

Cyber and Technology Liability Policy

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Cyber and Technology Liability Policy

SECTION I.A. OF THIS POLICY IS A THIRD PARTY LIABILITY COVERAGE SECTION AND APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED IN ACCORDANCE WITH THE TERMS IN THE POLICY. CLAIM EXPENSES ARE WITHIN AND REDUCE THE LIMIT OF LIABILITY. PLEASE REVIEW THE POLICY CAREFULLY.

Words and phrases in blue are defined in Section IV.

In consideration of the premium paid by the **Named Insured**, in reliance upon the **application**, and subject to the Declarations, limitations, conditions, provisions and other terms of this Policy, the **Insurer** and the **Insured** agree, with respect to the Insuring Agreements purchased, as stated on the Declarations page, as follows:

I. Insuring Agreements

A. THIRD PARTY LIABILITY COVERAGES

1. Technology and Professional Services

The **Insurer** will pay on behalf of an **Insured claim expenses** and **damages** that the **Insured** is legally obligated to pay as the result of a **claim** first made against the **Insured** during the **policy period** or extended reporting period (if applicable) alleging a **technology and professional services wrongful act** committed by the **Insured** or by a third party for the benefit of an **Insured** and for whose acts and omissions an **Insured** is legally responsible.

2. Media

The **Insurer** will pay on behalf of an **Insured claim expenses** and **damages** that the **Insured** is legally obligated to pay as the result of a **claim** first made against the **Insured** during the **policy period** or extended reporting period (if applicable) alleging a **media wrongful act** committed by the **Insured**

3. Privacy and Cyber Security

The **Insurer** will pay on behalf of an **Insured claim expenses** and **damages** that the **Insured** is legally obligated to pay as the result of a **claim** first made against the **Insured** during the **policy period** or extended reporting period (if applicable) alleging a **privacy and security wrongful act** committed by the **Insured**, an **outsourced provider** or a **rogue employee**.

4. Privacy Regulatory Defense, Awards and Fines

The **Insurer** will pay on behalf of an **Insured claim expenses** and **regulatory damages** that the **Insured Company** is legally obligated to pay as the result of a **privacy regulatory action**.

5. Supplemental Third Party Liability Prevention

Upon the **Insured's** exhaustion of the retention applicable to the Insuring Agreement under which the **Insurer** is providing coverage the **Insurer** will pay for **claim avoidance costs**, at the **Insurer's** sole discretion and with prior written consent, that the **Insured** thereafter incurs as a direct result of the **Insured's** reasonable investigation of a potentially covered circumstance that it reports to the **Insurer** in accordance with Section

VI. Notice. Such **claim avoidance costs** will be part of, and not in addition to, the limit of liability, as stated in Item 7. on the Declarations page, and will in no way serve to increase or supplement such aggregate limit of liability.

B. FIRST PARTY COVERAGES

1. Business Interruption and Extra Expense

The **Insurer** will pay for **loss of business income** and reimburse the **Insured Company** for **extra expense** during the **period of restoration** that the **Insured Company** incurs resulting from **cyber security breach** directly causing a total or partial interruption or deterioration in the **Insured Company's** business operations.

2. Data Recovery

The **Insurer** will reimburse the **Insured Company** for **data recovery expenses** that the **Insured Company** incurs directly resulting from a **cyber security breach**.

3. Cyber-Extortion

The **Insurer** will reimburse the **Insured Company** for **cyber-extortion expenses** that the **Insured Company** incurs directly resulting from and in response to a **cyber-extortion threat**.

C. DATA BREACH RESPONSE AND CRISIS MANAGEMENT COVERAGE

The **Insurer** will pay **data breach response and crisis management costs** that the **Insured Company** incurs for a continuous twelve (12) month period resulting from a **data breach** that is first discovered by an **executive officer** and as soon as notice of the **data breach** is reported to the **Insurer**.

D. CONDITIONS

1. The coverage provided under Sections I.A.1. Technology and Professional Services, I.A.2. Media, I.A.3. Privacy and Cyber Security and I.A.4. Privacy Regulatory Defense, Awards and Fines shall apply only if:

- (a) the first such **third party wrongful act** or **related matter** occurs on or after the **retroactive date** as stated in Item 7. on the Declarations page and prior to the Policy expiration date, as stated in Item 2. on the Declarations page;
- (b) prior to the Policy's effective date, as stated in Item 2. on the Declarations page, or that of the first such policy issued and continuously renewed by the **Insurer**, of which this Policy is a renewal, no **executive officer** knew or could have reasonably foreseen that such **third party wrongful act** or **related matter** did or likely would result in a **claim**;
- (c) the **claim** is reported to the **Insurer** during the **policy period** or extended reporting period (if applicable) and is reported in accordance with Section VI. Notice; and
- (d) notice of such **third party wrongful act** or **related matter** alleged or contained in any **claim** or in any circumstance has not been provided under any other prior policy of which this Policy is a renewal or replacement, or any subsequent policy, irrespective of whether such prior or subsequent policy was issued by the **Insurer** or other entity.

2. The coverage provided under Sections I.B. First Party Coverages and I.C. Data Breach Response and Crisis Management Coverage shall apply only if:
 - (a) an **executive officer** first becomes aware of such **first party incident** or **related matter** during the **policy period**;
 - (b) such **first party incident** is reported to the **Insurer** during the **policy period** or automatic extended reporting period (if applicable) and is reported in accordance with Section VI. Notice; and
 - (c) notice of such **first party incident** or **related matter** has not been provided under any prior policy of which this Policy is a renewal or replacement, or any subsequent policy, irrespective of whether such prior or subsequent policy was issued by the **Insurer** or other entity.

II. Defense and Settlement

A. DEFENSE

The **Insurer** has the right and duty to defend any **claim** covered under Sections I.A.1. Technology and Professional Services, I.A.2. Media, I.A.3. Privacy and Cyber Security and I.A.4. Privacy Regulatory Defense, Awards and Fines made against an **Insured** even if the allegations in the **claim** are groundless, false or fraudulent. The **Insurer** will select and appoint defense counsel.

B. SETTLEMENT

The **Insurer** has the right with the prior written consent of the **Insured**, such consent may not be unreasonably withheld, to settle a **claim**. If the **Insured** refuses to consent to any such settlement recommended by the **Insurer** and agreed to by the claimant, then the **Insurer's** duty to defend ends and the **Insurer's** limit of liability for such **claim** will not exceed the amount for which the **Insurer** could have settled such **claim** had the **Insured** consented to settlement, plus **claim expenses** incurred up to the time the **Insurer** made its settlement recommendation, plus an additional fifty percent (50%) of **claim expenses** and **damages** incurred by an **Insured** after the **Insurer** had made its settlement recommendation. All such payments by the **Insurer** are subject to Section III. Limit of Liability and Retention. Notwithstanding the foregoing, the **Insurer** shall have the right but not the duty to participate in the continuing defense of such **claim**.

III. Limit of Liability and Retention

A. LIMIT OF LIABILITY OPTION

The **Insured** shall elect the Policy's limits to apply on a Combined Limits or Separate Limits basis, as stated in Item 7. on the Declaration page.

1. Combined Limits

- (a) If the **Insured** elects Combined Limits then the Policy's Combined Policy Aggregate Limit, as stated in Item 7. on the Declarations page, is the **Insurer's** maximum liability for **loss** under all Insuring Agreements combined, inclusive of **data breach response and crisis management costs** regardless of the number of **claims**, Insuring Agreements triggered or individuals or entities making **claims**.

Upon exhaustion of such limit of liability, the **Insurer** will not be liable to pay any further **loss** with respect to this Policy.

- (b) If a **sublimit** with respect to an Insuring Agreement is stated in Item 7. on the Declarations page, then such **sublimit** will be the **Insurer's** maximum liability for **loss** with respect to such Insuring Agreement. Upon exhaustion of such **sublimit**, the **Insurer** will not be liable to pay any further **loss** with respect to the coverage provided by the subject Insuring Agreement. Each **sublimit** will be part of, and not in addition to, this Policy's Combined Policy Aggregate Limit of Liability and will in no way serve to increase or supplement such limit of liability. All payments made under a **sublimit** will reduce such limit of liability.

2. Separate Limits

If the **Insured** elects Separate Limits then the Policy's:

- (a) Third and First Party Aggregate Limit, as stated in Item 7. on the Declarations page, is the **Insurer's** maximum liability for all **damages, claim expenses, regulatory damages, loss of business income, extra expense, data recovery expenses, cyber-extortion expenses** and **claim avoidance costs** for all Third Party Liability Coverages and First Party Coverages, regardless of the number of **Insureds, claims, first party incidents**, or individuals or entities making **claims**.

If a **sublimit** with respect to an Insuring Agreement is stated in Item 7. on the Declarations page, then such **sublimit** will be the **Insurer's** maximum liability for **loss** with respect to such Insuring Agreement. Upon exhaustion of such **sublimit**, the **Insurer** will not be liable to pay any further **loss** with respect to the coverage provided by the subject Insuring Agreement. Each **sublimit** will be part of, and not in addition to, the Policy's Third Party Liability and First Party Aggregate Limit of Liability and will in no way serve to increase or supplement such limit of liability. All payments made under a **sublimit** will reduce such limit of liability.

- (b) Data Breach Response and Crisis Management Aggregate Limit of Liability

Data Breach Response and Crisis Management Aggregate Limit, as stated in Item 7. on the Declarations page, is the **Insurer's** maximum liability for all **data breach response and crisis management costs** for Data Breach Response and Crisis Management Coverage regardless of the number of **data breaches**.

3. Exhaustion of Limit

Upon exhaustion of the Combined Policy Aggregate Limit of Liability under the Combined Limits option or the Third Party and First Party Aggregate Limit of Liability or the Data Breach Response and Crisis Management Aggregate Limit of Liability under the Separate Limits option or after the **Insurer** has deposited or escrowed with a court of competent jurisdiction any amounts remaining in the Policy's aggregate limit of liability prior to exhaustion, the **Insurer** will not be liable to pay any further **loss** under the Policy.

B. RETENTIONS

- 1. Solely with respect to coverage provided on a Combined Limits basis, the **Insurer** is liable only for that portion of covered **damages, regulatory damages** and **claim expenses** resulting from a **third party wrongful act** and for that portion of covered **first party costs** resulting from a **first party incident** that is in excess of the applicable Insuring Agreement's retention amount, as stated in Item 7. on the Declarations page. If more

than a single retention applies to a **claim** and/or **first party incident**, then the **Insured** is responsible for paying the highest applicable retention. The retention will be borne entirely by the **Insured** alone and not by the **Insurer**.

2. Solely with respect to coverage provided on a Separate Limits basis, the **Insurer** is liable only for that portion of covered **damages**, **regulatory damages** and **claim expenses** resulting from a **third party wrongful act** and for that portion of any covered **loss of business income**, **extra expense**, **data recovery expenses**, **cyber-extortion expenses**, **data breach response and crisis management costs** and **claim avoidance costs** resulting from a **cyber security breach** or **cyber-extortion threat** that is in excess of the applicable Insuring Agreement's retention amount, as stated in Item 7. on the Declarations. If more than a single retention applies to a **claim** and/or **first party incident**, then the **Insured** is responsible for paying the highest applicable retention. The retention will be borne entirely by the **Insured** alone and not by the **Insurer**.

As respects Data Breach Response and Crisis Management Coverage a separate retention will apply and the **Insurer** is liable only for that portion of any covered **data breach response and crisis management costs** directly resulting from a **data breach**.

C. RELATED MATTERS AND RELATED LOSSES

1. **Related Third Party Wrongful Acts**

Covered **claims** resulting from **related matters** will be treated as a single **claim** first made against the **Insured** at the time the first such **related matter** occurred irrespective of whether such **related matter** occurred prior to or during the **policy period** and irrespective of the number of **related matters**, the identity or number of **Insureds** involved, or the number and timing of such **related matters**.
2. **Related First Party Incidents**
 - (a) All **related matters** involving **first party incidents** (other than **cyber-extortion threats**) will be considered a single **first party incident** which shall be deemed to have been discovered on the date on which the earliest such **first party incident** was discovered by an **executive officer**.
 - (b) All **related matters** involving **cyber-extortion threats** will be considered a single **cyber-extortion threat** first occurring on the date the first such **cyber-extortion threats** occurred.
3. **Related Loss**

All **loss** will be considered a single **loss** occurring on the date the first **related matter** giving rise to such **loss** first occurred or is first discovered, irrespective of the number of **related losses**, the identity or number of **Insured's** involved or the number and timing of such **related losses**.

IV. Definitions

A. APPLICATION

This Policy's **application** includes the signed application, information, statements, representations, attachments, exhibits and other material submitted to the **Insurer** in connection with the underwriting of the Policy or any other policy of which this Policy is a renewal or replacement. The **application** shall be deemed a part of this Policy as if physically attached.

B. BREACH RESPONSE PROVIDERS

The **Insurer's** pre-approved breach response providers available on the eRisk Hub® website or upon request of the **Insurer**.

C. CLAIM

1. A written demand for monetary damages, services, or injunctive or other non-monetary relief;
2. A civil proceeding for monetary damages, services, or injunctive or other non-monetary relief that is commenced by service of a complaint or similar pleading, including any appeal thereof;
3. A mandatory arbitration or other mandatory alternative dispute resolution proceeding for monetary damages, services, or injunctive or other non-monetary relief that is commenced by a written demand, including any appeal thereof, or a non-mandatory arbitration or other alternative dispute resolution proceeding to which the **Insurer** has consented in writing; and
4. A **privacy regulatory action** with respect to Section I.A.4. Privacy Regulatory Defense, Awards and Fines.

D. CLAIM EXPENSES

1. Reasonable and necessary fees for the defense of a **claim** defended by an attorney selected by the **Insurer** in accordance with Section II. Defense and Settlement as well as other reasonable and necessary fees, costs and expenses that result from the investigation, adjustment, negotiation, arbitration, defense or appeal of a **claim**; and
2. Premiums on appeal bonds, attachment bonds or similar bonds. Provided, however, the **Insurer** is not obligated to apply for or furnish any such bond.

E. CLAIM AVOIDANCE COSTS

Those costs incurred by the **Insured** whose intention is to prevent a **claim** that may arise from a circumstance the **Insured** reports in accordance with Section VI.A. Notice of Circumstance.

Claim Avoidance Costs do not include:

1. payments recoverable by the **Insured**;
2. any element of profit for the **Insured**;
3. any charge or credit against any fee owed or payable to the **Insured**; and
4. costs, fees or other expenses the **Insured** incurs to establish or document the existence or amount of **claim avoidance costs**.

F. CONFIDENTIAL BUSINESS INFORMATION

Any non-public third party business information, whether encrypted or unencrypted, that cannot be lawfully obtained or known by the general public, including trade secrets, customer lists, drawings, financial information and marketing plans that are provided to the **Insured** by a third party.

G. CONSUMER REDRESS AMOUNT

That sum of money that the **Insured** is legally obligated to deposit in a fund for the payment of consumer claims as the result of a litigated **privacy regulatory action** or by written agreement by the claimant, **Insured** and **Insurer**.

H. COVERAGE SECTIONS

I.A. Third Party Liability Coverages, I.B. First Party Coverages and I.C. Data Breach Response and Crisis Management Coverage.

I. CYBER-EXTORTION EXPENSES

1. Reasonable and necessary money, property or other consideration surrendered as payment by or on behalf of the **Insured Company** to which the **Insurer** has consented, such consent may not be unreasonably withheld, in order to prevent or limit a **cyber-extortion threat**; and
2. The reasonable and necessary costs agreed to by the **Insured Company** and the **Insurer** to conduct an investigation to determine the cause and scope of a **cyber-extortion threat**.

J. CYBER-EXTORTION THREAT

A threat against a **network** first made during the **policy period** to:

1. disrupt the **Insured's** business operations;
2. alter, damage, or destroy data stored on the **network**;
3. use the **network** to generate and transmit malware to third parties;
4. deface the **Insured's** website; and
5. access **personally identifiable information, protected health information or confidential business information** stored on the **network**,

made by a person or group, whether acting alone or in collusion with others, demanding payment or a series of payments in consideration for the elimination, mitigation or removal of the threat.

K. CYBER SECURITY BREACH

Any unauthorized: access to, use or misuse of, modification to the **network**, and/or denial of **network** resources by attacks perpetuated through malware, viruses, worms, and Trojan horses, spyware and adware, zero-day attacks, hacker attacks and denial of service attacks.

L. DAMAGES

1. Compensatory damages resulting from a judgment, award or settlement agreement, including pre-judgment and post-judgment interest, which the **Insured** becomes legally obligated to pay as a result of a **claim**; and
2. Punitive, exemplary damages and multiple damages, if the insuring of such damages is permitted under the laws and public policy of the jurisdiction under which the Policy is construed. Enforceability of punitive, exemplary damages and multiple damages will be governed by the applicable law that most favors coverage for such damages.

Damages do not include:

1. the return of any fees paid to an **Insured** or the offset of any future fees to be charged by or owed to an **Insured**;
2. lost investment income;
3. costs incurred by an **Insured** to withdraw or recall **technology products**, including products that incorporate an **Insured's technology products**, **technology services** or **professional services**;
4. costs incurred by an **Insured** to correct, re-perform or complete any **technology services** or **professional services**;
5. costs incurred by an **Insured** or by a third party at the direction of the **Insured** to remediate, repair, replace, restore, modify, update, upgrade, supplement, correct or otherwise improve a **network** to a level of functionality beyond that which existed prior to a **cyber security breach**;
6. civil or criminal fines or penalties or compliance violation remedies imposed on an **Insured**; provided, however, this provision does not apply to the coverage provided under Section I.A.4. Privacy Regulatory Defense, Awards and Fines;
7. liquidated damages in a written contract or agreement in excess of an **Insured's** liability that otherwise result from a **third party wrongful act**;
8. the monetary value of an electronic fund transfer or transaction that is lost or diminished during transfer;
9. any amounts incurred prior to the **Insured** providing notice of a **claim** pursuant to the terms of this policy;
10. the value of non-monetary relief, including any amount attributable to or arising therefrom; and
11. royalty or licensing fees or payments.

M. DATA BREACH

The actual or reasonably suspected theft, loss or unauthorized acquisition of data, which an **executive officer** first becomes aware of during the **policy period**, that has or may compromise the security, confidentiality and/or integrity of **personally identifiable information**, **protected health information** or **confidential business information**.

N. DATA BREACH REPORTING REQUIREMENT

Any provision in a law, statute or regulation, domestic or foreign, that requires the **Insured** to provide notification to affected persons of a breach of such person's **personally identifiable information** or **protected health information**.

O. DATA BREACH RESPONSE AND CRISIS MANAGEMENT COSTS

1. Costs charged by **Breach Response Providers** to:
 - (a) determine the legal applicability of and actions necessary to respond to a **data breach reporting requirement**;
 - (b) perform computer forensics to determine the existence, cause and scope of a **data breach** or **cyber security breach**;

- (c) notify individuals of a **data breach** who are required to be notified pursuant to any **data breach reporting requirement**;
 - (d) voluntarily notify individuals of a **data breach** who may not be required to be notified under an applicable **data breach reporting requirement**;
 - (e) operate a call center to manage **data breach** inquiries;
 - (f) provide credit or identity monitoring and identity protection and restoration services or any similar service for those individuals whose **personally identifiable information** was or may have been breached;
 - (g) provide medical identity restoration for those individuals whose **protected health information** was or may have been breached;
 - (h) minimize harm to the **Insured Company's** reputation by hiring a public relations or crisis communications firm, and
2. Any reasonable and necessary costs charged by a qualified provider who is not a **Breach Response Providers** and who the **Insurer** has consented in writing, such consent may not be unreasonably withheld, prior to the services being rendered to provide comparable services to those detailed in 1.(a) through 1.(h) above; provided, however, the maximum rate the **Insurer** will pay for such services shall not exceed the **Breach Response Providers** pre-negotiated rates; and
 3. Costs charged by a PCI Forensics Investigator to perform forensics to determine the existence, cause and scope of a breach or suspected breach of cardholder data.

P. DATA RECOVERY EXPENSES

Reasonable and necessary costs incurred by the **Insured Company** with the **Insurer's** prior written consent, such consent may not be unreasonably withheld, to:

1. determine whether damaged or destroyed computer programs, software or electronic data can be replaced, recreated, restored or repaired; and
2. replace, recreate, restore or repair such damaged or destroyed computer programs, software or electronic data residing on the **network** to substantially the form in which it existed immediately prior to a **cyber security breach**.

Q. EXECUTIVE OFFICER

Any duly elected or appointed Chief Executive Officer, Chief Financial Officer, Chief Information Officer, Chief Privacy Officer, Chief Security Officer, Chief Technology Officer, Chief Risk Officer, Chief Legal Officer, Risk Manager, General Counsel and in-house attorney designated to be in charge of litigation, or the functional equivalent of any of the foregoing, of the **Insured**.

R. EXTRA EXPENSE

Reasonable and necessary expenses in excess of the **Insured's** normal operating expenses that the **Insured** incurs to reduce or avoid **loss of business income**.

S. FIRST PARTY COSTS

Any [loss of business income](#), [extra expense](#), [data recovery expenses](#), [cyber-extortion expenses](#), [data breach response and crisis management costs](#) and [claim avoidance costs](#).

[First Party Costs](#) do not include any amounts incurred prior to the [Insured](#) providing notice of the [first party incident](#).

T. FIRST PARTY INCIDENT

A [cyber security breach](#), [cyber-extortion threat](#) or [data breach](#).

U. INSURED

The [Insured Company](#); and

1. any past, present or future officer, director, member, principal, partner, trustee, employee (other than a [rogue employee](#)), leased worker and temporary employee of the [Insured Company](#) acting in their capacity and in accordance with their authority as such;
2. any entity that an [Insured Company](#) is required by written contract to be insured under the Policy, but only for [third party wrongful acts](#) committed by the [Insured Company](#) or any persons identified in Section IV.U.1. and Section IV.U.3.;
3. any independent contractor performing services for the [Insured Company](#) under a written contract but solely with respect to such independent contractor's duties on behalf and for the benefit of the [Insured Company](#); and
4. with respect to Section I.A.2. Media, any person or entity that disseminates [matter](#) on behalf and for the benefit of an [Insured](#) where, prior to such dissemination, an [Insured](#) has agreed in writing to include such person or entity as an [Insured](#) under the Policy.

V. INSURED COMPANY

The [Named Insured](#) and any [subsidiary](#).

W. INSURER

The Insurance Company stated on the Declarations page.

X. LOSS

All [damages](#), [claim expenses](#), [regulatory damages](#) and [first party costs](#).

Y. LOSS OF BUSINESS INCOME

1. Net income (net profit or loss before income taxes) that could have reasonably been earned or net loss that could have reasonably been avoided; and
2. Continuing normal and reasonable operating expenses, including payroll.

A [loss of business income](#) calculation is based upon the amount of actual [loss of business income](#) the [Insured Company](#) sustains per hour during the [period of restoration](#).

Z. MANAGEMENT CONTROL

1. Ownership interests representing more than fifty percent (50%) of the voting, appointment or designation power of a company for the selection of a majority of (i) the board of directors of a corporation (ii) the management committee members of a joint venture or partnership or (iii) the members of the management board of a limited liability company; or
2. The right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an entity, to select, appoint or designate a majority of (i) the board of directors of a corporation (ii) the management committee members of a joint venture or partnership or (iii) the members of the management board of a limited liability company.

AA. MATTER

The content of any communication of any kind whatsoever, whether public or private, regardless of the nature or form of such content or the medium by which such content is communicated, including but not limited to language, data, facts, fiction, music, photographs, images, artistic expression, or visual or graphical materials.

BB. MEDIA WRONGFUL ACT

Any:

1. libel, slander, or any other form of defamation or harm to the character or reputation of any person or entity, including product disparagement or trade libel;
2. copyright infringement or misappropriation of property rights, information or ideas or dilution or infringement of title, slogan, trademark, trade name, service mark or service name;
3. common law unfair competition or unfair trade practices alleged in conjunction with the acts described above in Sections IV.BB.1. and IV.BB.2.;
4. invasion or infringement of the right of privacy or publicity, including the torts of intrusion upon seclusion, publication of private facts, false light, and misappropriation of name or likeness;
5. infliction of emotional distress or mental anguish;
6. false arrest, detention or imprisonment, harassment, trespass, wrongful entry or eviction, eavesdropping, or other invasion of the right of private occupancy;
7. plagiarism, piracy or misappropriation of ideas under implied contract; and
8. economic harm to a third party directly resulting from the party's reliance or failure to rely upon the content of **matter** which is false or erroneous,

resulting from an **Insured's** acquiring, blogging, broadcasting, collecting, disseminating, distributing, editing, exhibiting, gathering, obtaining, producing, publishing, releasing, researching, recording, tweeting or uttering **matter** through traditional and digital methods including but not limited to cable television, radio, movie and music studios, newspapers, magazines, books and print publications, website, apps, CD-ROMs and DVDs.

CC. NAMED INSURED

The entity stated in Item 1. on the Declarations page.

DD. NETWORK

A connected system of computing hardware, software, firmware and associated electronic components under the ownership, operation or control of, or leased by, an **Insured**.

EE. OUTSOURCED PROVIDER

Any third party, including a cloud service provider, to which an **Insured** has contracted to provide professional services or to process, maintain or transmit **personally identifiable information**, **protected health information** or **confidential business information** on behalf and for the benefit of an **Insured**.

FF. PERIOD OF RESTORATION

That period of time that begins at the end of the **waiting period** and which continues until the earlier of:

1. the date the **Insured Company's** operations are restored to the condition that existed immediately prior to the **cyber security breach**; or
2. one hundred-twenty (120) days after the date of the **cyber security breach**.

GG. PERSONALLY IDENTIFIABLE INFORMATION

Information, whether printed or digital, encrypted or unencrypted, in an **Insured's** or **outsourced provider's** care, custody or control, that alone or in conjunction can be used to uniquely identify an individual, including but not limited to such information as name, social security number, address, birth date, physical characteristics, IP address, biometric record, unique mobile device identifier, geo-location data, mobile telephone number, email address, user name, text message or email, call log, contacts and address book entries, financial or payment information, health or medical information, photos or videos or internet browsing history and non-public personal information as defined by the Gramm-Leach-Bliley Act; provided, however, **personally identifiable information** does not include information that is lawfully available to the general public.

HH. POLICY PERIOD

The period of time stated in Item 2. on the Declarations page, beginning on the effective date and expiring on the date of termination, expiration or cancellation of the Policy, whichever is earliest.

II. POLLUTANTS

Any substance exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances include but are not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, nuclear materials, nuclear waste, asbestos, including materials to be recycled, reconditioned, or reclaimed. Pollutants shall also mean any air emission, odor, waste water, oil or oil products, lead or lead products, latex infectious or medical waste, noise, dust, fibers, germs, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi) and electric or magnetic or electromagnetic field.

JJ. PRIVACY AND SECURITY WRONGFUL ACT

Any:

1. Loss or theft of or failure to protect [personally identifiable information](#), [protected health information](#) or [confidential business information](#);
2. violation of any law, statute or regulation governing the authenticity, availability, confidentiality, storage, control, disclosure, integrity or use of [personally identifiable information](#) or [protected health information](#);
3. violation of a [data breach reporting requirement](#);
4. failure to reasonably implement privacy or security practices required by governmental law or regulations; and
5. failure to prevent a [cyber security breach](#) that results in:
 - (a) the inability of an authorized user to gain access to the [network](#);
 - (b) the malicious addition, alteration, copy, destruction, deletion, disclosure, damage, removal or theft of data residing on the [network](#);
 - (c) a denial of service attack emanating from the [network](#) which damages or destroys third party's hardware, computer programs or electronic data residing on a third party's network; or
 - (d) the transmission of malware from the [network](#) to third parties.

KK. PRIVACY REGULATORY ACTION

A written request for information, civil investigative demand or civil proceeding brought by or on behalf of a governmental or regulatory authority first initiated and reported during the [policy period](#) against an [Insured](#) that results from an actual or alleged [privacy and security wrongful act](#) committed by the [Insured](#), an [outsourced provider](#) or a [rogue employee](#).

LL. PRIVACY REGULATORY FINE

A civil monetary fine or penalty imposed on an [Insured](#) by a governmental or regulatory authority.

MM. PROFESSIONAL SERVICES

The services stated in Item 6. on the Declarations page.

NN. PROTECTED HEALTH INFORMATION

All protected and individually identifiable health information, whether printed or digital, encrypted or unencrypted, held or transmitted by an [Insured](#) or its business associate, as those terms are defined by HITECH, the Health Insurance Portability and Accountability Act of 1996 Privacy Rule or any amendment thereto, including the Health Information Technology for Economic and Clinical Health Act and final Omnibus Rule issued on January 17, 2013.

OO. REGULATORY DAMAGES

Any [consumer redress amount](#) and [privacy regulatory fines](#).

PP. RELATED LOSSES

All **losses** that directly result or arise from the same, similar or continuous **claims** or **first party incidents**.

QQ. RELATED MATTERS

1. All **third party wrongful acts** that are the same, similar or arise from a continuous nexus of facts, circumstances, acts, errors or omissions, whether logically or causally related or connected; and
2. All **first party incidents** that are the same, similar or arise from a continuous nexus of facts, circumstances, acts, errors or omissions, whether logically or causally related or connected.

RR. RETROACTIVE DATE

The applicable date, if any, stated in Item 7. on the Declarations page for each Insuring Agreement in Section I.A. Third Party Liability Coverages.

SS. ROGUE EMPLOYEE

An employee of the **Insured Company** who deliberately acts outside the course and scope of employment and whose intentional conduct results in a **claim**; provided, however, **rogue employee** does not include an **executive officer**.

TT. SUBLIMIT

The applicable amount, if any, stated in Item 7. on the Declarations page for each Insuring Agreement within each **Coverage Section**.

UU. SUBSIDIARY

1. Any entity over which the **Named Insured**, directly or indirectly, has or had **management control** through or by way of one or more subsidiaries on or before the effective date of the **policy period**;
2. Any entity in which the **Named Insured** acquires **management control** during the **policy period**, either directly or indirectly, whose gross revenue does not exceed fifteen percent (15%) of the gross revenue of the **Insured Company**; and
3. Any entity of which the **Named Insured** acquires **management control** during the **policy period**, either directly or indirectly, whose gross revenue exceeds fifteen percent (15%) of the gross revenue of the **Insured Company**:
 - (a) but only for a period of sixty (60) days following the **Named Insured's** direct or indirect ability to exert **management control**; and
 - (b) after such sixty (60) period but only if (1) the **Named Insured** provides the **Insurer** with full particulars of such entity and agrees to remit any additional premium and amendments to the Policy relating to such entity and (2) the **Insurer** has agreed to add such entity as a **subsidiary** by way of a written endorsement to the Policy.

For purposes of this definition, revenue is measured by the most recent fiscal year prior to the effective of the Policy.

Notwithstanding the foregoing, coverage afforded by this Policy will apply only to [third party wrongful acts](#) and [first party incidents](#) occurring after the effective date that the [Insured Company](#) has obtained [management control](#) of such [subsidiary](#) and prior to the time that such [Insured Company](#) ceased to have [management control](#) of such [subsidiary](#) unless:

1. the [Insurer](#) is notified in writing of such change in circumstances prior to the effective date thereof and agrees in writing to provide coverage for [third party wrongful acts](#) and [first party incident](#) occurring on or after such effective date; and
2. the [Insured Company](#) accepts any special terms, conditions and exclusions and pays any additional premium charge required by the [Insurer](#).

VV. TECHNOLOGY AND PROFESSIONAL SERVICES WRONGFUL ACT

Any:

1. act, error, omission, neglect, negligent misrepresentation or breach of duty;
2. injury to a person arising out of defamation, including libel, slander, or other defamatory or disparaging statements or materials;
3. infringement of an intellectual property right except as otherwise excluded in Section V.N. Patent and Section V.O. Trade Secrets;
4. the failure of [technology products](#) to perform the intended function or serve their intended purpose; and
5. the failure of [technology services](#), [professional services](#) or [technology products](#) to meet any applicable legal or industry standard concerning quality, safety or fitness for a particular purpose.

WW. TECHNOLOGY PRODUCTS

Computer or telecommunications hardware or software products, components or peripherals or electronic products or components:

1. created, designed, distributed, manufactured, or sold by or on behalf and for the benefit of an [Insured](#); and
2. leased or licensed by an [Insured](#) to third parties, including software updates, service packs and other maintenance releases provided for such products.

XX. TECHNOLOGY SERVICES

Any computer, cloud computing, information technology, telecommunication, electronic services and any related consulting and staffing services including but not limited to data processing, data and application hosting, the provision of managed services, software as a service (SaaS), platform as a service (PaaS), infrastructure as a service (IaaS), network as a service (NaaS), computer systems analysis, computer consulting and training, programming, computer systems installation, management, repair, and maintenance, network design and Internet service.

YY. THIRD PARTY WRONGFUL ACT

A [technology and professional services wrongful act](#), [media wrongful act](#) and [privacy and security wrongful act](#).

ZZ. WAITING PERIOD

The number of hours stated in Item 7. on the Declarations page that must elapse prior to commencement of the [period of restoration](#).

V. Exclusions

The Policy does not apply to any [claim](#) or [first party incident](#) alleging, arising out of, based upon or attributable to:

A. DELIBERATE ACTS

dishonest, intentional or knowing wrongful, fraudulent, criminal or malicious:

1. acts, errors or omissions; or
2. willful violations of law, including privacy laws or regulations,

by an [Insured](#), other than a [rogue employee](#) as applicable; provided, however, the [Insurer](#) will provide the [Insured](#) with a defense of any otherwise covered [claim](#) and pay any otherwise covered [claim expenses](#) until there is a final, non-appealable judgment or adjudication in any action or proceeding as to such dishonest, intentional or knowing wrongful, fraudulent, criminal or malicious conduct, at which time the [Insured](#) shall reimburse the [Insurer](#) for all [claim expenses](#). Notwithstanding the foregoing, criminal proceedings are not covered under the Policy regardless of the allegations made against an [Insured](#).

For the purposes of determining the applicability of this exclusion the knowledge of or conduct by:

1. a natural person [Insured](#) will not be imputed to any other natural person [Insured](#); and
2. an [executive officer](#) will be imputed to the [Insured Company](#).

B. PERSONAL PROFIT

the gaining of any profit, remuneration, or financial or non-financial advantage to which the [Insured](#) is not entitled; provided, however, the [Insurer](#) will provide the [Insured](#) with a defense of any otherwise covered [claim](#) and pay any otherwise covered [claim expenses](#) until there is a final, non-appealable judgment or adjudication in any action or proceeding as to such gaining of profit, remuneration, or financial or non-financial advantage to which the [Insured](#) is not entitled, at which time the [Insureds](#) shall reimburse the [Insurer](#) for all [claim expenses](#).

C. UNINSURABLE MATTERS

matters deemed uninsurable under the law pursuant to which this Policy is construed.

D. PRIOR ACTS

[third party wrongful acts](#) occurring prior to the [retroactive date](#) and [first party incidents](#) discovered prior to the effective date of this Policy.

E. BODILY INJURY AND PROPERTY DAMAGE

bodily injury, sickness, disease, emotional distress, mental injury, mental tension, mental anguish, pain and suffering, humiliation or shock sustained by any person, including death that results from any of these, or damage to or destruction of any tangible property, including loss of use thereof

whether or not it is damaged or destroyed; provided, however, this exclusion will not apply to any otherwise covered [claim](#) for emotional distress, mental injury, mental tension or mental anguish, pain and suffering, humiliation or shock that directly results from a covered [third party wrongful act](#).

F. EMPLOYMENT PRACTICES

the following actually or allegedly occurring in connection with a person's employment or application for employment with the [Insureds](#): discrimination, retaliation, sexual or any other type of harassment, wrongful dismissal, discharge or termination, whether actual or constructive, wrongful discipline, wrongful deprivation of career opportunity, wrongful demotion or change in employment status, wrongful evaluation, negligent hiring, discipline, supervision or retention, failure to promote, failure to grant tenure, employment related misrepresentation, failure to adopt or comply with adequate workplace or employment policies or procedures, failure to train, breach of any oral, written, or implied employment contract; provided, however, this exclusion shall not apply to an otherwise covered [claim](#) under Section I.A.3. Privacy and Cyber Security.

G. OWNED ENTITY

[claims](#) made against the [Insureds](#) if, at the time the [third party wrongful act](#) giving rise to such [claim](#) was committed:

1. the [Insured](#) controlled, owned, operated or managed the claimant; or
2. the [Insured](#) was an owner, partner, director, officer or employee of the claimant;

For the purpose of this exclusion, a ten percent (10%) or more owner of the voting stock of a publicly held corporation or a forty percent (40%) or more owner of the voting stock of a privately held corporation shall be deemed to control, own, operate or manage any such corporation making such [claim](#).

H. INSURED V. INSURED

[claim](#) made against an [Insured](#) and brought by, or on behalf of an [Insured](#) or parent company, successor or assignee of an [Insured](#); provided, however, this exclusion shall not apply to an otherwise covered [claim](#) made by any past, present or future officer, director, member, principal, partner, trustee, employee or leased worker or temporary employee of the [Insured Company](#):

1. when the [claim](#) is made outside of their capacity and pursuant to their authority as such; or,
2. to an [Insured](#) alleging a [privacy and security wrongful act](#).

I. ERISA

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 ERISA, the Employee Retirement Income Security Act of 1974, or any analogous federal, state or local statutory or common law; provided, however, this exclusion shall not apply to an otherwise covered [claim](#) under Section I.A.3. Privacy and Cyber Security.

J. SECURITIES

the purchase, sale, or offer or solicitation of an offer to purchase, sell or solicit securities or any violation of a securities law, including the Securities Act of 1933, the Securities Exchange Act of 1934, and any regulation promulgated under or pursuant to the foregoing, or any federal, state or local laws analogous to the foregoing (including “Blue Sky” laws), whether such law is statutory, regulatory or common law.

K. RICO

violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organizations Act, or “RICO”) and any regulation promulgated under or pursuant to the foregoing or any federal, state or local law analogous to the foregoing, whether such law is statutory, regulatory or common law.

L. ANTITRUST AND UNFAIR COMPETITION

unfair methods of competition and unfair or deceptive acts or practices including deceptive advertising and pricing, price fixing, restraint of trade, monopolization or any violation of the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, or any other federal, state or local law, whether statutory, regulatory or common law, addressing anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade; provided, however, this exclusion shall not apply to an otherwise covered [claim](#) under Section I.A.3. Privacy and Cyber Security and Section I.A.4. Privacy Regulatory Defense, Awards and Fines and an otherwise covered [claim](#) resulting from subsection 3. [media wrongful act](#) under Section I.A.2. Media.

M. UNSOLICITED COMMUNICATIONS

unsolicited electronic dissemination of faxes, e-mails or other communications by or on behalf of an [Insured](#) to actual or prospective customers of an [Insured](#) or any other third party, including but not limited to 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; provided, however, this exclusion shall not apply to an otherwise covered [claim](#) directly resulting from a [cyber security breach](#) under Section I.A.3. Privacy and Cyber Security and any [loss of business income](#) otherwise covered under Section I.B.1. Business Interruption and Extra Expense.

N. PATENT

actual or alleged infringement, misappropriation, dilution, misuse or inducement to infringe, misappropriate, dilute or misuse any patent or patent right.

O. TRADE SECRETS

actual or alleged misappropriation of trade secrets; provided, however, this exclusion shall not apply to an otherwise covered [claim](#) directly resulting from a [cyber security breach](#) under Section I.A.3. Privacy and Cyber Security.

P. POLLUTION

actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of [pollutants](#) or testing for, monitoring, removal, containment, treatment, detoxification, neutralization or cleanup of any [pollutants](#).

Q. CONTRACTUAL

any obligation an [Insured](#) has underwritten contract; provided, however, this exclusion shall not apply to liability an [Insured](#) would have in the absence of a contract or an [Insured's](#):

1. breach of an exclusivity or confidentiality provision contained in a written agreement;
2. violation of an intellectual property right except a violation of a patent right;
3. negligent performance of [technology services](#) or [professional services](#) for a client or customer; or
4. provision of [technology products](#) to a client or customer which contain a material defect.

R. FORCE MAJEURE

fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, or act of God, however caused.

S. WAR

strikes or similar labor action, war, whether declared or not, invasion, act of foreign enemy, civil war, mutiny, coup d'état, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions; provided, however, this exclusion shall not apply to any actual, alleged or threatened attack against the [network](#), with the intention to cause harm or further social, ideological, religious or political objectives or to intimidate any person or entity in furtherance of such objectives.

T. INFRASTRUCTURE FAILURE

electrical, mechanical, Internet, telecommunication, cable or satellite failure, fluctuation or outage not under an [Insured's](#) operational control, however caused, including but not limited to any electrical power interruption, short-circuit, surge, brownout or blackout.

U. GOVERNMENTAL ORDERS

any court order or demand requiring the [Insured](#) to provide law enforcement, administrative, regulatory or judicial body or other governmental authority access to [personally identifiable information](#), [protected health information](#) or [confidential business information](#).

V. OVER-REDEMPTION

price discounts, prizes, awards, coupons or any other valuable consideration given in excess of the contracted or expected amount.

W. UNAUTHORIZED COLLECTION AND USE

unauthorized or unlawful collection, acquisition or use of [personally identifiable information](#) or [protected health information](#); provided, however, this exclusion shall not apply to a [claim](#) directly resulting from the acts of a [rogue employee](#).

VI. Notice

A. NOTICE OF CIRCUMSTANCE

Solely with respect to Sections I.A.1. Technology and Professional Services, I.A.2. Media, I.A.3. Privacy and Cyber Security and I.A.4. Privacy Regulatory Defense, Awards and Fines, if during the [policy period](#) or the extended reporting period (if applicable), an [Insured](#) first becomes aware of any circumstance that may reasonably be expected to be the basis of a [claim](#) being made against an [Insured](#), and if during the [policy period](#) the [Insured](#) provides the [Insurer](#) written notice of such circumstance along with any [third party wrongful act](#), the reasons for anticipating such [claim](#), with full particulars as to the dates, persons and entities involved, then any resulting [claim](#) which is subsequently made against an [Insured](#) and reported to the [Insurer](#) that arises out of such circumstance or [related matter](#) will be considered made at the time such notice of circumstance was provided.

B. NOTICE OF CLAIM AND FIRST PARTY INCIDENT

The [Insured](#), as a condition precedent to the obligations of the [Insurer](#) under the Policy, must provide to the [Insurer](#) written notice of any [claim](#) first made against an [Insured](#) and any [first party incident](#) first discovered as soon as reasonably practicable after an [executive officer](#) becomes aware of such [claim](#) or [first party incident](#).

Notwithstanding the foregoing, each [claim](#) under a Third Party Liability Coverage Section must be reported as soon as reasonably practicable after an [executive officer](#) becomes aware of such [claim](#), but in no event, later than sixty (60) days after the end of the [policy period](#).

C. NOTICE TO WHOM

1. Notice of a [claim](#) and/or [first party incident](#) must be provided to the [Insurer](#) and notice of a [third party wrongful act](#) or circumstance may be reported to the [Insurer](#) as stated in Item 4. on the Declarations page.
2. In addition to the notice requirement above, notice of a [first party incident](#) must also be provided to the [Insurer](#) via the XL Breach Hotline as stated in Item 5. on the Declarations page. Notice to the XL Breach Hotline alone will not serve as proper notice under the Policy.
3. The email/certified post mail defined above shall be deemed effective when received by the [Insurer](#).

D. WHEN A CLAIM IS DEEMED MADE

A [claim](#) will be deemed made pursuant to definition of [claim](#) clause: (1) IV.C.1. and IV.C.3., on the earliest date an [executive officer](#) receives the first written demand; (2) IV.C.2., on the date of service; and (3) IV.C.4., on the date an [executive officer](#) receives written notice of such action.

E. INSURED'S CLAIM AND FIRST PARTY INCIDENT OBLIGATIONS

1. In connection with a:
 - (a) **claim**, the **Insured** will, as a condition precedent to the obligations of the **Insurer** under the Policy, provide the **Insurer** with all information that the **Insurer** reasonably requires, including full particulars as to the dates, persons and entities involved in the **claim** and the manner in which the **Insured** first became aware of the **claim**;
 - (b) **first party incident**, as a condition precedent to the obligations of the **Insurer** under the Policy, the **Insured Company** will provide the **Insurer** proof of loss with full particulars within three (3) months: after the first discovery by an **executive officer** of the **first party incident** (other than a **cyber-extortion threat**); or first occurrence of the **cyber-extortion threat**.

F. ASSISTANCE AND COOPERATION

1. The **Insured** will reasonably cooperate with the **Insurer** and upon the **Insurer's** request:
 - (a) assist the **Insurer** in the investigation of any **third party wrongful act** and **first party incident**;
 - (b) attend hearings, depositions and trials;
 - (c) assist the **Insurer** in defending and effecting settlements of **claims**;
 - (d) secure and provide evidence which includes but not limited to obtain the attendance of witnesses;
 - (e) allow the **Insurer** to participate in the handling and management of any suit or proceeding;
 - (f) assist the **Insurer** in enforcing any right, contribution or indemnity against a third party which may be liable to the **Insured**; and
 - (g) allow a computer forensics expert access to systems, files and information.
2. The **Insured** will take all reasonable steps to limit and mitigate any **loss** arising from any **third party wrongful act** or **first party incident** for which coverage may be or is sought under the Policy. The **Insured** will do nothing which in any way increases the **Insurer's** exposure under the Policy or in any way prejudices the **Insurer's** potential or actual rights of recovery.

VII. Cancellation and Non-Renewal

A. CANCELLATION BY THE NAMED INSURED

Except for nonpayment of premium, as set forth below, the **Named Insured** has the exclusive right to cancel the Policy. Cancellation may be effected by mailing to the **Insurer** written notice stating when such cancellation will be effective. In such event, the **Insurer** will retain the pro rata portion of earned premium.

B. CANCELLATION BY THE INSURER

The **Insurer** may cancel the Policy only for nonpayment of premium. The **Insurer** will provide not less than ten (10) days written notice stating the reason for cancellation and when the Policy will be canceled. Notice of cancellation will be sent to the **Named Insured**.

C. NON-RENEWAL OF COVERAGE

The **Insurer** is under no obligation to renew the Policy upon its expiration. If the **Insurer** elects to non-renew the Policy, the **Insurer** will deliver or mail to the **Named Insured** written notice stating such at least sixty (60) days prior to the Policy's expiration date, as stated in Item 2. on the Declarations page. The offering of terms and conditions different from the expiring terms and conditions, including limits of liability, retention or premium, will not constitute a refusal to renew or a cancellation of the Policy.

VIII. Extended Reporting Period

A. AUTOMATIC EXTENDED REPORTING PERIOD

Effective upon the date of termination or cancellation of the Policy for any reason other than nonpayment of premium, the **Named Insured** will automatically be provided a period of sixty (60) days in which to give written notice to the **Insurer** of:

1. **claims** first made against the **Insured** during the **policy period** or the automatic extended reporting period for **third party wrongful acts** committed by an **Insured** after the **retroactive date** and prior to the end of the **policy period**; or
2. **first party incidents** that are first discovered by an **Insured** during said sixty (60) day period and otherwise covered by the Policy.

B. OPTIONAL EXTENDED REPORTING PERIOD

Effective upon the date of termination or cancellation of the Policy for any reason other than nonpayment of premium, the **Named Insured** will have the right to purchase an optional extended reporting period of one (1), two (2) or three (3) years. Such right must be exercised by the **Named Insured** within sixty (60) days of the date of termination or cancellation of the Policy by providing written notice to the **Insurer** and remitting the amount of additional premium described below in which to provide written notice to the **Insurer** of **claims** first made against the **Insured** during the optional extended reporting period for **third party wrongful acts** committed by an **Insured** after the **retroactive date** and prior to the end of the **policy period**.

The additional premium for the optional extended reporting period will be for a:

1. one (1) year optional extended reporting period, one hundred percent (100%) of the annual premium for the Policy;
2. two (2) year optional extended reporting period, one hundred fifty percent (150%) of the annual premium for the Policy; or
3. three (3) year optional extended reporting period, one hundred seventy-five percent (175%) of the annual premium for the Policy.

C. CONDITIONS

1. The automatic extended reporting period and the optional extended reporting period cannot be canceled and any additional premium charged for the optional extended reporting period will be fully earned at inception.
2. The first sixty (60) days of the optional extended reporting period, if purchased, will run concurrently with the automatic extended reporting period.
3. The limit of liability of the **Insurer** under the automatic extended reporting period and the optional extended reported period will be part of and not in addition to the limits of liability for the Policy.

IX. General Conditions

A. CHANGE IN CONTROL

If, during the **policy period**, the **Named Insured** consolidates with, merges into, or sells all or substantially all of its assets to another entity, or if any entity acquires **management control** of the **Named Insured**, then the Policy will remain in full force but only with respect to **third party wrongful acts** and **first party incidents** (other than **cyber-extortion threats**) involving the **Named Insured** that occurred prior to the date of the consolidation, merger, sale or acquisition of **management control**; provided, however, coverage will remain in force for **third party wrongful acts** and **first party incidents** (other than **cyber-extortion threats**) first discovered and for **cyber-extortion threats** first occurring subsequent to the date of the consolidation, merger, sale or acquisition of **management control**, if within thirty (30) days of the takeover effective date (1) the **Insurer** receives written notice containing full details of the transaction, (2) the **Named Insured** accepts all Policy amendments required by the **Insurer**, including the addition of special terms, conditions and exclusions, and (3) the **Named Insured** pays any additional premium charge.

B. ACTION AGAINST THE INSURER

No action may be brought against the **Insurer** unless, as a condition precedent thereto, (1) the **Insured** has fully complied with all of the terms, conditions and other provisions of the Policy, and (2) the amount of the **Insured's** obligation to pay has been finally determined, either by judgment against the **Insured** after an adversarial trial and appeal or by written agreement by the claimant, **Insured** and **Insurer**.

No person or entity will have the right under the Policy to (1) join the **Insurer** or its agents and representatives as a defendant, co-defendant or other party in any action against the **Insured** to determine the **Insured's** liability or (2) implead the **Insurer** or its agents and representatives in any such action.

C. BANKRUPTCY

Bankruptcy or insolvency of the **Named Insured** will not relieve the **Insurer** of any of its obligations hereunder.

D. OTHER INSURANCE

The Policy is excess over and will not contribute with any other valid and collectible insurance, whether prior or contemporaneous, unless such other insurance is expressly written to be excess of this Policy.

E. SUBROGATION

In the event of payment of **loss** by the **Insurer** under the Policy, the **Insurer** is subrogated to all of the **Insured's** rights of recovery against any person or entity to the extent of such payment. The **Insured** warrants and agrees to execute and deliver instruments and papers and do whatever else is required by the **Insurer** to secure, prosecute and collect on such rights. The **Insured** further warrants and agrees not to prejudice such rights.

If, prior to a **claim** being made, the **Insured Company** has waived its rights to recovery against a person or entity in any written contract or agreement, then the **Insurer** will waive its rights to subrogation against such person or entity to the same extent as the **Insured Company's** waiver.

F. TERRITORY

The Policy applies to **third party wrongful acts** and **first party incidents** occurring and **claims** made anywhere in the world other than any country barred by the Office of Foreign Assets Control (OFAC).

G. REPRESENTATION CLAUSE

In issuing the Policy, the **Insurer** has relied upon the **application**. The **Insured** warrants that the content of and materials provided to the **Insurer** are true, accurate and complete and are material to the **Insurer's** acceptance of the risk to which the Policy applies. Any material misrepresentation, concealment or misstatement by the **Insured** will render the Policy null and void with respect to any natural person **Insured** who knew of such material misrepresentation, concealment or misstatement and with respect to the **Insured Company** if an **executive officer** knew of such material misrepresentation, concealment or misstatement and relieve the **Insurer** from all obligations and liability herein with regard to said **Insured** parties.

H. NAMED INSURED SOLE AGENT

The **Named Insured** will be the sole agent and will act on behalf of the **Insured** for the purpose of:

1. providing and/or receiving notices, amendments to or cancelling of the Policy;
2. completing the **application**;
3. making statements, representations and warranties;
4. remitting premium and receiving the return premium that may become due;
5. paying the retention; and
6. exercising or declining to exercise any right under the Policy.

I. POLICY CHANGES

Notice to any agent of the **Insurer** or knowledge possessed by any such agent or by any other person will not affect a waiver or a change in any part of the Policy, and will not prevent or preclude the **Insurer** from asserting or invoking any right under or provision of the Policy. None of the provisions of the Policy will be waived, changed or modified except by a written and signed endorsement issued by the **Insurer** to form a part of the Policy.

J. ASSIGNMENT

The **Insured** may not assign any rights, remedies, privileges or protections under the Policy and any such assignment is not valid unless the **Insurer's** written consent is endorsed thereon.

K. ALTERNATIVE DISPUTE RESOLUTION

Any dispute arising out of or relating to the Policy, including but not limited to its construction, application and validity, or any breach thereof, will first be submitted to non-binding mediation administered by a mediation facility to which the **Insurer** and the **Insured** mutually agree. The **Insured** and the **Insurer** will attempt in good faith to settle the dispute 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, but the costs incurred through AAA, 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 United States city where either the **Named Insured** or the **Insurer** has its principal place of business, at the election of the party commencing mediation.

In the event such non-binding mediation does not result in a settlement of the dispute either party has the right:

1. to commence a judicial proceeding; and
2. with consent of the other party, to commence an arbitration proceeding in accordance with the commercial arbitration rules of AAA in effect at the time of dispute.

The decision of the arbitrator or arbitrators will be final and binding and any award may be confirmed and enforced in any court of competent jurisdiction.