



CyberPro Policy

THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY WITH DEFENSE COSTS, EXPENSES OR ANY OTHER AMOUNT COVERED BY THIS POLICY INCLUDED WITHIN THE LIMIT EXCEPT AS OTHERWISE MIGHT BE PROVIDED WITHIN ANY ATTACHED ENDORSEMENTS. THIS POLICY COVERS ONLY CLAIMS FIRST MADE AND REPORTED TO US DURING THE POLICY PERIOD AND ARISING FROM ANY WRONGFUL ACTS, FACTS, OR CIRCUMSTANCES THAT WERE FIRST COMMITTED OR OCCURRED ON OR AFTER THE RETROACTIVE DATE BUT BEFORE THE END OF THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD, IF APPLICABLE. ALL CLAIMS ARE SUBJECT TO THE APPLICABLE LIMITS OF LIABILITY AND THE APPLICABLE DEDUCTIBLE(S) AS STATED IN THE DECLARATIONS, WHICH ARE CONSIDERED TO BE PART OF THIS POLICY.

TERMS THAT APPEAR IN BOLD FACE TYPE ARE DEFINED TERMS IN THIS POLICY AND HAVE SPECIAL MEANING. PLEASE READ THIS POLICY CAREFULLY.

You have purchased some or all of the Insuring Modules contained within this policy. The Insuring Modules purchased are what **we** cover. Please refer to the Declarations, which show the Insuring Module(s) **you** have purchased. If an Insuring Module(s) has not been purchased, that portion of this policy is not applicable and no coverage will be provided under that Insuring Module.



I. WHAT WE COVER: INSURING MODULES

INSURING MODULE 1: (SECURITY AND PRIVACY LIABILITY)

We shall pay on **your** behalf **damages** and **claims expenses** that exceed **your deductible** as stated within item 4 of the Declarations, which **you** become legally obligated to pay as a result of any **claim** first made against **you** and notified by **you** to **us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, arising from an actual or alleged **security and privacy wrongful act(s)** for which **you** are legally liable provided that such act(s) occurred on or after the **retroactive date**.

INSURING MODULE 2: (MULTIMEDIA AND INTELLECTUAL PROPERTY LIABILITY)

We shall pay on **your** behalf **damages** and **claims expenses** that exceed **your deductible** as stated within item 4 of the Declarations, which **you** become legally obligated to pay as a result of any **claim** first made against **you** and notified by **you** to **us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, resulting from any actual or alleged **multimedia and intellectual property wrongful act(s)** arising during **your multimedia** activities, provided that such act(s) occurred on or after the **retroactive date**.

INSURING MODULE 3: (TECHNOLOGY SERVICES)

We shall pay on **your** behalf **damages** and **claims expenses** that exceed **your deductible** as stated within item 4 of the Declarations, which **you** become legally obligated to pay as a result of any **claim** first made against **you** and notified by **you** to **us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, arising from an actual or alleged **professional wrongful act(s)**, provided that such act(s) occurred on or after the **retroactive date**.

INSURING MODULE 4: (MISCELLANEOUS PROFESSIONAL SERVICES)

We shall pay on **your** behalf **damages** and **claims expenses** that exceed **your deductible** as stated within item 4 of the Declarations, which **you** become legally obligated to pay as a result of any **claim** first made against **you** and notified by **you** to **us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, arising from an actual or alleged **professional wrongful act(s)**, provided that such act(s) occurred on or after the **retroactive date**.

INSURING MODULE 5: (NETWORK INTERRUPTION AND RECOVERY)

We shall indemnify **you** for **network expenditure** that exceed **your deductible** as stated within item 4 of the Declarations, and for **loss of business income** after expiration of the applicable **waiting period** as stated within item 4 of the Declarations, resulting from a **network event** sustained by **you** and notified by **you** to **us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, provided that such event(s) occurred on or after the **retroactive date**.

INSURING MODULE 6: (EVENT SUPPORT EXPENSES)

We shall indemnify **you** for **event management costs**, **notification expenses**, and **support and credit monitoring expenses**, that exceed **your deductible** as stated within item 4 of the Declarations, when such costs and expenses are incurred, following a **security event**, **privacy event**, **social media event** or breach of **privacy regulations** and notified by **you** to **us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, provided that such event(s) or breach(es) occurred on or after the **retroactive date**.

INSURING MODULE 7: (PRIVACY REGULATORY DEFENSE AND PENALTIES)

We shall pay on **your** behalf those amounts that exceed **your deductible** as stated within item 4 of the Declarations, which **you** are legally obligated to pay, including **claims expenses**, as a result of a civil regulatory action or investigation, including a **regulatory compensatory award**, civil penalty, or fines to the extent insurable by law, imposed by a federal, state, or governmental regulatory body against **you** and notified by **you** to **us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, as a result of a **privacy event**, **security event**, or breach of **privacy regulations** sustained by **you**, provided that such event(s) or breach(es) occurred on or after the **retroactive date**.

INSURING MODULE 8: (NETWORK EXTORTION)

We shall indemnify **you** for **network extortion monies** that exceed **your deductible** as stated within item 4 of the Declarations, when such monies are paid by **you** following a **network extortion threat**, to the extent insurable by law and notified by **you to us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, provided that such threat(s) occurred on or after the **retroactive date**.

INSURING MODULE 9: (ELECTRONIC THEFT, COMPUTER FRAUD AND TELECOMMUNICATIONS FRAUD)

We shall indemnify **you** for **your** monetary loss that exceeds **your deductible** as stated within item 4 of the Declarations sustained from **electronic theft**, **computer fraud** or **telecommunications fraud**, which occurs on **your computer network** and arises from a **security event** sustained by **you** and notified by **you to us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, provided that such event(s) occurred on or after the **retroactive date**.

INSURING MODULE 10: (REPUTATIONAL DAMAGE)

We shall indemnify **you** for **reputational damage** that exceed **your deductible** as stated within item 4 of the Declarations arising directly from a **network event** sustained by **you** and notified by **you to us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, provided that such **network event** occurred on or after the **retroactive date**.

II. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. With respect to Insuring Modules 1, 2, 3, 4, and 7, **we** shall have the right and duty to defend any **claim** by a third party against **you** seeking payment under the terms of this policy, even if any of the allegations of the **claim** are groundless, false, or fraudulent, and subject to the Limit of Liability, exclusions, and other terms and conditions of this policy. **You** shall seek **our** consent, which shall not be unreasonably withheld, prior to appointment of defense counsel.
- B. The Limit of Liability available to pay **damages** and as stated within item 3 of the Declarations shall be reduced, and may be completely exhausted, by payment of **claims expenses** or any other amounts covered under the policy. **Damages, claims expenses**, and any other amounts covered under this policy shall be applied against the **deductible**.
- C. **We** shall have the right to make any investigation **we** deem necessary including, without limitation, any investigation with respect to the **application** and statements made in the **application** and with respect to coverage.
- D. With respect to Insuring Modules 1, 2, 3, 4, and 7, if **you** refuse to consent to any settlement or compromise recommended by **us** that is acceptable to the claimant and elect to contest the **claim**, **our** total liability for any **damages, claims expenses**, and other amounts covered under this policy shall not exceed:
 - 1. The amount for which the **claim** could have been settled, less the remaining **deductible**, plus the **claims expenses** incurred up to the time of such refusal; and
 - 2. Fifty percent (50%) of any **damages, claims expenses**, or other amounts covered under this policy incurred after the date such settlement or compromise was recommended to **you**. The remaining fifty percent (50%) of such **damages, claims expenses**, or other amounts covered under this policy are to be borne by **you at your** own risk and uninsured under this policy.

or the unexhausted proportion of the applicable Limit of Liability, whichever is less.

- E. It is further provided that **we** shall not be obligated to pay any **damages, claims expenses**, or any other amounts covered under this policy, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **damages, claims expenses**, or other amounts covered under this policy and that upon such payment, **we** shall have the right to withdraw from the further defense thereof by tendering control of said defense to **you**.

III. LIMIT OF LIABILITY

- A. The Limit of Liability set forth in item 3(A) of the Declarations shall be the limit of **our** liability for each **claim** and in the aggregate arising under each Insuring Module, including **claims expenses**, where applicable.
- B. The Limits of Liability set forth in item 3(B) of the Declarations shall be **our** total Limit of Liability under this policy regardless of the number of Insuring Modules that apply, including **claims expenses** where applicable.
- C. Notwithstanding the aggregate Limit of Liability under each Insuring Module as set forth in item 3(A) of the Declarations, all payments made under this policy, regardless of the number of Insuring Modules that apply, will reduce the total Limit of Liability set forth in item 3(B) of the Declarations. In no event will **we** pay more than the total Limit of Liability as set forth in item 3(B) of the Declarations.
- D. All **claims** arising out of the same, related, or continuing acts, facts, or circumstances, without regard to the number of insureds, **claims**, or claimants shall be considered a single **claim** and only one Limit of Liability, as set forth in item 3(A) of the Declarations, will apply. All such **claims** shall be deemed to have been made at the time of the first such **claim**.
- E. In the event that a **claim** is notified by **you**, in accordance with Section XI of this policy, and attaches to more than one Insuring Module, only one Limit of Liability as set forth in item 3(A) of the Declarations shall apply. In such event, at most, only the highest of the applicable Limits of Liability shall apply to such **claim**. **We** have the sole discretion to allocate **claims** paid, if any, against the appropriate applicable Limit of Liability. With regard to such **claim**, in no event shall the amount paid by **us** under any Insuring Module be greater than the Limit of Liability set forth in item 3(A) of the Declarations.
- F. The Limits of Liability for the **extended reporting period**, if applicable, shall be part of and not in addition to the Limit of Liability for the **policy period**.

IV. DEDUCTIBLE

- A. The **deductible** amount set forth in item 4 of the Declarations shall apply to each and every **claim**. The **deductible** shall be satisfied by **your** payment of amounts covered under the policy. If a **claim** attaches to more than one Insuring Module, only the highest **deductible** applies.
- B. **Your** payment of the applicable **deductible** is a condition precedent to the payment by **us** of any amounts covered under this policy and **we** shall only be liable for the amount in excess of **deductible**, not to exceed **our** total Limit of Liability as stated in item 3 of the Declarations. **You** shall make direct payments within the **deductible** to the appropriate parties.
- C. All **claims** arising out of the same, related, or continuing acts, facts, or circumstances, without regard to the number of insureds, **claims**, or claimants shall be considered a single **claim** and only one **deductible** shall apply. All such **claims** shall be deemed to have been made at the time of the first such **claim**.
- D. **We** will not indemnify **you** in respect of **loss of business income** incurred during the time of the **waiting period** listed in item 4 of the Declarations.

V. TERRITORIAL LIMITS

This policy applies to any wrongful acts, insured events, breaches or threats detailed under the relevant Insuring Modules, committed, alleged to have been committed or occurring anywhere in the world unless otherwise stated in item 10 of the Declarations.

VI. INSURED

The insured means:

- A. The legal entity(s) shown in item 1 of the Declarations;
- B. Any **subsidiary** of the legal entity(s) shown in item 1 of the Declarations, but only with respect to wrongful acts, insured events, breaches or threats as detailed under the relevant Insuring Module that occur while it is a **subsidiary** and otherwise covered by this policy;
- C. Any past, present, or future officer, director, trustee, or **employee** of any party described in VI (A) or (B) above, but only while acting within the scope of their duties as such;
- D. In the event that any party described in VI (A) or (B) above is a partnership, limited liability partnership, or limited liability company, then any general or managing partner, principal, stockholder, or owner thereof, but only while acting within the scope of their duties as such;
- E. Any agent or independent contractor, including distributors, licensees, and sub-licensees, but only while acting on behalf of, at the direction of, or under the control of any party described in VI (A) or (B) above; and
- F. Any entity required by contract to be named an insured under this policy and to whom **we** consent in writing, but only for the acts of any such entity as provided by the contract, and as detailed under the relevant Insuring Module.

VII. DEFINITIONS

- A. **Application** means all application forms, including any attachments thereto, and all other information and materials submitted to **us** by **you** or on **your** behalf in connection with the underwriting of this policy. All such applications, attachments, information, and materials are deemed attached to and incorporated into this policy.
- B. **Bodily injury** means physical injury, sickness, disease, death, mental anguish, mental injury, shock, humiliation or emotional distress sustained by any person.
- C. **Breach of contract** means breach of a written contract(s) with a client to perform **technology services** because of:
 - 1. The **technology services** being negligently performed or containing a material defect;
 - 2. The **technology services** failing to meet any statutory term concerning quality, safety, or fitness for a particular express purpose, or failing to meet an implied duty to exercise that degree of care or skill consistent with applicable industry standards; or
 - 3. Breach of any hold harmless or indemnity provision regarding infringement of intellectual property rights, breach of security, or the confidentiality of information.
- D. **Claim** means:
 - 1. A written demand for monetary damages or non-monetary relief, a request for a tolling agreement, the service of a civil suit, or institution of arbitration proceedings received by **you** seeking monetary damages or the threat or initiation of a suit and/or proceeding seeking a temporary restraining order or a preliminary or permanent injunction;
 - 2. A formal civil administrative proceeding or regulatory action or investigation to the extent covered by Insuring Module 7;
 - 3. A **network event**;
 - 4. Notification to **us** of the need to incur **event management costs, notification expenses or support and credit monitoring expenses**; or
 - 5. A **network extortion threat**;
 - 6. Notification to **us** that **electronic theft, computer fraud and/or telecommunications fraud** has occurred.

E. **Claims expenses** means:

1. Reasonable and necessary legal costs and expenses incurred with **our** consent and charged by an attorney(s) approved by **us** to defend a **claim**;
2. All other reasonable and necessary fees, costs, and expenses resulting from the investigation, adjustment, defense, and appeal of a **claim**, if incurred by **us**, or by **you** with **our** written consent; or
3. With respect to Insuring Modules 1 and 7, **your** reasonable and necessary legal costs and expenses incurred with **our** consent in the defense of any civil administrative proceeding or regulatory action as a result of a **privacy event**, **security event**, or breach of **privacy regulations** by **you** or on **your** behalf by someone for whom **you** are legally responsible.

Claims expenses does not include any salary, overhead, or other charges incurred by **you** for any time spent in cooperating in the defense and investigation of any **claim** or circumstance which might lead to a **claim** notified under this policy.

F. **Computer fraud** means an intentional, unauthorized or fraudulent entry of **data** including when such entry is made via the internet or another **computer network** by any person or persons including an **employee** that results in any or all of the following;

1. **Your money, your securities or your other asset** being transferred, disbursed, paid, delivered, altered, corrupted or lost.
2. **Money, securities or other asset of your** customers or clients being disbursed, paid, delivered, altered, corrupted, or lost from an account that is in **your** trust or control. .
3. Creation of an unauthorized or fictitious account in **your** name

G. **Computer network(s)** means interconnected electronic, wireless, web, or similar systems (including all **hardware** and software) used to share or process **data** or information in an analog, digital, electronic or wireless format including, but not limited to, computer programs, electronic data, operating systems, servers, media libraries, associated input and output devices, mobile devices, networking equipment, telecommunications system, websites, extranets, off line storage facilities (to the extent that they hold electronic data), and electronic backup equipment. With the exception of Insuring Modules 5, 9 and 10 **computer network(s)** also means the use of computing resources that are delivered as a service over a network or the internet (commonly known as “cloud computing”).

H. **Computer virus** means a program that possesses the ability to create replicas of itself (commonly known as “auto-reproduction” program) within other programs or operating system areas, or which is capable of spreading copies of itself wholly or partly to other **computer network(s)**.

I. **Damages** means a monetary judgment, consumer redress fund, award, settlement, or punitive damages to the extent insurable under the law pursuant to which this policy is construed. **Damages** does not include:

1. **Your** future profits or royalties, restitution, or disgorgement of **your** profits;
2. The cost to comply with orders granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief;
3. Loss of **your** fees or profits, return or offset of **your** fees or charges, or **your** commissions or royalties provided or contracted to be provided;
4. Taxes, fines, penalties, or sanctions; however, this does not include civil fines or penalties to the extent insurable by law or to the extent otherwise covered under Insuring Module 7
5. Any damages that are a multiple of compensatory damages;
6. Any amount which **you** are not financially or legally obligated to pay;
7. Disgorgement or return of any remuneration or financial advantage to which **you** were not legally entitled;

8. Monetary judgments, awards, or settlements which are uninsurable under the law pursuant to which this policy is construed;
9. Past, present and/or future license fees of any kind; or
10. Liquidated damages.
- J. **Data** means any machine readable information, including ready for use programs or electronic data, irrespective of the way it is used and rendered including, but not limited to, text or digital media.
- K. **Deductible** means the amount specified in item 4 of the Declarations.
- L. **Delivered programs** means programs, applications, and software where the development stage has been finalized, and are ready for operational use, having passed all test-runs and been proven successful in a live environment.
- M. **Denial of service** means an unauthorized or malicious attempt or attack on or via a **computer network** to make a **computer network** unavailable to its intended users.
- N. **Electronic theft** means;
1. The transfer, alteration, corruption, or theft of **your intangible asset**
 2. Disclosure, duplication, or theft of **your intangible asset(s)** to a person(s) or entities(s) who are not authorized to receive it.
- O. **Employee(s)** means any individual in **your** service, including any part-time, seasonal, and temporary workers or any individual who is working on **your** behalf, or at **your** direction, and under **your** direct control. **Employee** does not include any of **your** partners or directors.
- P. **Event management costs** means those reasonable and necessary fees **you** incur with **our** consent and which are approved by **us** for the employment of a public relations consultant if **you** reasonably consider that such appointment is needed in order to avert or mitigate any material damage to any of **your** brands following an actual or alleged **security event, privacy event** breach of **privacy regulations**, or a **social media event**.
- Q. **Extended reporting period** means the period of time after the end of the **policy period** for reporting **claims** as provided in Section X of this policy.
- R. **Hardware** means any and all physical components of a computer system.
- S. **Human error** means an accidental action or operating error, by **your employee(s)**.
- T. **Intangible Asset** means non-public information or non-tangible property, which is owned by **you** and is held within **your computer network** but has no physical substance including trade secrets, copyrights, patents, trademarks, **data** or other information when the disclosure, theft, corruption or copying of such would cause you a monetary loss or give a competitor commercial advantage to which they would not have previously had.
- U. **Loss of business income** means the net income (net profit or loss before income taxes) that **you** would have earned had no **network event** occurred.
- Loss of business income** does not include **reputational damage, electronic theft** or **telecommunications fraud**.
- V. **Malicious code** means software designed to infiltrate, disrupt, or damage a **computer network** or gather sensitive information, all without the owner's informed consent, by a variety of forms including, but not limited to, Trojan horses, spyware, malware, dishonest adware and crimeware.
- W. **Miscellaneous professional services** means **your** business services, which are performed for and on behalf of **your** clients or in the course of **your** business and limited to those services stated in Item 11 of the Declarations.
- X. **Money** means a medium of exchange in current use and authorized or adopted by a domestic or foreign government and includes currency, coins, banknotes, bullions, or registered checks.

- Y. **Multimedia** means the release of any content in a physical or electronic format, including, internet content, newspapers, newsletters, magazines, books, brochures, images or other types of publications and advertising materials.
- Z. **Multimedia and intellectual property wrongful act** means:
1. Defamation including, but not limited to, disparagement or harm to the reputation or character of any person or organization, libel, slander, product disparagement, trade libel, or infliction of emotional distress or mental anguish;
 2. Invasion, infringement, or interference with the right to privacy or right of publicity, including false light, public disclosure of private facts, including those of an **employee**, intrusion, or commercial appropriation of name or likeness;
 3. Plagiarism, piracy or misappropriation of ideas;
 4. Infringement of copyright, domain name, title, or slogan; trade dress; or the dilution or infringement of trademark, service mark, service name, or trade name;
 5. Wrongful entry or eviction, trespass, eavesdropping, false arrest, malicious prosecution; or
 6. Liability arising out of **your** negligence in connection with **your** release of **multimedia** content in advertising.
- AA. **Named insured** means the individual, partnership, entity, or corporation designated as such in the Declarations.
- BB. **Network event** means loss sustained by **you** in connection with **your computer network(s)** arising from:
1. A **security event**; **privacy event** or a breach of **privacy regulations**;
 2. **Computer virus**;
 3. **Malicious code**;
 4. Accidental corruption or destruction of **your data** because of **human error**;
 5. Damage or destruction of **hardware**, so that **your data** stored is not machine readable;
 6. Malfunction or failure of **your computer network**;
 7. **Programming error** of **delivered programs**;
 8. Natural disaster, but only for corruption, destruction, or damage to **your data**; or
 9. Failure of a direct or back-up power supply or under/over voltage but only if such power supply is owned, operated, and controlled by **you**.
- However, a **network event**;
1. Only covers losses arising from **delivered programs**
 2. Only pertains to **your** loss and does not include coverage for any **claim** made by a third party or any **claim** resulting from an incident occurring on the computer infrastructure of an outsourced entity or third party service provider.
 3. Does not include coverage for loss of any **money** or **securities**, except as specifically provided under Insuring Module 9.
- CC. **Network expenditure** means costs incurred with **our** consent and authorized by **us** arising from a **network event**, which may include:
1. **Your** actual costs to restore, re-collect, or replace **data**, including expenses for materials, working time, and overhead cost allocation at the affected location(s) associated with restoring or replacing **data**;

2. **Your** reasonable and necessary costs and expenses incurred with **our** consent of specialists, investigators, forensic auditors, breach counsel or loss adjusters retained by **you** for the purpose of conducting a review or audit to substantiate that a **network event** is occurring or has occurred, or to determine the scope, cause, or extent of any theft or unauthorized disclosure of information or **data**, including when **your** portable media and **data** storage devices are away from **your** premises;
3. **Your** reasonable and necessary costs and expenses for the use of rented, leased, or hired external equipment, services, labor, premises, or additional operating costs, including staff overtime and expenditure, provided that these costs and expenses were reasonably incurred as a result of a **network event**; or
4. Any other reasonable and necessary costs and expenses that **you** incur directly as a result of a **network event**.

Network expenditure does not include loss of profits or **loss of business income** or **reputational damage**. **Network expenditure** is part of, and not in addition to, the Limit of Liability stated within item 3 of the Declarations.

DD. **Network extortion threat** means a credible threat or series of related threats, including a demand for funds, directed at **you** to avoid corruption, damage, destruction, or introduction of a **computer virus**, **malicious code**, or a **denial of service** to any aspect of **your computer network**, or any threat or series of related threats to release, or disclose confidential and personal information which resides within **your computer network**.

EE. **Network extortion monies** means:

1. Monies payable by **you**, with **our** prior written consent, to a person(s) or entity(ies) reasonably believed to present a **network extortion threat** for the purpose of terminating such a threat; or
2. Other reasonable and necessary costs and expenses payable by **you** with **our** prior written consent directly resulting from a **network extortion threat**.

FF. **Notification expenses** means those reasonable and necessary legal expenses, postage expenses, and related advertising expenses **you** incur with **our** consent and which are approved by **us** to mitigate damage to **your** brand or comply with governmental privacy legislation mandating notification to affected individuals in the event of a **security event**, **privacy event**, or breach of **privacy regulations** that results in the compromise or potential compromise of personal information maintained by **you** or otherwise residing on a **computer network** operated by **you** or on **your** behalf.

GG. **Other asset** means a tangible and physical product that is owned by **you** or is under **your** trust or control and:

1. Has an economic value; or
2. Is held as inventory for sale; or
3. Is sold or exchanged in trade or commerce, or
4. Is shipped via land sea or air

Other asset does not include **money** or **securities**

HH. **Policy period** means the period of time from the effective date to the expiration date as specified in item 2 of the Declarations, or to any earlier cancellation date.

II. **Privacy event** means a breach of confidentiality, infringement, or violation of any right to privacy including, but not limited to, a breach of **your** privacy policy, breach of a person's right of publicity, false light, intrusion upon a person's seclusion, or public disclosure of a person's private information.

JJ. **Privacy regulations** means statutes and regulations, associated with the confidentiality, access, control, and use of personally identifiable, non-public information including, but not limited to the following or similar statutes and regulations:

1. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), known as HIPAA, including amendments contained in the Health Information Technology for Economic and Clinical Health Act (HITECH) and related state medical privacy laws;

2. Gramm-Leach-Bliley Act of 1999 (G-L-B), also known as the Financial Services Modernization Act of 1999;
3. State and Federal statutes and regulations regarding the security and privacy of consumer information;
4. Governmental privacy protection regulations or laws associated with the control and use of personal information;
5. Privacy provisions of consumer protection laws, including the Federal Fair Credit Reporting Act (FCRA) and similar state laws;
6. Children's Online Privacy Protection Act or similar laws;
7. The EU Data Protection Act or other similar privacy laws in other jurisdictions; or
8. Identity Theft Red Flags Rules under the Fair and Accurate Credit Transactions Act of 2003 (FACTA).

KK. **Professional wrongful act** means:

1. Negligent breach of duty, negligent misrepresentation, or negligent act, error, omission or misleading statement in **your** performance of or failure to perform **technology services** with reference to Insuring Module 3 or **miscellaneous professional services** with reference to Insuring Module 4.
2. Unintentional **breach of contract**, but only in connection with **your** performance of or failure to perform **technology services**.

LL. **Programming error** means an error, flaw, mistake, failure, or fault, which occurs during the development or encoding of a computer program, software, or application, which would, when in operation, result in a malfunction or incorrect operation of a **computer network**.

MM. **Property damage** means physical injury to, impairment, destruction, or corruption of any tangible property, including the loss thereof. **Data** is not considered tangible property.

NN. **Regulatory compensatory award** means a regulatory agency's monetary award to a third party, including a sum or money which **you** are legally required to deposit into a fund as equitable relief for the payment of consumer claims due to an adverse judgement or settlement of a regulatory proceeding. **Regulatory compensatory award** does not include a criminal penalty or fine issued by a regulatory agency of any kind, including federal, state, or local governmental agencies.

OO. **Reputational damage** means **your** loss of net income (net profit or loss before income taxes) due to:

1. Termination of **your** services contract by one of **your** client(s) and/or
2. Reduction in the value of **your** business and brands;

where such loss arises directly from a **network event**.

PP. **Retroactive date** means the date specified in item 5 of the Declarations.

QQ. **Securities** means written negotiable and non-negotiable instruments or contracts which represent **money** or other **asset**
Securities does not include the actual **money** or other **asset**

RR. **Security and privacy wrongful act** means:

1. A **privacy event**, **security event** or breach of **privacy regulations** committed by **you** or which occurs on **your computer network**;
2. **Your** failure to disclose a **security event** or **privacy event** in violation of notification laws or regulations;
3. **Your** failure to prevent transmission of **malicious code**, a **computer virus**, or a **denial of service** attack from **your computer network**;

4. **Your** failure to prevent loss of **employee** personally identifiable information, as defined in **privacy regulations**; or
 5. **Your** failure to maintain the security or confidentiality of personally identifiable information stored on **your computer network** under any contract, including but not limited to a payment card processing agreement with a financial institution or other payment processor.
- SS. **Security event** means
1. The misuse or unauthorized access of **your computer network**;
 2. The use of **your computer network** for a **denial of service** attack; or
 3. **Your** breach of duty to protect the security and confidentiality of non-public proprietary corporate information, and/or personally identifiable non-public information either in an electronic or physical format.
- TT. **Social media event** means the release of any electronic **multimedia** content, by an **employee** on any social network or social media electronic platform.
- UU. **Subsidiary(ies)** means:
1. Any entity of which more than fifty percent (50%) of the issued and outstanding shares are owned by **you**, on or before the commencement of the **policy period**; or
 2. Any entity which becomes a **subsidiary** during the **policy period** provided that such entity does not represent more than a twenty percent (20%) increase in **your** total assets, employee count or gross revenue as of the date of the acquisition. Where such entity represents an increase in **your** total assets, employee count or gross revenue of more than twenty percent (20%), such entity shall be deemed a **subsidiary** under this policy, but only upon the condition that within thirty (30) days of it becoming a **subsidiary**, **you** shall have provided **us** with full particulars of the new **subsidiary** and agreed to any additional premium and/or amendment of the provisions of this policy required by **us** relating to such new **subsidiary**, subject to advanced receipt, review and acceptance by **us** of full and complete underwriting information.
- VV. **Support and credit monitoring expenses** means those reasonable and necessary expenses **you** incur with **our** consent and which are approved by **us** for the provision of credit file monitoring services, credit repair and restoration costs, identity theft monitoring expenses, identity theft education and assistance, including call center expenses, in the event of a **security event**, **privacy event** or a breach of **privacy regulations**, which results in the compromise or potential compromise of personal information maintained by **you** or otherwise residing on a **computer network** operated by **you** or on **your** behalf.
- WW. **Technology services** means **your** computer and electronic technology services, which are performed for and on behalf of **your** clients or in the course of **your** business and may include data processing, web design, hosting, internet or network services, content delivery, programming, technology consulting, installation, integration, configuration, support or management services, software development, design, sale or other related technology services. **Technology services** does not include any other professional activities or advice which is not directly related to technology activities.
- XX. **Telecommunications fraud** means an intentional, malicious or wilful act that results in the misuse or unauthorized access of **your** telecommunication system by a third party.
- YY. **Waiting period** means the number of hours that must elapse as provided in item 4 of the Declarations before the recovery of **loss of business income** can be considered.
- ZZ. "We," "us", or "our" means the insurers providing this insurance.
- AAA. "You," "your" and "yours" means the insured as provided in Section VI of this policy.

VIII. WHAT WE DO NOT COVER: EXCLUSIONS

We shall not be liable for any **claim** directly or indirectly arising out of or in any way attributable to:

- A. Any wrongful acts or the same, related, or continuing acts, facts, or circumstances that were first committed or first occurred prior to the **retroactive date**;
- B. Any event, threat and/or breach of regulations or the same, related or continuing events, threats, breaches, facts or circumstances that were first committed or first occurred prior to the **retroactive date**;
- C. Any wrongful acts or the same, related or continuing acts, facts, or circumstances that took place prior to the continuity date if **you** knew or could have reasonably foreseen by that date that such acts, facts, or circumstances could be the basis of a **claim** or circumstance. The continuity date is the earlier of the inception date of either this policy or the first policy issued by Ascent Underwriting to **you** that has been continuously renewed;
- D. Any event, threat and/or breach of regulations or the same, related or continuing events, threats, breaches, facts or circumstances that took place prior to the inception of this policy, if **you** knew or could have reasonably foreseen such events, threats, breaches, facts or circumstances could be the basis of a claim or circumstance;
- E. Any **claim** or circumstance notified to a previous insurer prior to the inception of this policy;
- F. Any **claim** made by an insured against another insured; unless such claim is brought by an **employee** under Insuring Modules 1 or 6;
- G. **Your** malicious, fraudulent, dishonest, or criminal act. Notwithstanding the foregoing, the insurance afforded by this policy shall apply to **claims expenses** incurred in defending any such **claim** until final adjudication, but shall not apply to any **damages** that **you** might become legally obligated to pay. **We** will have the right to recover those **claims expenses** incurred from those parties found to have committed malicious, fraudulent, dishonest, or criminal acts by a court, jury, or arbitrator. However, this exclusion does not bar coverage for the actions of a rogue **employee**, or coverage afforded under Insuring Module 9. For purposes of this exclusion, "rogue **employee**" means an **employee** who acts maliciously, fraudulently, dishonestly or criminally without the knowledge or consent of **your** Chief Information Officer, Risk Manager, General Counsel, Chief Operations Officer, Chief Executive Officer or their functional equivalents within the legal entity(s) shown in item 1 of the Declarations;
- H. **Bodily injury**, except that this exclusion shall not apply to wrongful infliction of emotional distress or mental anguish arising out of **technology services, multimedia, privacy event, security event**, or a breach of **privacy regulations**;
- I. **Property damage**; For the avoidance of doubt, this policy provides coverage arising from the loss of **data** when such loss arises from physical damage to **hardware**;
- J. Satellite failures; electrical or mechanical failures and/or interruption including, but not limited to, electrical disturbance, spike, brownout, or blackout; outages to electricity, gas, water, telephone, cable, telecommunications; gradual deterioration of overhead transmission, distribution lines or subterranean insulation or cabling or other infrastructure, unless such infrastructure is under **your** operational control and unless such **claim** forms part of a **network event**;
- K. The actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products, or services; including **your** cost guarantees, cost representations, contract price, or cost estimates being exceeded;
- L. The violation of any economic or trade sanctions by the United States government including, but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC");
- M. Any breach of any express, implied, actual, or constructive contract, warranty, guarantee, or promise, or the liability of others assumed by **you** under any contract or agreement, but this exclusion does not apply to:
 - 1. Any liability or obligation **you** would have in the absence of such contract or agreement;
 - 2. Unintentional **breach of contract**, but only with respect to **technology services**; or
 - 3. A breach of **your** privacy policy;

- N. The actual or alleged government enforcement or investigation of any state or federal regulation including, but not limited to, regulations promulgated by the United States Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission; but this exclusion does not apply:
1. To the extent that a **claim** falls under Insuring Module 7; or
 2. To a **claim** by a government entity brought in its capacity as a customer of **you** arising in the course of **your** provision of **technology services** or **miscellaneous professional services** to such government entity;
- O. Any employer-**employee** relations policies, practices, acts, or omissions, any actual or alleged refusal to employ any person, or any misconduct with respect to **employees**. This includes, but is not limited to, claims arising under workers compensation or similar laws unless such claims are made by an employee arising out of a **security event**, **privacy event** or breach of **privacy regulations**;
- P. Any actual or alleged discrimination of any kind including, but not limited to, age, color, race, gender, creed, national origin, marital status, sexual preferences, disability, or pregnancy;
- Q. Strikes or similar labor actions, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular uprising, military uprising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions. This exclusion also excludes coverage for any loss or damages arising out of confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority. This exclusion also excludes loss, cost, **damages**, or **claims expenses** of whatsoever nature directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing, or in any way relating to the above;
- R. All losses or expenses arising from a terrorist act. For the purposes of this agreement, a terrorist act means an act or series of acts including the use of force or violence 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, or ideological purposes, including the intention to influence any government and/or to put the public in fear for such purposes;
- S. **Your** commercial decision to cease providing a particular product or service;
- T. Prizes, awards, or coupons;
- U. Any fine or penalty arising out of any agreement by **you** to comply with or follow the Payment Card Industry Standard or any Payment Card Company rules; or implement, maintain, or comply with any security measures or standards related to any payment card data including, but not limited to, any fine or penalty imposed by a payment card company on a merchant bank or payment processor that **you** have paid or agreed to reimburse or indemnify. However, this exclusion shall not apply to civil penalties and fines to the extent insurable by law arising out of an otherwise covered **claim** under Insuring Module 7;
- V. Any actual or alleged unfair competition, antitrust violations, deceptive trade practices, or restraint of trade or antitrust statute, legislation, or regulation. However, this exclusion shall not apply to the extent that a **claim** falls under Insuring Module 7;
- W. The actual or alleged infringement of any patent or the misappropriation, theft, copying, display or publication of any trade secret, unless such **claim** arises from a **security event** or a **privacy event** and does not involve **your** actual or alleged infringement, misappropriation, theft, copying, display or publication;
- X. **Your** knowing use of illegal or unlicensed programs that are in violation of the provisions or laws referring to software protection;
- Y. The actual or alleged purchase, sale, offer of, or solicitation of an offer to purchase or sell securities, or violation of any securities law including, but not limited to, the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002, or any regulation promulgated under the foregoing statutes, or any federal, state, local, or foreign laws similar to the foregoing statutes, including "Blue Sky" laws, whether such law is statutory, regulatory, or common law;
- Z. Unauthorized trading of **money**, **securities**, **property** or any other medium whether or not in **your** name and whether or not in a genuine or fictitious account. This exclusion also applies to trading in excess of approved authority levels or outside of approved parameters. This exclusion shall not apply to direct losses incurred by **you** as a result of

computer fraud which results in improper financial gain to an **employee**. However, **we** shall not be liable for any **employee** salary, commissions, fees or other employment associated compensation;

IX. INNOCENT INSURED PROVISION

- A. Whenever coverage under this policy would be excluded, suspended, or lost because of non-compliance with Section XI, relating to the giving of notice of **claim** to **us**, 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 responsible for the loss or damage otherwise insured hereunder, 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 XI promptly after obtaining knowledge of the failure of any other insured to comply therewith. Notwithstanding the foregoing, the reporting of any such **claim** must be made during the **policy period** or **extended reporting period**, if applicable.
- B. Whenever coverage under this policy would be excluded, suspended, or lost because of Exclusion E relating to malicious, fraudulent, dishonest, or criminal acts 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. EXTENDED REPORTING PROVISIONS

- A. Automatic Extended Reporting Period: If either **you** or **us** shall cancel or non-renew this policy, **you** shall have the right following the effective date of such cancellation or non-renewal, to a period of sixty (60) days thereafter in which to give written notice to **us** of **claims** relating to those Insuring Module(s) purchased as shown in the Declarations, provided that any actual or alleged wrongful acts under Insuring Module(s) 1, 2, 3, or 4, **network event** under Insuring Module(s) 5 or 10, **security event, privacy event**, or breach of **privacy regulations** under Insuring Module 6, **privacy event, security event**, or breach of **privacy regulations** under Insuring Module 7, **network extortion threat** under Insuring Module 8, or **security event** under Insuring Module 9, all if applicable, occurred prior to the end of the **policy period** and are otherwise covered by this policy, and are reported to **us** during the automatic **extended reporting period**, and subject to the conditions set forth herein..
- B. Extended Reporting Period Endorsement: In the event of cancellation or non-renewal of this policy by **you** or **us**, **you** shall have the right, upon payment in full and not proportionally or otherwise in part of:
1. One hundred and twenty five percent (125%) of the gross annual premium set forth in item 6 of the Declarations to have issued an endorsement providing a 12-month **extended reporting period** for **claims** relating to those Insuring Module(s) purchased as shown in the Declarations, provided that any actual or alleged wrongful acts under Insuring Module(s) 1, 2, 3, or 4, **network event** under Insuring Module(s) 5 or 10, **security event, privacy event**, or breach of **privacy regulations** under Insuring Module 6, **privacy event, security event**, or breach of **privacy regulations** under Insuring Module 7, **network extortion threat** under Insuring Module 8, or **security event** under Insuring Module 9, all if applicable, occurred prior to the end of the **policy period** and are otherwise covered by this policy and are reported to **us** during the **extended reporting period**, and subject to the conditions set forth herein; or
 2. Two hundred percent (200%) of the gross annual premium set forth in item 6 of the Declarations to have issued an endorsement providing a 24-month **extended reporting period** for **claims** relating to those Insuring Module(s) purchased as shown in the Declarations, provided that any actual or alleged wrongful acts under Insuring Module(s) 1, 2, 3, or 4, **network event** under Insuring Module(s) 5 or 10, **security event, privacy event**, or breach of **privacy regulations** under Insuring Module 6, **privacy event, security event**, or breach of **privacy regulations** under Insuring Module 7, **network extortion threat** under Insuring Module 8, or **security event** under Insuring Module 9, all if applicable, occurred prior to the end of the **policy period** and are otherwise covered by this policy and are reported to **us** during the **extended reporting period**, and subject to the conditions set forth herein.

In order for the **named insured** to purchase the **extended reporting period**, the payment of the additional premium must be paid to **us** within thirty (30) days of the non-renewal or cancellation.

- C. The Limit of Liability for the above **extended reporting periods** shall be part of, and not in addition to, the Limit of Liability for the **policy period**.
- D. **Our** quotation of a different premium, **deductible**, or Limit of Liability or changes in policy language for the purpose of renewal shall not constitute a refusal to renew by **us**.
- E. The right to the **extended reporting period** shall not be available to the **named insured** where cancellation or non-renewal by **us** is because of non-payment of premium or **your** failure to pay amounts within the applicable **deductible**.
- G. All notices and premium payments with respect to the **extended reporting period** shall be directed to **us** through **your** insurance agent or broker.
- H. At the commencement of the **extended reporting period** in Paragraph B. above, the entire premium shall be deemed earned and in the event the **named insured** terminates the **extended reporting period** for any reason prior to its natural expiration, **we** will not be liable to return any premium paid for the **extended reporting period**.

XI. NOTICE OF CLAIM OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

- A. If any **claim** is made against **you** under Insuring Module(s) 1, 2, 3, or 4 then **you** shall forward every demand, notice, summons, or other information received by **you** or **your** representative to **us**, through persons named in item 7 of the Declarations, as soon as practicable after **your** Chief Information Officer, Risk Manager, General Counsel, Chief Operations Officer, Chief Executive Officer or their functional equivalents within the legal entity(s) shown in item 1 of the Declarations have first become aware of such **claim**, provided that such demand, notice, summons or other information is not received by **us** more than fourteen (14) days after the expiration of the **policy period**.
- B. If **you** have any **claim** under Insuring Module(s) 5, 6, 7, 8, 9, or 10 then, **you** shall immediately forward to **us** notice through persons named in item 7 of the Declarations, as soon as practicable after **your** Chief Information Officer, Risk Manager, General Counsel, Chief Operations Officer, Chief Executive Officer or their functional equivalents within the legal entity(s) shown in item 1 of the Declarations have first become aware of such **claim**, provided that such notice is not received by **us** more than fourteen (14) days after the expiration of the **policy period**.
- C. If during the **policy period**, **your** Chief Information Officer, Risk Manager, General Counsel, Chief Operations Officer, Chief Executive Officer or their functional equivalents within the legal entity(s) shown in item 1 of the Declarations become aware of any acts, facts, or circumstances that they believe could give rise to a **claim**, they must give written notice of the following information to **us**, through persons named in item 7 of the Declarations, as soon as practicable during the **policy period**:
 1. Specific details of the acts, facts, or circumstances that could reasonably be the basis for a **claim**;
 2. Possible **damages**, penalties, or other amounts potentially covered under this policy that may result or has resulted from the acts, facts or circumstances;
 3. Details regarding how **you** first became aware of the acts, facts, or circumstances; and
 4. The **computer network** security and event logs, which provide evidence of the alleged incident.

Any subsequent **claim** arising out of such acts, facts, or circumstances which is the subject of the written notice will be deemed to be a **claim** at the time written notice complying with the above requirements was first given to **us**. Any **claim** arising under Insuring Module(s) 5, 9 or 10 will be deemed to have been made on the date **you** first became aware of the acts, facts, or circumstances resulting in such loss.
- D. A **claim** shall be considered to be reported to **us** when notice is first given to **us** through persons or entity named in item 7 of the Declarations.

XII. CALCULATION OF LOSS PROVISIONS REGARDING LOSS OF BUSINESS INCOME, INTANGIBLE ASSET AND REPUTATIONAL DAMAGE

In the event of loss occurring under Insuring Modules 5, 9 and/or 10 an auditor and/or a loss adjuster will be appointed by mutual agreement of **us** and **you** to calculate the amount of loss. If such an agreement cannot be reached, we will appoint the auditor and/or loss adjuster subject to **your** consent, such consent not to be unreasonably withheld. **We** will pay the cost and expense related to the auditor and/or loss adjuster that exceed **your deductible** as stated in Item 4 of the Declarations. Such payment will be applied against the applicable Limit of Liability.

Requests made by **you** for indemnity by **us** shall be accompanied by a computation of the loss consistent with this section of the policy. This shall set out in detail how the loss has been calculated and what assumptions have been made. **You** shall produce any documentary evidence, including any applicable reports, books of accounts, bills, invoices, and other vouchers and copies of such which **we** may require, and **you** shall afford **us** or **our** agent every assistance in their investigations.

Any **claims** payment under this Section will, where applicable, be reduced by the extent to which **you**:

- A. Use damaged or undamaged **data**, or **intangible asset**, or
- B. Make use of available stock, merchandise, or other **data or intangible asset**; or
- C. Use substitute facilities, equipment, or personnel.

LOSS OF BUSINESS INCOME UNDER INSURING MODULE 5 AND REPUTATIONAL DAMAGE UNDER INSURING MODULE 10

The calculation of loss regarding **loss of business income** and **reputational damage** under Insuring Module(s) 5 and 10 will be based solely on loss of the net income attributable to a **network event** and shall be based on an analysis of the revenues and costs generated during each month of the twelve (12) months prior to the loss occurring and will also take into account the reasonable projection of future profitability or otherwise had no loss occurred and will include all material changes in market conditions that would affect the profits generated.

INTANGIBLE ASSET UNDER INSURING MODULE 9

The calculation of loss regarding **intangible asset** under Insuring Module 9 will be based solely on loss of the net income attributable to **electronic theft** or **computer fraud** and shall be based on an analysis of the revenues and costs generated during each month of the twelve (12) months prior to the loss occurring and will also take into account the reasonable projection of future profitability or otherwise had no loss occurred and will include all material changes in market conditions that would affect the profits generated.

Any dispute that arises between **you** and **us** regarding the calculation of loss shall be resolved In accordance with Section **XXI DISPUTE RESOLUTION**.

XIII. ASSISTANCE AND COOPERATION

- A. **You** shall cooperate with **us** in all investigations. **You** shall execute all papers and render all assistance as requested by **us**. Part of this assistance may require **you** to provide copies of a third party's system security and event logs.
- B. Upon **our** request, **you** shall assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to **you** with respect to which insurance is afforded under this policy; and **you** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses at **your** own cost.
- C. **You** shall not admit any liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award, or dispose of any **claim** without **our** written consent. However, the prompt public admission of a **security event** potentially impacting non-public personally identifiable information of **employees** or third parties as required by governmental privacy legislation or credit card association operating requirements will not be considered as an admission of liability requiring **our** prior consent; however **we** are to be informed as soon as practicable of such public admission if such public admission is a circumstance that could lead to a **claim**.

- D. **We** shall have the right to make any investigation that **we** deem necessary with respect to coverage including, but not limited to, any investigation with respect to the **application**, statements made in the **application** and any supplemental material submitted therewith. **We** shall be permitted to inspect your property, operations, or records.
- E. **You** shall submit for examination under oath by **our** representative, if requested, in connection with all matters relating to this policy.

XIV. SUBROGATION

If any payment is made under this policy and there is available to **us** any of **your** rights of recovery against any third party, then **we** shall maintain all such rights of recovery. **You** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. **You** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **damages, claims expenses**, or any other amounts paid by **us**, and lastly to the **deductible**. Any additional amounts recovered shall be paid to **you**.

XV. OTHER INSURANCE

This policy shall apply in excess of any other valid and collectible insurance policy available to **you**, including any **deductible** or deductible portion thereof, unless such other insurance is written only as specific excess insurance over the Limit of Liability of this policy.

XVI. ENTIRE AGREEMENT

By acceptance of this policy, **you** agree that this policy embodies all agreements between **you** and **us** relating to this insurance. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or stop **us** from asserting any right under the terms of this insurance; nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this policy and signed by **us**.

XVII. ASSIGNMENT

The interest hereunder is not assignable by **you** or **your subsidiaries**. If an insured shall die or be adjudged incompetent, such insurance shall cover **your** legal representative as **you** would be covered under this policy.

XVIII. CANCELLATION BY YOU

If this policy is cancelled by **you**, thirty percent (30%) of the premium shall be deemed earned upon inception of this policy and **we** will refund the remaining unearned premium computed on a daily pro rata basis thereafter. No premium will be refunded where any **claims** or circumstances have been notified under this policy.

XIX. CANCELLATION BY US

We will only cancel this policy if **you** fail to pay the premium within the terms of the payment warranty specified within the Declarations, or if a principal, partner, executive officer, or director intentionally makes a material misrepresentation to **us** in regard to any **claim** notified to **us** under this policy; in which case, **we** will provide a notice of cancellation in accordance with the applicable law.

XX. CHANGE OF CONTROL

Should there be a "change of control" to the **Named Insured** during the **policy period** all coverage under this Policy shall terminate at the date of such "change of control" unless **we** have issued an endorsement extending coverage under this Policy and **you** have agreed to pay any additional premium and agreed to any additional terms of coverage required by **us**.

A "change of control" to the **Named Insured** will be considered to be any of the following: **your** acquisition by or merger into another entity, **your** liquidation or dissolution, or the sale, or disposition of substantially all of **your** assets.

XXI. WORDS AND TITLES OF PARAGRAPHS

The titles of paragraphs, section, provisions, or endorsements of or to this policy are intended solely for convenience and reference and are not deemed in any way to limit or expand the provisions to which they relate and are not part of this policy. Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

XXII. DISPUTE RESOLUTION

- A. No action shall lie against **us** unless, as a condition precedent thereto, there shall have been full compliance with all terms of this policy, and until the amount of **your** obligation to pay shall have been finally determined either by judgment or award against **you** after actual trial or arbitration or by written agreement of **you**, the claimant, and **us**.
- B. No person or organization or any legal representative thereof who has secured such judgment, award, or written agreement shall thereafter be entitled to make a **claim** under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join **us** as a party to an action or other proceeding against **you** to determine **your** liability, nor shall **we** be impleaded by **you** or **your** legal representative. Bankruptcy or insolvency of **you** or of **your** estate shall not relieve **us** of **our** obligations under this policy.
- C. Mediation. If any dispute arises between **you** and **us** involving this policy and/or a **claim** hereunder, it is hereby mutually agreed by **you** and **us** that such dispute shall be referred to a qualified mediator in a good faith effort to negotiate a resolution of the dispute, prior to the initiation of any arbitration or other proceedings. The party electing to mediate shall provide written notice to the other party setting forth its request to mediate and a brief statement regarding the issue to be mediated. The persons named in item 8 of the Declarations are authorized and directed to accept the Notice of Mediation on behalf of **us**. The **named insured** is authorized and directed to accept the Notice of Mediation on behalf of any insured.
- D. Arbitration. As a condition precedent to any right of action hereunder, in the event that a good faith effort to mediate pursuant to Section XXI (C) above cannot resolve a dispute between **you** and **us** involving this policy or a **claim** hereunder, it is hereby mutually agreed that such dispute shall be determined by final and binding arbitration before a single arbitrator. Such arbitration cannot be commenced until thirty (30) days after the conclusion of the mediation pursuant to Section XXI (C). If the parties cannot mutually select the arbitrator, the parties will refer the selection of the arbitrator to the American Arbitration Association.

XXIII. SERVICE OF SUIT CLAUSE (U.S.A.)

- A. Subject to the application of Section XXI, it is agreed that in the event of **our** failure to pay any amount claimed to be due under this policy, **we**, at **your** request, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this clause constitutes or should be understood to constitute a waiver of **our** rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or seek a transfer of a case to another court as permitted by the laws of the United States or any state in the United States. It is further agreed that service of process in such suit may be made upon **our** representative, designated in item 8 of the Declarations, and that in any suit instituted against any one of them upon this contract; **we** will abide by the final decision of such court, or of any appellate court in the event of an appeal.
- B. **Our** representative designated in item 8 of the Declarations is authorized and directed to accept service of process on **our** behalf in any such suit and/or upon **your** request to give a written undertaking to **you** that they will enter a general appearance upon **our** behalf in the event such a suit shall be instituted.
- C. Pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, **we** hereby designate the Superintendent, Commissioner, or Director of Insurance or other officer specified for that purpose in the statute, or his successor in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on **your** behalf or any beneficiary hereunder arising out of this policy, and **we** hereby designate **our** representative listed in item 8 of the Declarations as the person to whom the said officer is authorized to mail such process or a true copy thereof.

XXIV. CHOICE OF LAW

The interpretation of this policy and any disputes involving this policy shall be resolved applying the law designated in item 9 of the Declarations.

XXV. WARRANTY BY YOU

By acceptance of this policy, all insureds agree that the statements contained in the **application**, any application for insurance if this policy is a renewal, and any supplemental materials submitted therewith are their agreements and representations, which shall be deemed material to the risk assumed by **us**, and that this policy is issued in reliance upon the truth thereof.

The misrepresentation or non-disclosure of any matter by **you** or **your** agent in the **application** and any supplemental materials submitted to **us**, will render this policy null and void and relieve **us** from all liability under this policy.

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