters**, under oath if required;
- 2) assist the **underwriters** in the investigation of any **wrongful act, claim, cyber incident, or first party loss**;
- 3) attend hearings, depositions and trials;
- 4) assist in effecting settlement;
- 5) cooperate in securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits;
- 6) allow a computer forensics expert access to systems, files and information;
- 7) provide the **underwriters** with copies of all legal and forensics reports for which the **insured** requests payment, reimbursement or indemnification from the **underwriters**; and

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- 8) give a written statement or statements to the **underwriters'** representatives and meet with such representatives for the purpose of investigation and/or defense all without charge to the **underwriters** (and any such expenses do not constitute **defense costs**). The **insured** shall further cooperate with the **underwriters** and do whatever is necessary to secure and effect any right, contribution, indemnity or apportionment that the **insured** may have. The **insured** will take all reasonable steps to limit and mitigate any **liability loss** or **first party loss**, and agrees that it shall not take any action that in any way increases the **underwriters'** exposure under this **policy**.

F. Hold Harmless for Approved Vendors

With regard to the **insured's** use of **approved vendors** in relation to any **first party cyber coverage**: the **underwriters** shall not be a party to any agreement entered into between any **approved vendor** and the **insured**; and **approved vendors** are independent contractors, and are not agents of the **underwriters**.

The **insureds** agree that the **underwriters** assume no liability arising out of any services rendered by an **approved vendor**. The **underwriters** shall not be entitled to any rights or subject to any obligation or liability set forth in any agreement entered into between any **approved vendor** and an **insured**. Any rights and obligations with respect to such agreement, including billings, fees and services rendered, are solely for the benefit of, and borne solely by such **approved vendor** and the **insured**, and not the **underwriters**.

G. Termination of Policy

1) Cancellation by the Underwriters for Non-Payment of Premium

The **underwriters** may not cancel this **policy** except for non-payment of premium due under the **policy**. The **underwriters** may cancel this **policy**, by providing no less than fifteen (15) days prior written notice of the cancellation to the named **insured** due to non-payment of premium due under the **policy**.

2) Cancellation by the Named Insured

The **named insured** may cancel this **policy** by giving advance written notice to the **underwriters** stating when thereafter cancellation shall take effect.

If the **named insured** cancels this **policy** either before a **claim** has been made or a **cyber incident** has been discovered by a **control group member**, thirty percent (30%) of the premium shall be deemed earned upon the Inception Date of this **policy** and the remaining earned premium will be computed pro rata from the remaining 70% premium, based on the effective date of cancellation. The premium for this **policy** will be deemed fully earned, if this **policy** is canceled by the **named insured** after a **claim** has been made or a **cyber incident** has been discovered by a **control group member**.

H. Extended Reporting

1) Automatic Reporting Window

If this **policy** does not renew or terminates for any reason other than the non-payment of premium, then solely as respects the **liability coverages**, the **named insured** will be provided a period of sixty (60) days in which to give written notice to the **underwriters** of any **claim** first made against the **insured** during the **policy period** for **wrongful acts** first committed or a **cyber incident** first occurring after the **retroactive date** and prior to the end of the **policy period**.

2) Optional Extended Reporting Period

If this **policy** does not renew or terminates for any reason other than the non-payment of premium, and only if the **insured** does not obtain replacement insurance coverage, then solely as respects the **liability**

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coverages, the named insured shall have the right to purchase an optional **extended reporting period**, upon written request and payment of the additional premium amount stated in Item 10.A. of the Policy Declarations. The **extended reporting period**, if elected, commences on the date of such termination or nonrenewal, and once commenced, the **extended reporting period** is non-cancellable and the entire premium is fully earned.

Any **extended reporting period**, if elected, shall only apply with respect to any claim that is first made against an insured and reported to the underwriters during the **extended reporting period**, but only to the extent such claim is for **wrongful acts** first committed or **cyber incidents** first occurring after the **retroactive date** and before the effective date of cancellation or nonrenewal.

The right to purchase the optional **extended reporting period** shall lapse unless written notice of election to purchase the **extended reporting period**, together with payment in full of the additional premium due, is received by the underwriters within thirty (30 days) after the effective date of termination or nonrenewal. The election and payment of the optional **extended reporting period** shall be evidenced by issuance of an Endorsement to this policy and is subject to all of the terms, conditions, limitations, exclusions and other provisions of this policy.

Any claim made and reported during the **extended reporting period** shall be deemed to have been made during the immediately preceding **policy period**, and the Policy Aggregate Limit of Insurance and applicable Coverage Aggregate Limits of Insurance for the **extended reporting period** shall be part of and not in addition to, the Policy Aggregate Limit of Insurance and Coverage Aggregate Limits of Insurance for such **policy period**. The purchase of the optional **extended reporting period** shall not increase or reinstate the Policy Aggregate Limit of Insurance or the applicable Coverage Aggregate Limit of Insurance.

I. Material Changes in Exposure

1) Change in Control of Named Insured

If during the **policy period**:

- a) the named insured merges into or consolidates with another entity such that the named insured is not the surviving entity; or if a receiver, conservator, trustee, liquidator or rehabilitator is appointed to take control of, supervise, manage or liquidate the named insured; or
- b) another entity(ies) and/or person(s) acquires securities or voting rights that results in ownership or voting control by the other entity(ies) and/or person(s) of more than fifty percent (50%) of the outstanding securities representing the rights to vote for the election of an named insured's directors;

then the coverage under this policy will continue until the end of the **policy period**, but solely with respect to claims made during the **policy period**, resulting from a **wrongful act** committed or from a **cyber incident** that occurred prior to the date of the change in control stated in paragraphs (a) and (b) above. Upon the occurrence of any change of control described above, the **policy** may not be cancelled, and the entire premium for this **policy** shall be considered fully earned.

2) Creation or Acquisition of Subsidiary

If during the **policy period** an insured organization acquires or creates a subsidiary:

- a) if such newly created or acquired subsidiary does not, as of the date of such acquisition or creation, represent more than forty percent (40%) of the insured organizations total assets, employee count or gross revenue, then such subsidiary will be deemed a **subsidiary** under this **policy** and coverage shall be afforded to the insured and such **subsidiary** for claims first made or **cyber incidents** first occurring after the effective date of such transaction or event, or

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- b) if such newly created or acquired subsidiary is not afforded coverage pursuant to paragraph a) above, then coverage shall be afforded to the **insured** and such subsidiary for claims first made or **cyber incidents** first occurring, after the effective date of such transaction for a period of sixty (60) days, and
- c) the **underwriters** have the option of providing coverage for the **insured** and any newly created or acquired subsidiary not afforded coverage pursuant to paragraph a) above, beyond the sixty (60) days provided that:
 - i. the **insured** gives the **underwriters** written notice of such transaction or event as soon as possible;
 - ii. the **insured** gives the **underwriters** information regarding the transaction or event as the **underwriters** may reasonably require;
 - iii. the **insured** accepts any terms, conditions, exclusions, limitations and additional premium, if any, as the **underwriters**, at their sole discretion, may impose; and
 - iv. an Endorsement attached to this **policy** evidences specific coverage as respects the newly acquired or created subsidiary.

As respects any coverage for the **insured** and any newly created or acquired subsidiaries pursuant to paragraphs a) through c) above, this **policy** shall not apply to, and the **underwriters** shall not pay, any **liability loss** or **first party loss** based upon, arising out of, or directly or indirectly resulting from, or in any way involving any **wrongful act** first committed, any **cyber incident** that first occurred, or any **related matter** to any **wrongful act** first committed or **cyber incident** that first occurred, before the effective date of the creation or acquisition of the subsidiary.

3) Cessation of Subsidiary

If before or during the **policy period**, an entity ceases to be a **subsidiary**, then:

- a) solely with respect to any **liability coverages**, coverage for such **subsidiary** shall continue until termination of this **policy**, but solely for a **claim** for any **wrongful acts** committed prior to the date such entity ceased to be a **subsidiary**, or arising out of a **cyber incident** that occurred prior to the date such entity ceased to be a **subsidiary**; and
- b) coverage with respect to any **first party cyber coverage** terminates with respect to such **subsidiary** or for any **cyber incident** involving such **subsidiary**, that occurs or is discovered after the date such entity ceased to be a **subsidiary**.

J. Representations and Severability

The **insured** represents and acknowledges that statements made in the **application**, and the information submitted therewith, are true, accurate, and complete, and that such statements and information are the basis upon which this **policy** was issued and are considered to be incorporated herein and form a part of this **policy**; and are deemed material to the acceptance of the risk assumed by the **underwriters** under this **policy**. The **insured** understands and agrees that this **policy** was issued in reliance upon the truth and accuracy of the representations, statements and information made in or submitted with the **application**.

In the event the **application** contains any misrepresentation, misstatement, or concealment that materially affects either the acceptance of this risk, the nature of the risk assumed by the **underwriters** under this **policy**, then no coverage shall be afforded under this **policy** as respects:

- a) any **insured person** who knew of such misrepresentation, misstatement, or concealment, and
- b) the **insured organization** if a **control group member** knew of such misrepresentation, misstatement, or concealment.

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K. Spousal Extension

The coverage afforded under this **policy** will, subject to the terms, conditions, limitations, and exclusions, be extended to apply to a claim against a person who, at the time the claim is made, is a lawful spouse or domestic partner of an **insured**, but only if such spouse or domestic partner is the subject of the claim because of marriage or domestic partnership to such **insured**. In no event will the coverage afforded under this provision apply to any claim caused by, resulting from or in any way involving the acts of an **insured's** spouse or domestic partner.

L. Other Insurance

This **policy** shall be excess over any other valid and collectible insurance, including any insurance under which there is a duty to defend, or where defense is outside of the limits, and regardless of whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such insurance is written specifically as excess insurance of this **policy**, by specific reference therein to the Policy Number set forth in the Policy Declarations. However, with respect to **data breach incident response costs** only, this **policy** shall be primary. Solely as respects any **liability loss** incurred by an **indemnitee** under Insuring Clause A. Technology Products and Services Liability Coverage, this **policy** applies excess of any other valid and collectible insurance for the benefit of the **indemnitee**.

M. Subrogation

If any payment is made under this **policy**, the **underwriters** shall be subrogated to the extent of such payment to all rights of recovery thereof, and the **insured** shall execute all documents required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the **underwriters** to effectively bring suit in the name of the **insured**, and shall provide all other assistance and cooperation that the **underwriters** may reasonably require. The **insured** shall do nothing after a claim is brought against the **insured** or after a **cyber incident** occurs, to prejudice the **underwriters'** subrogation rights. All recoveries (after first deducting the legal fees and expenses incurred by the **underwriters** in obtaining such recovery) shall first be paid to the **underwriters** to the extent of any **liability loss** or **first party loss** incurred by the **underwriters**, with the balance paid to the **insured**.

N. Choice of Law and Jurisdiction

The construction, application and validity, and performance of this **policy**, or any breach thereof, will be governed exclusively by the laws of the State of New York.

O. Dispute Resolution and Action Against Underwriters

1) Appraisal

Solely with regard to Insuring Agreement G. Network Business Interruption Coverage or Insuring Agreement H. Digital Data Recovery Coverage, if the **insured** and **underwriters** have a dispute as to the calculation of **loss of income**, **extra expenses**, or **digital data recovery costs** as applicable, as provided in the Proof of Loss submitted by the **insured** pursuant to [Section III.A.\(3\) Proof of Loss under Insuring Agreement G. Network Business Interruption Coverage](#) or [Section III.A.\(4\) Proof of Loss under Insuring Agreement H. Digital Data Recovery Coverage](#), the dispute will be resolved through third party appraisal. Each party will select a qualified third party appraiser who will separately determine the amount of **loss of income**, **extra expenses**, or **digital data recovery costs**, subject to the terms, conditions, definitions, and exclusions of this **policy**. If the appraisers fail to then agree upon the amount, the dispute will be submitted to a third appraiser jointly selected and mutually agreed to by the **insured** and **underwriters**. A

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decision agreed to by two of the three appraisers will be binding on both the **insured** and **underwriters**. Each party will bear their own costs of the appraiser they each retain, and will equally share the costs of the third appraiser.

2) Mediation

Except as provided in O.1) above, any other dispute arising out of or relating to this **policy**, including its construction, application and validity, or any breach thereof, must first be submitted to non-binding mediation administered by a mediation facility to which the **underwriters** and the **insured** mutually agree. The **underwriters** and the **insured** will attempt in good faith to settle the dispute in good faith and in accordance with the commercial mediation rules of the American Arbitration Association (“AAA”) in effect at the time of the dispute. No award of punitive damages will be made in any such mediation. Each party will bear its own fees and costs in connection with any such mediation. However, the costs incurred through the mediation facility, including the fees and expenses of the mediator, will be shared equally by the parties unless the mediation award provides otherwise. All mediation proceedings will be held in a state in the United States where either the **underwriters** or the **insured** has its principal place of business, at the election of the party commencing mediation. The costs of mediation shall be split equally by the parties.

3) Service of Suit

In the event the **underwriters** fail to pay an amount claimed under this **policy** and such non-binding mediation does not resolve the dispute, the **underwriters**, at the request of the **insured**, will submit to the jurisdiction of a Court of competent jurisdiction in the United States. Nothing in this Section 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 to seek a transfer of a case to another Court as permitted by the laws of the United States or of any state in the United States. It is agreed that any suit instituted against the **underwriters** 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.

It is further agreed that service of process in such suit may be made upon any senior partner in the firm indicated in Item 13. of the Policy Declarations, and such firm is authorized and directed to accept service of process on behalf of the **underwriters** in any such suit and/or upon the request of the **insured** to give a written undertaking to the **insured** that they will enter a general appearance upon the **underwriters’** behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the **underwriters** designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as the **underwriters’** true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **insured** or any beneficiary hereunder arising out of this **policy**, and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

P. Alteration and Assignment

No assignment of interest under this **policy**, will bind the **underwriters**, without its prior written consent.

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Q. Bankruptcy of Insured

Bankruptcy or insolvency of the insured shall neither relieve the underwriters of their obligations, nor deprive the underwriters of their rights or defenses under this policy.

R. Territory

This policy applies to claims made or cyber incidents taking place anywhere in the world, where and to the extent legally permissible.

S. Authorization Clause

The named insured shall have the sole authority and responsibility to act on behalf of an insured with respect to: (a) the payment or return of premium; (b) the exercise of the rights provided in this policy regarding consent to settlement; (c) the exercise of the rights provided in this policy regarding the optional extended reporting period; and (d) the exercise of the rights provided in this policy regarding cancellation of the policy. All insureds understand and agree that the named insured has the authority set forth in the paragraph above.

T. Compliance with Applicable Sanction Laws

The underwriters will not be deemed to provide cover nor will the underwriters be liable to make any payment under this policy, or provide any benefit under this policy to the extent that the provision of such cover, payment, or provision of such benefit would expose the underwriters to any sanctions, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, law or regulations of the United States of America (including but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC")), European Union, Australia, or United Kingdom.

U. Headings

The titles of the various paragraphs of this policy and its Endorsements are inserted solely for convenience or reference, and are not to be deemed in any way to limit or affect the provision to which they relate.

V. Entire Agreement

The insured agrees that this policy, including the application and any Endorsements attached, constitutes the entire agreement between the insured and the underwriters, relating to this insurance. The terms, conditions and limitations, of this policy can only be waived or changed by written endorsement issued by the underwriters.

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For purposes of this policy, whenever appearing in bold in this policy:

Application means the signed application(s), representations and warranties provided to the **underwriters** by the **insured**, including any information, documents, attachments and other materials provided to the **underwriters** in conjunction therewith, in connection with this policy or any other policy issued to the **insured** by the **underwriters** of which this policy is a renewal or replacement. The **underwriters** shall be deemed to have relied upon the completeness and accuracy of the signed **application(s)** in binding the insurance, whether this is the first policy, a renewal policy or a replacement policy.

Approved vendor means any company listed on the “Approved Vendor List” available on the Coverholder’s website yrisk.com/approvedcybervendors or provided to the **insured** upon request.

Claim means a:

- a) written demand for monetary or non-monetary relief, including injunctive relief, commenced when first received by an **insured**;
- b) civil proceeding seeking monetary or non-monetary relief, including injunctive relief, commenced by the service of a complaint or a similar pleading on an **insured**, including any appeal therefrom;
- c) written demand for arbitration or mediation seeking monetary or non-monetary relief, including injunctive relief, commenced by receipt of a written demand by an **insured** for arbitration or mediation;
- d) written request to toll or waive a statute of limitations relating to an actual or potential claim referenced in a) through c) above, commenced by receipt of such written request by an **insured**; and
- e) solely as respects Insuring Agreement D. Privacy Regulatory Coverage, a **privacy regulatory claim**; against an **insured**, or solely as respects Insuring Agreement A. Technology Products and Services Liability Coverage, against an **insured** or **indemnitee**. Provided, any claims arising from the same related matter shall be deemed to have been made pursuant to [Section III.B.5\) Related Matters and Single Event](#).

Consumer redress fund means the sum of money an **insured organization** is legally obligated to deposit in a fund for the benefit of consumers resulting from an adverse judgement, ruling, or settlement of a **privacy regulatory claim**.

Control group member means an **insured organization’s** chairperson of the board of directors, president, chief executive officer, chief operating officer, chief financial officer, chief technology officer, chief information officer, chief privacy officer, chief information security officer, risk manager, general counsel and/or in-house counsel, or their functional equivalents.

Corporate information means any non-public confidential or proprietary third party business information that:

- a) is in the **insured’s** care, custody, or control;
- b) an **insured organization** is legally required to maintain in confidence under a written confidentiality or non-disclosure agreement; and
- c) cannot be legally obtained or known by the general public.

Cyber extortion and ransom costs means reasonable and necessary:

- a) expenses paid to an **approved vendor** that directly relate to the **insured’s** efforts to execute an extortion or ransom payment or to negotiate and/or end a **cyber extortion or ransomware demand**; and
- b) funds or cryptocurrency an **insured** surrenders as an extortion or ransom payment only if such payment is approved in writing by the **underwriters** prior to such payment;

incurred by the **insured** solely and directly in response to a **cyber extortion or ransomware demand**.

Cyber extortion or ransomware demand means a demand by a third party or **rogue employee** (each without collusion with, or the assistance or participation of, a **control group member**), that the **insured** pay a ransom as a condition for the mitigation or removal of:

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- a) a threat of malicious activity to the **insured's system**, the **insured's website**, **digital data**, **personal information** or **corporate information**;
- b) a threat to disclose or disseminate any trade secrets of the **insured organization**, sensitive, confidential financial information, or sensitive or critical business information of the **insured organization**; or
- c) malware (including ransomware) that is installed in the **insured's system** and is allegedly capable of any of the malicious activity in a) above.

Cyber incident means a **network security incident**, **data breach incident**, **privacy violation incident**, and solely as respects Insuring Agreement I. Cyber Extortion and Ransomware Coverage, a **cyber extortion** or **ransomware demand**.

Cyber terrorism means:

- a) any non-physical attack against the **insured's system**, with the intention to cause harm to, damage or destroy the **insured's system**;
- b) introduction or transmission of a computer virus or malicious code into the **insured's system**; or
- c) restriction or inhibition of access, including denial of service attack upon **insured's system**

to further social, ideological, religious or political objectives or to intimidate any person or entity in furtherance of such objectives.

Damages means monetary amounts that the **insured** becomes legally obligated to pay on account of any claim, other than a **privacy regulatory claim**, for compensatory damages, pre-judgment or post-judgment interest, settlements, and punitive, exemplary or multiplied damages, if permitted by applicable law and public policy.

Damages do not include:

- a) any amount for which an **insured** is not financially liable or legally obligated to pay;
- b) taxes, loss of tax benefits, fines, penalties or sanctions imposed against an **insured**;
- c) any amount uninsurable under the laws pursuant to which this **policy** is construed;
- d) any cost to comply with any injunctive or remedial, preventative, or other non-monetary or declaratory relief, including specific performance or any agreement to provide such relief;
- e) any cost or expense incurred to replace, upgrade, update, improve, or maintain an **insured's system**;
- f) any costs to correct, recall, replace, repair, withdraw, modify, enhance, restore, develop, improve, update or re-perform services or products, including **technology services** or **technology products**; or for the reprint, recall, or removal of **technology products** or **media content**;
- g) liquidated damages pursuant to a contract, to the extent such liquidated damages exceed the amount for which the **insured** would have been liable in the absence of such contract;
- h) past or future profits; past or future royalties; costs of licensing, or other costs of obtaining future use restitution or disgorgement; or return or offset of fees, payments, charges, royalties, or commissions for goods or services already provided or contracted to be provided by an **insured**; or
- i) **privacy regulatory fines**, **consumer redress funds**, or **PCI assessments and penalties**.

Data breach incident means the unauthorized access, disclosure, theft, or loss of **personal information** or **corporate information** while in the care, custody, or control, of the **insured organization** or in the care, custody, or control of a third party for whom the **insured organization** is liable, arising from the unintentional failure of the **insured**, an **independent contractor**, or an **outsourced provider** to prevent such incident or protect such information.

Data breach incident response costs means the reasonable and necessary costs incurred by the **insured organization**, when such costs are charged by an **approved vendor** solely for the services specified below, solely to the extent that the services provided are in connection with **personal information** as the direct result of a **data breach incident**:

- a) Legal Costs, which means the costs of retaining the services of a law firm to 1) determine the **insured's** requirements to notify affected individuals or governmental or administrative authorities of the **data breach incident**, 2) determine the **insured's** indemnification rights against a third parties in relation to the

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data breach incident, 3) draft notification letters to affected individuals, 4) determine obligations to communicate with regulatory authorities in relation to the **data breach incident**, 5) determine the **insured's** obligations under a **merchant services agreement**, and 6) coordinate engagement with **approved vendors**;

- b) **Forensics and Investigation Costs**, which means the costs of retaining the services of a third party computer forensics firm to conduct an investigation to determine the cause and extent of the **data breach incident** and if applicable, conduct a PFI investigation;
- c) **Notification Costs**, which means the costs of mandatory notifications to affected individuals of the **data breach incident**;
- d) **Credit Monitoring and Call Center Costs**, which means the costs of providing credit or identity monitoring, credit restoration, or identity protection to noticed individuals of the **data breach incident**, and retaining a call center to address inquiries from such affected individuals, for a time period not to exceed the greater of one year or the time period required by applicable law; and
- e) **Crisis Management Costs**, which means the costs, of retaining a public relations firm, law firm, or crisis management firm, for crisis communications consultation and services to minimize any adverse effects of negative publicity arising directly from the **data breach incident**

provided **data breach incident response costs** do not include that portion of any of the costs defined above, incurred more than ten (10) days prior to the **insured** notifying the **underwriter** of the **data breach incident** pursuant to [Section III.A.2\) Notice of Cyber Incidents Under First Party Cyber Coverages](#).

Defense costs means the reasonable and necessary costs, charges, fees (including attorneys' fees, experts' fees, mediation or arbitration costs) and expenses (other than regular or overtime wages, salaries, fees or benefits of an **insured person**) incurred by an **insured** in investigating, defending, opposing or appealing any **claim**, and the premium for appeal, attachment or similar bonds; however, the **underwriters** shall have no obligation to apply for or furnish such bond.

Digital data means any electronic data, software, computer programs, electronic information, and firmware stored on an **insured's system**. **Digital data** shall not include or be considered tangible property, and does not include hardware or hardware components, or the **insured's system** (other than the digital data or firmware stored therein).

Digital data recovery costs means the reasonable and necessary costs incurred by an **insured organization** with the **underwriters'** prior written approval to:

- a) determine whether damaged or destroyed **digital data** directly caused by a **network security incident**, can be replaced, recreated, restored or repaired; and
- b) to replace, recreate, restore or repair damaged or destroyed **digital data** directly caused by a **network security incident**, to substantially the form in which it existed immediately prior to the **network security incident**;

provided **digital data recovery costs** shall not include:

- a) costs incurred to update, replace, recreate, restore, modify or otherwise improve **digital data** to a level beyond that which existed prior to the applicable **network security incident**;
- b) costs incurred to identify or remediate software program errors or vulnerability, or costs to update, replace, modify, restore, upgrade, maintain, or improve an **insured's system**;
- c) costs incurred to research and develop **digital data**;
- d) the economic or market value of **digital data**; or
- e) any consequential loss or damages.

Extended reporting period means the period of time shown in Item 10.B. of the Policy Declarations, subject to [Section III.H. Extended Reporting](#).

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Extra expenses means the reasonable and necessary expenses the **insured organization** incurs after an **interruption in service** and before the end of the **period of restoration**, that are over and above the operating and payroll expenses such **insured organization** would have normally incurred to conduct its business to:

- a) avoid, minimize, mitigate or reduce **loss of income**, and
- b) to attempt to restore business operations;

provided **extra expenses** do not include **digital data recovery costs**, or any costs or expenses incurred to correct any deficiencies or to update, upgrade, restore, modify, remediate, or otherwise improve or maintain an **insured's system, digital data**, or information or cyber security to a level beyond that which existed immediately before the **interruption in service**. **Extra expenses** shall not exceed the amount that otherwise would have been payable as **loss of income**.

First inception date means the earlier of:

- a) the Inception Date of this **policy**, as stated in Item 2. of the Policy Declarations, or
- b) the inception date of the first policy issued to the **insured organization** by the **underwriters** of which this **policy** is a direct renewal or replacement.

First party loss means any:

- a) **data breach incident response costs**;
- b) **loss of income**;
- c) **extra expenses**;
- d) **digital data recovery costs**; and
- e) **cyber extortion and ransom costs**.

First party cyber coverage means the following coverages, if purchased by the **insured**, as shown in Item 8. of the Policy Declarations:

- a) Insuring Agreement F. Data Breach Incident Response Coverage
- b) Insuring Agreement G. Network Business Interruption Coverage
- c) Insuring Agreement H. Digital Data Recovery Coverage
- d) Insuring Agreement I. Cyber Extortion and Ransomware Coverage

Indemnitee means any third party person or entity for whom the **insured organization** has assumed liability in the form of a written hold harmless or indemnity agreement and has agreed pursuant to a written contract with such third party, to provide insurance such as is provided under this insurance **policy**. Such third party is only an **indemnitee**, when:

- a) the **insured organization** is contractually obligated to indemnify the third party for a **claim** that is made against the third party, solely arising out of a **technology products and services wrongful act** committed by an **insured** prior to the execution of the indemnification agreement; and
- b) the **insured organization** has directed the **underwriters** to indemnify the third party for such **claim**, in accordance with their contractual indemnification obligations;

provided such person or entity is not an **indemnitee** for any claim alleging any error, omission, neglect, or wrongful act committed or attempted by such person, entity, or its employees. An **indemnitee** is not an **insured** under this **policy** and does not have the rights and obligations of an **insured** under this **policy**. Any payments by the **underwriters** made to or on behalf of an **indemnitee** are subject to [Section III.B.3\) Sub-limit for Indemnitees and Assumed Liabilities](#).

Independent contractor means any past or present natural person or entity providing **technology services** on behalf of the **insured organization**, pursuant to a written contract between such natural person or entity and the **insured organization**, but only while acting within the scope of the contract, and on behalf of, at the direction of, and under the control of the **insured organization**; provided **independent contractor** does not include an **outsourced provider**.

Insured means any **insured organization** and any **insured person**.

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Insured organization means the named insured and any subsidiary.

Insured person means a control group member and any past, present, or future natural person:

- a) whose labor or service is, was or will be engaged and directed by an insured organization including any part-time, seasonal, leased or temporary employee, intern or volunteer; and
- b) principal, partner, officer, director, or trustee of an insured organization;

only when acting solely in his or her capacity and in accordance with his or her authority and duties as such.

Insured person shall not include any independent contractor (inclusive of any independent contractor), indemnitee, or rogue employee.

Insured's system means computer hardware, software, telephone system, firmware, and the data stored thereon, as well as associated input and output devices, data storage devices, networking equipment and storage area network or other electronic data backup facilities, under the operational control of the insured organization or operated solely for the benefit of the insured organization by an outsourced provider.

Interruption in service means an actual and detectable interruption in the insured organization's business operations, due to the actual total or partial impairment, degradation, cessation, or failure in the performance of the insured's system for a period longer than the waiting period, resulting directly from a network security incident.

Liability coverages means the following coverages, if purchased by the insured, as shown in Item 8. of the Policy Declarations:

- a) Insuring Agreement A. Technology Products and Services Liability Coverage
- b) Insuring Agreement B. Media Liability Coverage
- c) Insuring Agreement C. Privacy and Network Security Liability Coverage
- d) Insuring Agreement D. Privacy Regulatory Coverage
- e) Insuring Agreement E. PCI Liability Coverage

Liability loss means any defense costs, damages, privacy regulatory fines, consumer redress funds, and PCI assessments and penalties.

Loss of income means the net profit the insured organization reasonably could have earned, or net loss that reasonably could have been avoided, before income taxes, during the restoration period had no interruption in service occurred. Calculation of loss of income shall be based on an analysis of the revenues and costs generated per hour during the restoration period. Loss of income does not include any extra expenses.

Media content means any data, text, sounds, images, graphics, music, photographs, or advertisements, for which the insured is responsible, and shall include video, streaming content, webcasts, podcasts, blogs, online forums, and chat rooms. Media content shall not include the insured's system, other than the data stored thereon, or the actual goods, products or services described, illustrated or displayed in such media content.

Media wrongful act means:

- a) any error, misstatement, misleading statement, negligent act, omission, neglect, or breach of duty committed, attempted, omitted, or allegedly committed, attempted or omitted by an insured, in the public display of media content on an insured organization's website or printed material; or media content posted by or on behalf of an insured on any social media site or anywhere on the internet; and either of which results in the following:
 - i. defamation, libel, slander, or any other harm to the character or reputation of any person or entity, including product disparagement or trade libel;
 - ii. copyright infringement, passing-off, plagiarism, piracy, or misappropriation of property rights;
 - iii. infringement or dilution of title, logo, slogan, domain name, metatag, trademark, trade name, service mark, or service name;

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- iv. invasion or infringement of the right of privacy or publicity, including the torts of intrusion upon seclusion, publication of private facts, false light, or misappropriation of name or likeness;
 - v. false arrest, detention, or imprisonment, harassment, trespass, wrongful entry or eviction, eavesdropping; or
 - vi. common law unfair competition or unfair trade practices, including misrepresentation in advertising, solely when alleged in conjunction with the alleged conduct referenced in items i. through v. immediately above; and
- b) any liability the **insured organization** has assumed on behalf of a third party pursuant to a written contract, but only if such liability arises out of **media content** furnished by the **insured** to such third party and results in any of the harms outlined in items a) i. through vi. above. Such assumed liability shall be subject to any limitations and provisions in [Section III.B.3\) Sub-Limits](#).

Merchant services agreement means any agreement between the **insured organization** and a credit or debit card company, credit or debit card processor, financial institution, or independent sales organization allowing the **insured organization** to accept payment by credit card, debit card, or prepaid card.

Named insured means the entity stated in Item 1. of the Policy Declarations.

Network security incident means malicious or fraudulent:

- a) unauthorized access to or unauthorized use of;
- b) introduction or transmission of a computer virus or malicious code into;
- c) restriction or inhibition of access, including denial of service attack upon; or
- d) alteration, corruption, damage, manipulation, misappropriation, theft, deletion, or destruction of **digital data** in;

an **insured's system** due to the failure or circumvention of the **insured's** computer security protocols and protections. **Network security incident** does not include a **cyber extortion or ransomware demand**, although it does include any of the above incidents that result from a **cyber extortion or ransomware demand**.

Outsourced provider means any third party to which the **insured organization** has contracted to provide business process, cloud services and resources, hosting, security management, colocation or data storage, to and for the benefit of the **insured organization**, provided however, **outsourced provider** does not include any third party provider of connectivity, terrestrial or satellite communication services to the **insured**.

PCI assessments and penalties means all amounts the **insured** is legally obligated to pay pursuant to the terms of a **merchant services agreement** as a direct result of a **data breach incident** impacting credit, debit, or prepaid card information, including:

- a) contractual fines or penalties for non-compliance with the PCI Data Security Standards; and
- b) monetary assessments, including for operational expenses, card reissuance fees and fraud recoveries and case management fees.

Personal information means, whether printed or digital:

- a) any non-public information that could allow an individual person to be uniquely identified;
- b) any personal information as defined in any federal, state, local or foreign privacy protection law or regulation governing the control and use of an individual person's confidential or protected information; or
- c) any other information associated with an individual person that could be used to perpetrate identity theft or fraud;

in an **insured's** care, custody, or control, and that cannot be legally obtained or known by the general public.

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

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Policy period means the period of time set forth in Item 2. of the Policy Declarations, subject to any prior termination in accordance with [Section III.G. Termination of the Policy](#). **Policy period** does not include any of the **extended reporting period**.

Privacy regulation means any federal, state or local statute, law or regulation governing privacy protection and the confidentiality of **personal information**.

Privacy regulatory claim means a suit, civil investigation or civil proceeding brought by or on behalf of a governmental entity in such entity's regulatory capacity, for a **privacy violation incident** that results from and is in connection with an actual or suspected **data breach incident**, commenced by a written request for information, the service of a complaint or similar pleading.

Privacy regulatory fines means fines and penalties that an **insured** becomes legally obligated to pay as a direct result of a **privacy regulatory claim**, but only when permitted by applicable law.

Privacy violation incident means any:

- a) unintentional violation of any **privacy regulation** by an **insured**; or
- b) negligent failure by an **insured** to comply with the **insured organization's** public facing privacy policy provided to third parties, in written or electronic form.

Related matter means any **cyber incidents**, **wrongful acts** or **claims** based upon, arising from, in consequence of, directly or indirectly resulting from, or involving in any way continuous, repeated, the same, related, or substantially similar facts, circumstances, subjects, situations, causes, transactions, events, or a continuous, repeated, the same, related or a substantially similar series of facts, circumstances, subjects, situations, or transactions.

Restoration period means that period of time that begins at the end of the **waiting period** and continues until the earlier of:

- a) thirty (30) days after the date the **insured's system** is repaired or restored, to substantially the same level that had existed prior to the **interruption of service**; or
- b) one hundred eighty (180) days after the **waiting period** begins.

Retroactive date means the date shown in Item 9. of the Policy Declarations, or solely as respects a claim involving a **subsidiary** that was acquired by an **insured organization**, the **retroactive date** means the date the **insured organization** acquired such **subsidiary**.

Rogue employee means an employee of the **insured organization**, other than a **control group member**, acting intentionally and maliciously outside of the scope and authority of their employment position with the **insured organization**, and whose intentional malicious conduct causes a **cyber incident** or **claim**.

Subsidiary means:

- a) any entity of which more than fifty percent (50%) of the issued and outstanding shares are owned by the **insured organization**, on or before the Inception Date of this **policy** as stated in Item 2. of the Policy Declarations, but subject to the provisions in [Section III.I.3\) Cessation of Subsidiary](#), if applicable, and
- b) any entity created or acquired by an **insured organization** during the **policy period** solely if afforded such status pursuant to the provisions in [Section III.I.2\) Creation or Acquisition of Subsidiary](#).

Technology products means:

- a) software, source code, object code, programs or systems, and the data residing therein; and
- b) computer and communications hardware, firmware, components or related electronic equipment; created, designed, developed, installed, assembled, manufactured, leased or licensed by an **insured organization** to a third party for consideration, or otherwise manufactured, sold or distributed by or on behalf of the **insured**

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organization to a third party for consideration, however, **technology product** does not include any products that have been recalled by the **insured organization** prior to the **first inception date**.

Technology products and services wrongful act means any actual or alleged:

- a) defect, deficiency, inadequacy or dangerous condition in a **technology product**;
- b) failure of a **technology product** to perform in accordance with the terms and conditions of a contract or agreement or to perform the function or serve the purpose intended;
- c) failure of a **technology product**, or an error, omission, neglect or breach of duty committed in rendering a **technology service**, that allegedly causes or contributes to a data breach, transmission of a virus or malicious code, network security failure, of a direct customer of the **insured organization**;
- d) breach of contract for **technology services** with a client or customer of an **insured organization** if such breach was unintentional by the **insured**;
- e) wrongful act, error, misstatement, misleading statement, omission, neglect, or breach of duty committed or allegedly committed solely in the performance of or failure to perform a **technology service**; or
- f) failure to perform a **technology service** in accordance with the terms and conditions of a contract or agreement; and

as respects items d), e) and f) above, solely when committed or allegedly committed by an **insured** or by an **independent contractor**.

Technology services means any technology services performed for others for consideration, by the **insured** or by an **independent contractor** on behalf of an **insured organization**, including any:

- a) technology related training, consulting, staffing, research, analysis, programming, or support;
- b) data or application related services;
- c) information, network, or cyber security services;
- d) website, Internet, network related services;
- e) cloud computing related or information technology managed services;
- f) telecommunications services;
- g) computer or electronic hardware maintenance or repair; or
- h) services provided in conjunction with **technology products**.

Underwriters means the Underwriters providing this insurance as indicated in Item 15. of the Policy Declarations.

Waiting period means the period beginning at the time of the **interruption in service** and ending after the number of hours stated in Item 8. of the Policy Declarations for Insuring Clause G. Network Business Interruption Coverage.

Wrongful act means any **technology products and services wrongful act** or **media wrongful act**.