



# Broker Insurance Document

Insured: State Of Tennessee

Period of  
Insurance: 1<sup>st</sup> July 2021 to 1<sup>st</sup> July 2022

Dated: 5<sup>th</sup> August 2021



Insurance | Risk Management | Consulting

[www.ajg.com/uk](http://www.ajg.com/uk)

Arthur J Gallagher Risk Management Services Inc –  
Chicago  
300 South Riverside Plaza, Suite 1500  
CHICAGO  
60606  
Illinois  
United States

Date: 5<sup>th</sup> August 2021

## BROKER INSURANCE DOCUMENT FI1886021

We thank you for your instructions and confirm that we have placed this Insurance on your behalf as detailed below. Please check the details and advise us immediately should they not conform to your request.

### SCHEDULE

**TYPE:** Primary Cyber Liability

**NAMED INSURED:** State of Tennessee

**ADDRESS:** State Capitol Building  
Nashville  
Tennessee 37243 0001  
United States of America

**PERIOD:** From: 1<sup>st</sup> July 2021  
To: 1<sup>st</sup> July 2022

Both days at 12:01 am Local Standard Time at the Principal Address of the Insured.

**INTEREST:** This Policy will indemnify/cover the Insured for Cyber Liability Insurance and as more fully disclosed within the Policy Wording.

**LIMIT OF LIABILITY:** USD 10,000,000 Each and Every Claim and in the Aggregate (including Claims Expenses) and sublimited as follows:

Coverage A Technology/Professional Errors & Omission  
No cover given

Coverage B Security & Privacy Liability (including employee privacy)  
USD 10,000,000 in the aggregate including claims expenses

Coverage C Privacy Regulatory Claims Coverage  
USD 10,000,000 in the aggregate including claims expenses

Coverage D Security Breach Response Coverage  
USD 10,000,000 in the aggregate including claims expenses

Coverage E Multimedia Liability  
USD 10,000,000 in the aggregate including claims expenses

**LIMIT OF LIABILITY  
(CONTINUED):**

Coverage F Cyber Extortion  
USD 10,000,000 in the aggregate including claims expenses

Coverage G Business Income and Digital Asset Restoration  
USD 10,000,000 in the aggregate including claims expenses

Coverage H PCI DSS Assessment  
USD 1,000,000 in the aggregate including claims expenses

**RETENTION  
(INCLUDING CLAIM  
EXPENSES):**

USD 1,500,000 Each and Every Claim (including Claims Expenses) but 10 hours waiting period in respect to Coverage G.1

**TERRITORIAL LIMITS:** Worldwide

**RETROACTIVE DATE:** Full Prior Acts

**CONTINUITY DATE** 1<sup>st</sup> July 2020

**PREMIUM:** USD 445,500 for 100% for the Policy Period

**CONDITIONS:** As per Policy Wording:  
AJG Tech/Cyber Macro 2.1 as attached  
NMA45 Short Rate Cancellation Table Endorsement as attached  
LMA3100 Sanctions & Exclusions Clause as attached  
NMA2975 (Amended) Special Cancellation Clause, as attached  
Data Protection Short Form Notice, as attached  
Endorsement 1 – Breach Vendor Panel as attached  
Endorsement 2 – Bricking, as attached  
Endorsement 3 – Voluntary Shutdown, as attached  
Endorsement 4 – Cyber Extortion Sublimit, as attached  
Endorsement 5 – Biometric Collection Exclusion, as attached

Jurisdiction Limits: Worldwide

**SUBJECTIVITIES:** None

**NOTICES:** Complaints Procedure Notice (as attached)  
AJG Short Form Privacy Notice, as attached

**NOTICE OF  
CLAIM TO:** macroclaims@atherialaw.com  
Atheria Law  
33 Bush Street, Suite 2020,  
San Francisco, CA  
United States of America

VIA.

**NOTICE OF  
CLAIM TO  
(CONTINUED):**

Arthur J. Gallagher  
Gallagher Claims Division  
67 Lombard Street  
London  
EC3V 9LJ  
Tel: 020 7204 6000  
Email: GallagherClaimsUK@ajg.com

**NOTICE OF  
ELECTION:**

Arthur J. Gallagher Risk Management Services, Inc.  
300 S. Riverside Plaza, Suite 1900  
Chicago, IL 60606  
USA

**OUR  
REPRESENTATIVE  
FOR SERVICE OF  
SUIT:**

Lloyd's America, Inc.  
Attention: Legal Department  
280 Park Avenue, East Tower, 25<sup>th</sup> Floor  
New York, NY 10017

**CHOICE OF LAW  
AND JURISDICTION:**

In case of any dispute arising out of this Insurance, the same shall be governed by the laws of Idaho and subject to the exclusive jurisdiction of the courts of the United States of America in accordance with the attached

**PREMIUM  
PAYMENT TERMS:**

Premium to be paid to Underwriters via Brokers by 30<sup>th</sup> August 2021

**Premium Payment Clause LSW3001 (Amended) 60 days from inception**

Notwithstanding any provision within this contract or any endorsement hereto, in respect of non payment of premium only the following clause will apply.

The (Re)Insured undertakes that premium will be paid in full to (Re)Insurers within the number of days specified in the Premium Payment Terms (or, in respect of instalment premiums, when due).

If the premium due under this contract has not been so paid to (Re)Insurers within the agreed timescale (and, in respect of instalment premiums, by the date they are due) (Re)Insurers shall have the right to cancel this contract by notifying the (Re)Insured via the broker in writing. In the event of cancellation, premium is due to (Re)Insurers on a pro rata basis for the period that (Re)Insurers are on risk but the full contract premium shall be payable to (Re)Insurers in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this contract.

**PREMIUM  
PAYMENT TERMS  
(CONTINUED):**

It is agreed that (Re)Insurers shall give not less than 15 days prior notice of cancellation to the (Re)Insured via the broker (as outlined in the Notice of Cancellation Provisions). If premium due is paid in full to (Re)Insurers before the notice period expires, notice of cancellation shall automatically be revoked. If not, the contract shall automatically terminate at the end of the notice period.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

30/09/08  
LSW3001 (amended)

**TAXES PAYABLE  
BY INSURED AND  
ADMINISTERED BY  
UNDERWRITERS:**

No taxes applicable

**RECORDING,  
TRANSMITTING  
AND STORING  
INFORMATION:**

Where the Broker maintains risk and claim data / information / documents the Broker may hold data / information / documents electronically.

**INSURER CONTRACT  
DOCUMENTATION:**

This document details the contract terms entered into by the insurer(s) and constitutes the contract document.

Any further documentation changing this contract, agreed in accordance with the contract change provisions set out in this contract, shall form the evidence of such change.

Insureds are advised that if any terms, clauses or conditions are unclear they should contact Arthur J. Gallagher (UK) Limited immediately.

Wherever there is reference to 'Insured' and/or 'Assured' in this document, they shall be deemed to have the same meaning.

Wherever there is reference to 'Insurer' and/or 'Underwriter' in this document, they shall be deemed to have the same meaning.

Wherever there is reference to 'Policy' and/or 'Contract' in this document, they shall be deemed to have the same meaning.

**INSURER CONTRACT  
DOCUMENTATION  
(CONTINUED):**

**“US SURPLUS LINES NOTICE**

This contract is subject to US state surplus lines requirements. It is the responsibility of the surplus lines broker to affix a surplus lines notice to the contract document before it is provided to the insured. In the event that the surplus lines notice is not affixed to the contract document the insured should contact the surplus lines broker.”

**INFORMATION:**

The following information was provided to Insurer(s) to support the assessment of the risk at the time of the underwriting:

Final submission email from Will Slater of Gallagher to Adam Taylor of Brit on the 21<sup>st</sup> May 2021 at 11:45am, containing the following:

General Governance:

Email attachment for the following entities. Each email contains the full app, ransomware app, and supplementary written answers to all of Brit's questions.

1. Email attachment for STS = Strategic Technology Solutions. This forms the bulk of the submission for the State 'General Governance' who went first on every section of the call. My understanding is that they provide the systems to the whole of the State 'General Governance' department
2. Email attachment for Attorney General – note they do not fill in any of the Security Controls questions in the app, I take this to mean that they directly mirror the controls evidenced in the STS app
3. Email attachment for Comptroller
4. Email attachment for General Assembly

University of Tennessee:

5. Written question responses part 2
6. Written question responses part 1
7. Ransomware App

University of Memphis:

8. Full app
9. Written responses to all underwriting questions
10. Written appendix to full app
11. Ransomware app

Tennessee Board of Regents:

12. Full app
13. Written responses to underwriting questions
14. Ransomware app

All of the above are as seen and agreed by underwriters



**(RE)INSURERS  
LIABILITY:**

**In respect of the Lloyd's Brussels Security.**

**LSW1001 – SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

**In respect of the non - Lloyd's Brussels Security**

**LMA 3333 (RE)INSURER'S LIABILITY CLAUSE**

**(RE)Insurer's Liability Several Not Joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

**Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".



**(RE)INSURERS  
LIABILITY  
(CONTINUED):**

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

**ORDER HEREON:** 100% of 100%

<b>COVERAGE HAS BEEN EFFECTED WITH</b>
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**Signed Line: Security:**

56.2500% Lloyd's Syndicate 2987 BRT

18.7500% Lloyd's Syndicate 2988 BRT

25.0000% Lloyd's Syndicate 1618 KII

100.0000%	Total placed hereon, in respect of the above order.
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This Broker Insurance Document is our confirmation to you that a contract of Insurance has been effected with the Insurers listed hereon, using the information which you have provided and/or agreed. Please examine this Broker Insurance Document carefully to confirm that cover has been arranged in accordance with your requirements and that the Insurers are acceptable: please advise us immediately if this is not the case. This document is not your contract of Insurance, but is evidence of the terms and conditions of the contract.

**DUTY OF FAIR PRESENTATION**

If your policy is subject to English law you are required to make a fair presentation of the risk to Insurers which discloses every material circumstance which you know or ought to know relating to the risk to be insured. This includes information known by your senior management and those responsible for arranging your insurance as well as information which would reasonably have been revealed by a reasonable search of information available to you. A circumstance is material if it would influence the judgment of a prudent insurer in determining whether to provide insurance for the risk and, if so, on what terms.

Disclosure must be reasonably clear and accessible to a prudent insurer. Material representations of fact must be substantially correct and material representations of expectation/belief must be made in good faith.

Failure to comply with the duty of fair presentation could mean that the policy is void or that Insurers are not liable to pay all or part of your claim(s). If you are in any doubt as to what may constitute a fair presentation, please feel free to contact us and we will endeavour to assist you.

If your policy is not subject to English law you are expected to disclose risk information in accordance with the requirements of the applicable law. In such circumstances we expect you will disclose risk information at least equal to the standard required under English law and where the applicable law requires you to disclose information over and above the level required under English law you will provide such information in accordance with that law.

For and on behalf of  
Arthur J. Gallagher (UK) Limited



Authorised Signatory



**State of Tennessee**

**Tech/Cyber**

**Macro Wording**

**v.2.1**

**US**

## POLICY FORM

In consideration of the payment of the premium and reliance upon the statements made by **You** in the **Application** and subject to the Limit of Liability, exclusions, conditions and other terms of this Policy, it is agreed as follows:

### I. COVERAGES

#### A. TECHNOLOGY/PROFESSIONAL ERRORS & OMISSION

We shall pay on **Your** behalf **Damages** and **Claim Expenses** resulting from a **Claim** first made against **You** and reported to **Us** during the **Policy Period** or **Extended Reporting Period** arising out of any **Technology/Professional Wrongful Act** by or on behalf of **You**.

#### B. SECURITY & PRIVACY LIABILITY (INCLUDING EMPLOYEE PRIVACY)

We shall pay on **Your** behalf **Damages** and **Claim Expenses** resulting from a **Claim** first made against **You** and reported to **Us** during the **Policy Period** or **Extended Reporting Period** arising out of a **Privacy Wrongful Act** and/or a **Security Wrongful Act** by or on behalf of **You**.

#### C. PRIVACY REGULATORY CLAIMS COVERAGE

We shall pay on **Your** behalf **Regulatory Fines**, **Consumer Redress Funds** and **Claim Expenses** resulting from a **Regulatory Claim** first made against **You** and reported to **Us** during the **Policy Period** or **Extended Reporting Period** arising out of a **Privacy Wrongful Act** by or on behalf of **You**.

#### D. SECURITY BREACH RESPONSE COVERAGE

We shall reimburse **You** for **Breach Response Costs** that **You** incurs in the event of a **Security Breach** with respect to **Private Information** that **You** first discover during the **Policy Period**.

We will not make any payment under this Coverage unless the **Security Breach** first occurs on or after the **Retroactive Date** and before the end of the **Policy Period** and **You** first learn of the **Security Breach** within the **Policy Period** and report the **Security Breach** to **Us** as soon as practicable within the **Policy Period**.

#### E. MULTIMEDIA LIABILITY

We shall pay on **Your** behalf **Damages** and **Claim Expenses** resulting from a **Claim** first made against **You** and reported to **Us** during the **Policy Period** or **Extended Reporting Period** arising out of a **Multimedia Wrongful Act** by or on behalf of **You**.

#### F. CYBER EXTORTION

We shall reimburse **You** for the **Cyber-Extortion Expenses** and **Cyber-Extortion Payments** that **You** actually pay directly resulting from a **Cyber-Extortion Threat** received and reported to **Us** during the **Policy Period**.

**G. BUSINESS INCOME AND DIGITAL ASSET RESTORATION**

1. **We** shall pay the **Business Income Loss** in excess of the applicable retention that **You** sustain during a **Period of Restoration** resulting directly from a **Network Disruption** that commences during the **Policy Period**, but only if the duration of such **Network Disruption** exceeds the Waiting Period set forth in the Risk Details and such **Network Disruption** results solely and directly from a **System Failure** that commenced on or after the **Retroactive Date**.
2. **We** shall reimburse **You** for the **Restoration Costs** in excess of the applicable retention that **You** incur because of the alteration, destruction, damage or loss of **Digital Assets** that commences during the **Policy Period** resulting directly from a **System Failure** that commences on or after the **Retroactive Date**.

**H. PCI DSS ASSESSMENT**

**We** shall pay on **Your** behalf any **PCI DSS Assessments** resulting from a **Security Breach** that is reported to **Us** during the **Policy Period** or **Extended Reporting Period** provided such **Security Breach** takes place on or after the **Retroactive Date** and before the end of the **Policy Period** by or on behalf of the **Insured**.

**II. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS**

- A. **We** shall have the right and duty to defend, subject to the applicable **Policy Aggregate Limit** and applicable **Sublimits of Liability**, exclusions and other terms and conditions of this Policy, any **Claim** against **You** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false, or fraudulent.
- B. **You** and **We** shall mutually agree on counsel to defend **Claims**. **You** shall not formally appoint defense counsel without **Our** consent, which shall not be unreasonably withheld. However, in the absence of such agreement, **Our** decision shall be final.
- C. **We** agree that **You** may settle any **Claim** where the **Damages** and **Claim Expenses** do not exceed 50% of the retention. Furthermore you may settle any **Claim** where the **Damages** and **Claim Expenses** do not exceed 100% of the retention provided the entire **Claim** is resolved and **You** receive a full release from all claimants.

**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.

The applicable **Policy Aggregate Limit** and **Sublimits of Liability** available to pay **Damages** and **Losses** shall be reduced and may be completely exhausted by payment of **Claim Expenses**. **Damages**, **Losses** and **Claim Expenses** shall be applied against the applicable retention **You** pay.

D. If **You** refuse to consent to a settlement or compromise **We** recommend that is acceptable to the claimant and **You** elect to contest such **Claim**, then:

1. Subject to the applicable limit of liability, **Our** liability for any **Damages** and **Claim Expenses** shall not exceed:
  - a. the amount for which the **Claim** could have been settled, plus the **Claim Expenses** incurred prior to the date of such refusal; and
  - b. sixty percent (60%) of the **Damages** and **Claim Expenses** in relation to clause **IA** but seventy percent (70%) in relation to **IB - IH** excess of the amount in a. above incurred in such **Claim**; provided that **You** bear the remaining forty percent (40%) in relation to **IA** but thirty percent (30%) in relation to **IB - IH** of the **Damages** and **Claim Expenses** in excess of the amount in a. above incurred in such **Claim** uninsured and at **Your** own risk; and
2. **We** shall have the right to withdraw from the further defense of such **Claim** by tendering control of the defense to **You**.

This clause shall not apply to any settlement where the total of the proposed settlement and incurred **Claim Expenses** do not exceed all applicable retentions.

- E. **We** shall not be obligated to pay any **Damages, Losses** or **Claim Expenses**, or to undertake or continue defense of any **Claim**, after the applicable **Policy Aggregate Limit** or applicable **Sublimits of Liability** has been exhausted by payment of **Damages, Losses** and/or **Claim Expenses** or after deposit of the applicable limit of liability in a court of competent jurisdiction, and that upon such payment or deposit, **We** shall have the right to withdraw from the further defense thereof by tendering control of said defense to **You**.
- F. With respect to Coverage D Security Breach Response Coverage where **You** have provided **Us** an invoice for reimbursement which has been agreed by **Us**, **We** will pay such invoice within 30 days of agreeing to such invoice in writing to **You**.

### III. TERRITORY

This insurance applies to **Claims** made and acts, errors or omissions committed or alleged to have been committed anywhere in the world.

### IV. EXCLUSIONS

The coverage under this Policy shall not apply to any **Damages, Claim Expenses** or **Loss** incurred with respect to any **Claim**, or any **Breach Response Costs, PCI DSS Assessments** or other amounts, arising out of or resulting, directly or indirectly, from:

- A. **Bodily Injury** or **Property Damage**;
- B. **Your** employment practices or any alleged or actual discrimination against any person or entity on any basis, including without limitation, race, creed, color, religion, ethnic background, national origin, age, handicap, disability, sex, sexual orientation, or pregnancy. However, this exclusion shall not apply to any **Claim** alleging a **Privacy Wrongful Act** or **Security Wrongful Act** in connection with an **Employee's** or prospective **Employee's** employment;

- C.** the failure, malfunction or inadequacy of any satellite; any electrical or mechanical failure and/or interruption, including but not limited to electrical disturbance, spike, brownout or blackout; or any outage to gas, water, telephone, cable, telecommunications or other infrastructure, unless such infrastructure is under **Your** operational control; however this exclusion shall not apply to any **Privacy Wrongful Act** that is caused by such electrical or mechanical failure or that is caused by such failure of telephone lines, data transmission lines or other infrastructure comprising or supporting the **Internet**;
- D.** fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, or any other physical event, however caused;
- E.** breach of any express, implied, actual or constructive contract, agreement, warranty, guarantee or promise, provided, however, this exclusion shall not apply to:
1. any liability or obligation **You** would have in the absence of such contract or agreement;
  2. any breach of **Your** privacy statement, or other customer or employee-facing representation regarding protection or use of **Private Information**;
  3. any indemnity by **You** in a written contract or agreement with **Your** client regarding any **Privacy Wrongful Act** or **Security Wrongful Act** by **You** in failing to preserve the confidentiality or **Private Information**;
  4. with respect to Coverage A., for any unintentional **Breach of Contract**; or
  5. solely with respect to Coverage H, any indemnity by **You** in a written contract with an **Acquiring Bank** regarding a **PCI DSS Assessment**;
- F.** any of the following:
1. any presence of pollutants or contamination of any kind;
  2. any actual, alleged or threatened discharge, dispersal, release, or escape of pollutants or contamination of any kind;
  3. any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants or in any way respond to or assess the effects of pollutants or contamination of any kind;
  4. manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials, or products containing asbestos, asbestos fibers or dust;
  5. ionizing radiation or contamination by radioactivity from any nuclear fuel or any nuclear waste from the combustion of nuclear fuel;
  6. actual, potential or alleged presence of mold, mildew or fungi of any kind;
  7. the radioactive, toxic, or explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or



8. the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment or that affects the value, marketability, condition or use of any property;

**G.** any of the following:

1. purchase, sale, offer of or solicitation of an offer to purchase or sell securities, or alleged or actual violation of any securities law, including but not limited to the provisions of the Securities Act of 1933, or the Securities Exchange Act of 1934, as amended, 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;
2. alleged or actual violation of the Organized Crime Control Act of 1970 (commonly known as "Racketeer Influenced And Corrupt Organizations Act" or "RICO"), as amended, or any regulation promulgated thereunder, or any federal, state, local or foreign law similar to the foregoing statute, whether such law is statutory, regulatory or common law;
3. alleged or actual violation of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, as amended; or
4. alleged or actual anti-trust violations, restraint of trade or unfair competition, including without limitation, violations of the Sherman Act, the Clayton Act or the Robinson-Patman Act, or any other federal, state, local, or foreign laws regulating the same or similar conduct; provided, however, this exclusion G.4 shall not apply to a **Claim** for a **Multimedia Wrongful Act** or **Regulatory Claim**;

However this exclusion G does not apply to any otherwise covered **Claim** under Insuring Agreements B and D that results from a **Security Breach**, provided that no member of the **Control Group** participated, or is alleged to have participated or colluded, in such **Security Breach**.

- H.** any **Act of Terrorism**; strike or similar labor action, 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; including all amounts, **Damages**, or **Claim 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; however, if **We** allege that by reason of this exclusion any **Damages** or **Claim Expenses** are not covered by this Policy, the burden of proving the contrary shall be upon **You**. However this exclusion does not apply to acts perpetrated electronically.

**I.** any of the following:

1. any circumstance occurring, or act, error, or omission committed, prior to the **Continuity Date**, if on or before the **Continuity Date** of this Policy, the **Control Group** knew or could have reasonably foreseen that such circumstance or **Wrongful Act** would be the basis of a **Claim**;

2. any **Claim** or circumstance previously notified to a prior insurer that could reasonably be expected to be a **Claim** or loss covered by this Policy; or
  3. any circumstance occurring, or act, error, or omission committed prior to the **Retroactive date**;
- J.** any criminal, dishonest, intentional violation of the law, unfair or deceptive business practice, fraudulent or malicious act, error or omission committed by **You** with actual criminal, dishonest, fraudulent or malicious purpose or intent; provided, however, this exclusion shall not apply to:
1. **Claim Expenses** incurred in defending any such **Claim** until there is a final adjudication, judgment, binding arbitration decision or conviction against **You** in such **Claim** or an admission by **You** establishing such conduct, or a plea of *nolo contendere* or no contest by **You** regarding such conduct, in which event **You** shall reimburse **Us** for all **Claim Expenses** that **We** have paid and **We** shall have no further liability for **Claim Expenses** from such **Claim**; and
  2. any of **You** who did not personally commit or personally participate in committing or personally acquiesce in such conduct, except that the exclusion shall apply with respect to **You** if an admission, final adjudication, or finding in a proceeding separate or collateral to the **Claim** establishes that a current principal, partner, director, or officer of **You** in fact engaged in such conduct;
- K.** any **Claim** made by or on behalf of:
1. any person or entity within the definition of **You** against any other person or entity within the definition of **You** provided this exclusion shall not apply to an otherwise covered **Claim**:
    - a. made by a current or former **Employee**;
    - b. made by an **Additional Insured**
  2. any entity which:
    - a. is operated, managed, or controlled by **You** or in which **You** have an ownership interest in excess of 15% or in which **You** are an officer or director, or
    - b. operates, controls, or manages **You**, or has an ownership interest of more than 15% in **You**;
- L.** **Your** activities as a trustee, partner, officer, director, or **Employee** of any employee trust, charitable organization, corporation, company or business other than **You**;
- M.** any alleged or actual infringement or violation of patent rights or misappropriation, theft, copying, display or publication of any trade secret by, or with active cooperation, participation, or assistance of, **You**, any of **Your** former **Employees**, **Subsidiaries**, directors, officers, partners, trustees, or any of **Your** successors or assignees; provided, however this exclusion shall not apply to misappropriation of any trade secret obtained as a result of a **Privacy Wrongful Act** or a **Security Wrongful Act**;

- N.** any of the following:
1. trading losses or trading liabilities;
  2. the monetary value of any electronic fund transfers or transactions by or on behalf of **You** which is lost, diminished, or damaged during transfer from, into or between accounts;
  3. the face value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;
  4. the theft of any money, securities, or any equivalents thereof (including e-certificates, coupons, gift cards and vouchers); or
  5. the monetary value of any transfer of funds, securities, or any equivalents thereof (including e-certificates, coupons, gift cards and vouchers) made as a result of a fraudulent instruction (including phishing or any other social engineering techniques).
- However this exclusion N does not apply to any otherwise covered **Claim** under Insuring Agreements B, C and D that results from a **Security Breach**, provided that no member of the **Control Group** participated, or is alleged to have participated or colluded, in such **Security Breach**;
- O.** the actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services; or as a result of **Your** cost guarantees, cost representations, contract price, estimates of probable costs or cost estimates being exceeded;
- P.** any costs or expenses incurred or to be incurred by **You** or others for the withdrawal, recall, inspection, repair, replacement, reproduction, removal or disposal of work product resulting from or incorporating the results of **Technology/Professional Services** or any product or other property on which **Technology/Professional Services** were performed; however this exclusion shall not apply to a third party **Claim** for the resulting loss of use of the work product resulting from such **Technology/Professional Services**;
- Q.** any actual or alleged obligation to make licensing fees or royalty payments, including but not limited to the timeliness of such payments;
- With respect to Insuring Coverage G only this Policy does not apply to any **Loss** arising out of, or resulting, directly or indirectly, from:
- R.** any costs of updating, upgrading or remediation of **Your Computer Systems** or **Your Digital Assets**; provided, however, this exclusion shall not apply to **Restoration Costs** otherwise covered under Coverage G.2.;
- S.** any seizure, confiscation, nationalization, or destruction of, or damage to or loss of use of any **Digital Asset** or **Your Computer Systems** by order of any governmental authority;
- T.** ordinary wear and tear or gradual deterioration of **Digital Assets** or **Computer Systems** on which **Digital Assets** are processed or stored, whether owned by **You** or others;
- U.** the physical loss of, damage to or destruction of tangible property, including the loss of use thereof; provided, however, "tangible property" does not include **Digital Assets**

## V. DEFINITIONS

**A. Act of Terrorism** means:

1. any act certified an Act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002 or otherwise declared an Act of terrorism by any government;
2. any act committed by any person or group of persons designated by any government as a terrorist or terrorist group or any act committed by any person or group of persons acting on behalf of or in connection with any organization designated by any government as a terrorist organization; or
3. the use of force or violence and/or the threat thereof by any person or group of persons, whether acting alone or on behalf of or in connection with any organization or government, committed for political, religious, ideological, or similar purposes, including the intention to influence any government and/or put the public, or any section of the public, in fear.

**B. Acquiring Bank** means a bank or financial institution that accepts credit and or debit card payments (including credit cards, debit cards, stored value cards and pre-paid cards) for products or services on behalf of a merchant, including processing and crediting those payments to a merchant's account.

**C. Additional Insured** means any natural person or entity that **You** have expressly agreed in writing to add as an additional insured under this Policy prior to the commission of any act for which such person or entity would be provided coverage for under this Policy, but only to the extent that **You** would have been liable and coverage afforded under the terms and conditions of this Policy had such **Claim** been made against **You**. Nothing herein shall confer any rights, duties or obligations to such third party entity under this Policy and there shall be no coverage afforded to such entity as a result of any independent acts committed by such third party.

**D. Application** means all applications, including any attachments thereto, and all other information and materials submitted by **You** or on **Your** behalf to **Us** in connection with the underwriting of this Policy. All such applications, attachments, information and materials are deemed attached to and incorporated into this Policy.

**E. Bodily Injury** means injury to the body, sickness, or disease sustained by any person, and where resulting from such injuries, mental anguish, mental injury, shock, humiliation, emotional distress, loss of consortium, or death.

**F. Breach of Contract** means the actual or alleged unintentional breach of a written contract with a client or customer to provide **Technology/Professional Services** due to the:

1. **Technology/Professional Services** not conforming to any written specifications and performance standards forming part of the written contract
2. **Technology/Professional Services** being negligently performed or containing a material defect;
3. **Technology/Professional Services** failing to meet any implied statutory term concerning necessary quality, safety or fitness for a particular express purpose or failing to meet an implied duty to exercise a degree of care or skill consistent with applicable industry standards;

4. **Technology/Professional Services** failing to comply with legal or statutory requirements; or
5. breach of any hold harmless or indemnity provision regarding infringement of intellectual property rights, breach of security or the confidentiality of information.

**G. Breach Response Costs** means the following fees, costs, charges or expenses, if reasonable and necessary, that **You** incur in responding to a **Security Breach** during the period of twelve (12) months after **You** first learn of such **Security Breach**:

1. forensic professional fees and expenses to determine the cause and extent of such **Security Breach** and terminate the **Security Breach** (however, betterment of the **Computer System** is not covered);
2. legal fees and expenses to determine whether **You** are obligated under applicable **Privacy Regulations** to notify applicable regulatory agencies or individuals affected or reasonably believed to be affected by such **Security Breach**, effect compliance with any applicable **Privacy Regulations**, draft the text of privacy notifications to individuals affected or reasonably believed to be affected by such **Security Breach**, evaluate contractual obligations relating to such a **Security breach** and coordinate the investigation of such **Security Breach**;
3. costs to notify individuals affected or reasonably believed to be affected by such **Security Breach**, including printing costs, publishing costs, postage expenses, call center costs or costs of notification via phone or e-mail;
4. **Credit Monitoring Expenses**; or
5. any other reasonable and necessary fees and expenses **You** incur with **Our** prior written consent to avert or mitigate any Public relations damage to any of **You**.

**You** are able to incur any costs under G.1 (forensic) and G.2 (legal advice) without **Our** prior written consent if **You** use a vendor from the **Breach Response Panel**. A use of a vendor not on the **Breach Response Panel** is permitted, but only with **Our** prior written consent.

Provided, however, **We** shall have no obligation to reimburse **You** for such **Breach Response Costs** as identified under G.3, G.4 and or G.5 unless:

1. **You** provide an opinion from legal counsel that **You** were obligated under applicable **Privacy Regulations** to notify applicable regulatory agencies or individuals affected or reasonably believed to be affected by such **Security Breach** of such **Security Breach**; or
2. **You** voluntarily incur with **Our** prior written consent such **Breach Response Costs** (including **Credit Monitoring Expenses**), such as in a jurisdiction where **You** have no obligation to notify applicable regulatory agencies or individuals affected or reasonably believed to be affected by such **Security Breach** of such **Security Breach** or where **You** wish to voluntary notify to help protect and mitigate any damage to **Your** brand and reputation.

**Breach Response Costs** do not include **Your** overhead expenses or any salaries, wages, fees, or benefits of **Your Employees**.

H. **Breach Response Panel** means the breach vendors as identified in the attached Breach Vendor Panel

I. **Business Income Loss** means:

1. **Earnings Loss**; and/or
2. **Expenses Loss**.

**Business Income Loss** does not include:

1. any contractual penalties;
2. any costs or expenses incurred to update, upgrade, replace, restore or otherwise improve any **Computer System** to a level beyond that which existed prior to a **System Failure**;
3. any costs or expenses incurred to identify, remove or remediate computer program errors or vulnerabilities, or costs to update, upgrade, replace, restore, maintain or otherwise improve any **Computer System**;
4. any legal costs or expenses or **Loss** arising out liability to any third party;
5. any **Loss** incurred as a result of unfavorable business conditions; or
6. any other consequential **Loss** or damage.

J. **Claim** means:

1. a written demand received by **You** for money or services, including the service of a civil suit or institution of arbitration proceedings;
2. initiation of a civil suit against **You** seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction); or
3. solely with respect to Coverage C., a **Regulatory Claim** made against **You**;

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, or omissions or from any continuing acts, errors, or omissions shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of claimants or **You** involved in the **Claim**. All such **Claims** shall be deemed to have been made at the time of the first such **Claim** was made or deemed made under Section IX.A.

K. **Claim Expenses** means:

1. reasonable and necessary fees charged in the defense or settlement of a **Claim** by an attorney;
2. all other legal costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, if incurred by **Us** or by **You** with **Our** prior written consent; however, **Claim Expenses** do not include **Your** overhead expenses or any salaries, wages, fees, or benefits of **Your Employees** for any time spent in cooperating in the defense or investigation of any **Claim** or circumstance that might lead to a **Claim**; and



3. reasonable and necessary fees charged in the defense or settlement of a **PCI DSS Assessment** by an attorney whom **We** designate or whom **You** designate with our prior written consent, such consent not to be unreasonably withheld.
- L. **Computer System** means electronic, wireless, web or similar systems (including all hardware and software) used to process data or information in an analog, digital, electronic or wireless format, including computer programs, electronic data, operating systems, and components thereof, including but not limited to laptops, personal digital assistants, cellular phones, media storage and peripheral devices, media libraries, associated input and output devices, networking equipment, and electronic backup equipment. With respect to Insuring Coverage G only **Computer System** means a **Computer System**, over which **You** have direct operational control or that is under the direct operational control of a **Service Provider**, used to process, maintain or store **Your Digital Assets**.
- M. **Consumer Redress Funds** means any sums of money **You** are legally required to deposit in a fund for the payment of consumer **Claims** due to a settlement of, or an adverse judgment in, a **Regulatory Claim**.
- N. **Continuity Date** means the date specified in the Risk Details.
- O. **Control Group** means the General Counsel, Risk Manager, Chief Information Officer, Chief Privacy Officer, Chief Information Security Officer and Chief Technology Officer and their functional equivalents in any jurisdiction of the **Named Insured**.
- P. **Credit Monitoring Expenses** means the reasonable and necessary expense of providing free credit report, identity theft protection services, credit monitoring services, ID theft restoration mitigation and restoration services, credit freezes, fraud alerts or call center services for customers affected or reasonably believed to be affected by a **Security Breach**; provided, however, **We** shall not be obligated to reimburse **You** for more than two (2) years of credit monitoring services or identity theft protection services for customers who are at least eighteen (18) years old unless there is a rule, regulation, court ruling, requirement by a regulator or statutory requirement or advice from breach response counsel from the **Breach Response Panel** requiring otherwise.
- Q. **Cyber-Extortion Threat** means a credible threat or connected series of threats, including the threat being executed on, made by someone other than a director, trustee or partner of **You**:
  1. to introduce or activate a **Malicious Code** into **Your Computer System**;
  2. to interrupt **Your Computer System** or interrupt access to **Your Computer System**, such as through a **Denial of Service Attack**;
  3. to corrupt, damage or destroy **Your Computer System**; or
  4. to disseminate, divulge, or improperly utilize any **Private Information** on **Your Computer Systems** taken as a result of a **System Failure**.

For the avoidance of doubt, **Cyber Extortion Threat** includes any demand for a **Cyber Extortion Payment** after any of 1 – 4 above have been initiated.



- R. Cyber-Extortion Payment** means any sum paid to or at the direction of any third party, including money used to purchase cryptocurrency, that **You** reasonably believe to be responsible for a **Cyber-Extortion Threat**; provided that:
1. **You** obtain **Our** written consent prior to making such **Cyber-Extortion Payment**;
  2. **You** make such **Cyber-Extortion Payment** to terminate the **Cyber-Extortion Threat**; and
  3. the **Cyber-Extortion Payment** does not exceed the amount **We** reasonably believe would have been incurred had such **Cyber-Extortion Payment** not been made.
- S. Cyber-Extortion Expenses** means the reasonable and necessary expenses **You** incur with **Our** approval in evaluating and responding to a **Cyber-Extortion Threat**. However, **Cyber-Extortion Expenses** do not include **Your** overhead expenses or any salaries, wages, fees, or benefits of **Your Employees**.
- T. Damages** means:
1. Solely with respect to Coverages A, B and E, a monetary judgment, award or settlement, including but not limited to:
    - a. pre-judgment interest;
    - b. post-judgment interest that accrues after entry of the judgment or award and before **We** have paid, offered to pay or deposited in court that part of the judgment or award within the applicable limit of liability; and
    - c. subject to this Policy's terms, conditions, and exclusions, punitive or exemplary **Damages** (where insurable by the applicable law that most favors coverage for such **Damages**);
  2. Solely with respect to Coverage C, **Regulatory Fines** and **Consumer Redress Funds**; and

**Damages** shall not include or mean:

1. **Your** future profits, restitution, or disgorgement of profits; or **Your** cost to comply with any order granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief;
2. **Your** return or offset of fees, charges, royalties, or commissions for goods or services already provided or contracted to be provided;
3. fines or penalties of any nature, except **Regulatory Fines** and **Consumer Redress Funds** as identified above;
4. any amount **You** are not financially or legally obligated to pay;
5. multiple **Damages**;
6. any donations or contributions to any charitable organization or any discounts, coupons, prizes, awards or other incentives offered to **Your** customers or clients;

7. liquidated damages to the extent that such damages exceed the amount for which **You** would otherwise have been liable in the absence of such liquidated damages agreement;
  8. **PCI DSS Assessments**; or
  9. matters that may be deemed uninsurable under the law pursuant to which this Policy may be construed.
- U. Denial of Service Attack** means inability of a third party to gain access to **Your Computer Systems** through the **Internet** due to unauthorized attacks or deliberate overloading of bandwidth connections and/or web servers by means of the sending of substantial quantities of repeat or irrelevant communication or data with the intent of blocking access to the **Computer System** by third parties.
- V. Digital Assets** means any electronic data, including **Private Information**, or computer software over which **You** have direct control or for which such control has been contractually assigned by **You** to a **Service Provider**. **Digital Assets** do not include computer hardware of any kind.
- W. Earnings Loss** means the difference between the revenue that **Your Organization** would have earned, based on reasonable projections and the variable costs that would have been incurred, but which **Your Organization** would have saved as a result of not earning that revenue.
- X. Employee** means any individual in **Your Organization's** service, including any part-time, seasonal, and temporary **Employee**, who is compensated by salary, wages, fees or commissions and over whom **You** have the right to direct and control, but excluding any member of the **Control Group**. This includes any volunteers.
- Y. Expenses Loss** means the additional expenses **Your Organization** incurred to minimize the suspension of business and to continue operations during the **Period of Restoration** that are over and above the cost that **Your Organization** reasonably and necessarily would have incurred to conduct **Your** business had no **System Failure** occurred. These additional expenses do not include any **Restoration Costs** or any actual, reasonable and necessary expenses **You** incur in response to a **System Failure** in order to prevent, minimize or mitigate any further damage to **Your Digital Assets**, minimize the duration of a **System Failure** or preserve critical evidence of any wrongdoing.
- Z. Extended Reporting Period** means the period of time after the end of the **Policy Period** for reporting **Claims** as provided in Section VIII. of this Policy.
- AA. Intellectual Property** means trademark, copyright, trade name, trade dress or service mark of any third party.
- For the avoidance of doubt **Intellectual Property** does not include patent or trade secret.
- BB. Intranet** means a private computer network inside a company or organization that uses the same kinds of software found on the **Internet**, but only for internal use.
- CC. Internet** means the worldwide public network of computer networks which enables the transmission of electronic data between different users, commonly referred to as the **Internet**, including a private communications network existing within a shared or public network platform.

**DD. Loss(es)** means:

1. **Business Income Loss;**
2. **Restoration Costs;** and
3. **Cyber-Extortion Payments and Cyber-Extortion Expenses.**

All **Losses** arising from the same or related underlying facts, circumstances, situations, transactions or events or related **System Failure** shall be deemed a single **Loss**.

**EE. Malicious Code** means any unauthorized and corrupting or harmful computer code, including but not limited to computer viruses, spyware, Trojan horses, worms, logic bombs, and mutations of any of the proceeding.

**FF. Media Content** means data, digital code, images, graphics, sounds, text or any other similar material.

**GG. Multimedia Wrongful Act** means any of the following acts committed in the ordinary course of **Your** business in gathering, communicating, reproducing, publishing, disseminating, displaying, releasing, transmitting or disclosing **Media Content** via any **Computer System** that **You** own or operate or is operated on **Your** behalf by a third party, including any web-based social media authorized or operated by **You** or any **Internet** or **Intranet** website or via any non-electronic media:

1. defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
2. invasion of or interference with the right to privacy or publicity;
3. false arrest, detention or imprisonment or malicious prosecution;
4. infringement of any right to private occupancy, including trespass, wrongful entry, eviction or eavesdropping;
5. infringement of copyright, domain name, trade dress, title or slogan, or the dilution or infringement of trademark, service mark, service name or trade name;
6. plagiarism, piracy or misappropriation of ideas; or
7. liability regarding any **Media Content** for which **You** are responsible;

provided always that any **Multimedia Wrongful Act** was committed or alleged to have been committed by **You**, or any person for whom or entity for which **You** are legally responsible, including an independent contractor or outsourcing organization.

**HH. Network Disruption** means any of the following events:

1. a detectable failure, interruption or degradation of the operation of **Your Computer System**; or
2. the denial, restriction, or hindrance of access to or use of **Your Computer System** or **Your Digital Assets** by any party who is otherwise authorized to have access.

More than one such event that results from the same or related underlying facts, circumstances, situations, transactions or **System Failure** shall be considered a single **Network Disruption** which commences on the date of the earliest of such events.

- II. PCI DSS Assessment(s)** means a written demand received by **You** from **Your Acquiring Bank** or a card association (MasterCard, VISA, Discover, American Express or JCB) for monetary fines, penalties, reimbursements, PFI fees/expenses, fraud recoveries or assessments due to **Your** non-compliance with **PCI Data Security Standards** following a **Security Breach**. This does not include any charge backs, interchange fees, discount fees or prospective services fees.
- JJ. PCI Data Security Standards** (known as PCI DSS) means the published data security standard in effect now or as hereafter amended that all merchants and processors must follow when storing, processing and transmitting cardholder data.
- KK. Period of Restoration** means one hundred and eighty (180) consecutive days from the commencement of a **Network Disruption**.
- LL. Policy Period** means the period of time from the effective date to the expiration date specified in the Risk Details, or any earlier cancellation date.
- MM. Privacy Breach** means a common law breach of confidence, infringement, or violation of any rights to privacy, including but not limited to breach of **Your** privacy statement, breach of a person's right of publicity, false light, intrusion upon a person's seclusion, public disclosure of **Private Information**, wrongful collection of **Private Information** or misappropriation of a person's picture or name for commercial gain.
- NN. Privacy Regulations** means any federal, state, local or foreign statute or regulation requiring **You** to limit or control the collection, use of, or access to, **Private Information** in **Your** possession or under **Your** control, or obligating **You** to inform individuals of the **Unauthorized Access** to or disclosure of such **Private Information**, including but not limited to the following statutes and regulations:
1. The Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), including Title II requiring protection of confidentiality and security of electronic protected health information, and as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH), any rules and regulations promulgated thereunder as they currently exist and as amended, and any related state medical privacy laws as they currently exist and as amended;
  2. The Gramm-Leach-Bliley Act of 1999, also known as the Financial Services Modernization Act of 1999, including sections concerning security protection and standards for customer records maintained by financial services companies, and the rules and regulations promulgated thereunder as they currently exist and as amended;
  3. Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a), but solely with respect to alleged unfair or deceptive acts or practices in or affecting commerce;

4. Federal, state or local privacy protection regulations or laws, such as the California Database Protection Act of 2003 (previously called SB 1386), the Telephone Consumer Protection Act of 1991, the CAN-SPAM Act of 2003, as they currently exist now or may be amended, associated with the control and use of, or limiting **Unauthorized Access** to, personal information, including but not limited to requirements to post privacy policies, adopt specific privacy controls, or inform customers of breaches of security that has or may impact their personal information;
5. Federal, state or local data breach regulations or laws, as they currently exist now or in the future, imposing liability for failure to take reasonable care to guard against **Unauthorized Access** to credit or debit account information that is in **Your** possession or under **Your** control;
6. Identity Theft Red Flags under the Fair and Accurate Credit Transactions Act of 2003;
7. Federal and state consumer credit reporting laws, such as the Federal Fair Credit Reporting Act (FCRA) and the California Consumer Credit Reporting Agencies Act (CCCRAA);
8. the Children's Online Privacy Protection Act of 1998; or
9. Privacy protection regulations or laws adopted by countries outside of the United States, such as the EU General Data Protection Regulation, the Canadian Personal Information Protection and Electronic Documents Act and the Australian Privacy Act, as they currently exist now or may be amended, associated with the collection, control and use of, or limiting **Unauthorized Access** to, personal information.

**OO. Privacy Wrongful Act** means any **Privacy Breach** or breach of **Privacy Regulations** committed by **You** or by any person or entity for which **You** are legally responsible, including an independent contractor or outsourcing organization.

**PP. Private Information** means any:

1. proprietary or confidential information owned by a third party or **You**; or
2. information that can be used to determine, distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual

**QQ. Property Damage** means physical injury to or destruction of any tangible property, including the loss thereof. Data is not considered tangible property.

**RR. Regulatory Claim** means:

1. any request for information, civil investigative demand or formal investigation of **You** by an administrative or regulatory agency or similar governmental body concerning a **Privacy Breach** or possible breach of **Privacy Regulations**; or
2. any administrative adjudicative proceeding against **You** by an administrative or regulatory agency or similar governmental body for a breach of **Privacy Regulations**.

A **Regulatory Claim** shall not include a **PCI DSS Assessment**.

- SS. Regulatory Fines** means fines, penalties, or sanctions awarded for a violation of any **Privacy Regulation**. However, **Regulatory Fines** do not include a **PCI DSS Assessment**.
- TT. Restoration Costs** means the actual, reasonable and necessary costs **You** incur to replace, restore, or re-create **Your Digital Assets** to the level or condition at which they existed prior to sustaining any **Loss**. If such **Digital Assets** cannot be replaced, restored or recreated, then **Restoration Costs** will be limited to the actual, reasonable and necessary costs **You** incur to reach this determination. **Restoration Costs** do not include:
1. any costs or expenses incurred to update, upgrade, replace, restore or otherwise improve **Your Digital Assets** or **Computer System** to a level beyond that which existed prior to sustaining any **Loss**; or
  2. the economic or market value of any **Digital Assets**, including trade secrets.
- UU. Retroactive Date** means the date specified in the Risk Details.
- VV. Security Breach** means:
1. the loss or disclosure of **Private Information** in **Your** care, custody or control or on **Your** behalf, including such information stored on paper or on a **Computer System** or
  2. **Theft of Data, Unauthorized Access** to or **Unauthorized Use** of **Private Information** in **Your** care, custody or control or on **Your** behalf, including such information stored on paper or on a **Computer System**
- More than one **Security Breach** arising from the same or a series of continuous, repeated or related acts, errors, or omissions shall be considered a single **Security Breach**, which shall be deemed to have first occurred at the time of the first such **Security Breach**.
- WW. Security Wrongful Act** means any act, error, or omission committed by **You** or a person or entity for which **You** are legally responsible, including an independent contractor or outsourcing organization, in the conduct of **Computer Systems** security and the protection of the security and confidentiality of **Private Information**, that results in:
1. the inability of a third party, who is authorized to do so, to gain access to **Your Computer Systems**;
  2. the failure to prevent or hinder **Unauthorized Access** to or **Unauthorized Use** of a **Computer System** operated by **You** or on **Your** behalf, the failure to prevent physical theft of hardware or firmware **You** control, the failure to prevent people or processes security failures, or the failure to prevent false communications designed to trick the user into surrendering **Private Information** (such as "phishing", "pharming" or "vishing"), any of which results in:
    - a. the alteration, copying, corruption, destruction or deletion of, or damage to, electronic data on a **Computer System** operated by **You** or on **Your** behalf;
    - b. unauthorized disclosure of **Private Information**;
    - c. **Theft of Data** (including identity theft); or



- d. **Denial of Service Attacks** against **Internet** sites or **Computer Systems** of a third party; or
  - 3. the failure to prevent transmission of **Malicious Code** from a **Computer System** operated by **You** or on **Your** behalf to a third party's **Computer System**.
- XX. Service Provider** means any third party that is responsible for the processing, maintenance, protection or storage of **Your Digital Assets** pursuant to a written contract directly with **Your Organization**. A **Service Provider** does not include any provider of telecommunications services, including **Internet** access, to **You**.
- YY. Subsidiary** means any entity:
- 1. where more than 50% of the outstanding securities representing the present right to vote for the election of such corporation's directors are owned by the **Named Insured** directly or indirectly, if such corporation was so owned on the inception date of this Policy;
  - 2. which becomes so owned after the inception date of this Policy, provided the revenues of the newly acquired corporation do not exceed 20% of **Your Organization's** annual revenues as set forth in its most recent audited financial statement; or
  - 3. which becomes so owned after the inception date of this Policy, provided that if the revenues of the newly acquired corporation exceed 20% of **Your Organization's** annual revenues as set forth in its most recent audited financial statement, the provisions of Section IX. I. 1. must be fulfilled.
- ZZ. System Failure** means:
- 1. the **Unauthorized Access** or **Unauthorized Use** of **Your Computer System** or **Your Digital Assets**;
  - 2. the unauthorized transmission of computer code into **Your Computer System** that causes **Loss** or damage to **Your Digital Assets**;
  - 3. a **Denial of Service Attack** on **Your Computer System** that causes **Loss** or damage to **Your Digital Assets**;
  - 4. accidental physical damage or destruction of electronic media, so that stored **Digital Assets** are no longer machine-readable;
  - 5. failure in power supply or under/over voltage only if such power supply is under **Your** or a **Service provider's** direct operational control. Direct operational control includes back-up generators;
  - 6. electrostatic build-up and static electricity;
  - 7. an accidental, unintentional or negligent act, mistake, error or omission by **Your Employee** or a **Service Provider** in:
    - a. the entry, or modification of **Your Digital Assets**;



- b. the creation, handling, development or maintenance of **Your Digital Assets**;  
or
  - c. on-going **Computer System** operation or maintenance, excluding the design, architecture or configuration of **Your Computer System**; or
8. any other unscheduled or unplanned outage of **Your Computer System**.

**AAA. Technology/Professional Services** means those **Technology/Professional Services** stated in the Risk Details, provided by **You** for others for a fee or other compensation (or for free if provided in conjunction with other fee based services or provided to potential or existing customers as an encouragement to purchase such services), and further includes, but is not limited to the creation, manufacture, development, distribution, license, lease, sale or training of any information technology, data processing, information services, installation, design, development, integration, or configuration of a **Computer System** or computer and telecommunications products, hardware or software product or related electronic product.

**BBB. Technology/Professional Wrongful Act** means:

- 1. negligent act, error or omission or negligent misrepresentation;
- 2. an unintentional infringement of **Intellectual Property** rights (except as excluded under Exclusion M); or
- 3. any unintentional **Breach of Contract**

in rendering or failure to render **Technology/Professional Services**

**CCC. Theft of Data** means the unauthorized taking, misuse or disclosure of information on **Computer Systems**, including but not limited to charge, debit, or credit information, banking, financial and investment services account information, proprietary information, and **Private Information**

**DDD. Unauthorized Access** means the gaining of access to a **Computer System** by an unauthorized person or persons or an authorized person or persons in an unauthorized manner.

**EEE. Unauthorized Use** means the use of a **Computer System** by an unauthorized person or persons or an authorized person or persons in an unauthorized manner.

**FFF. We, Us or Our** means the underwriters providing this insurance.

**GGG. You or Your or Yours** means:

- 1. the entity named in the Risk Details ("**Named Insured**"), and all **Subsidiaries** (together "**Your Organization**");
- 2. any present or future director, officer, or trustee of **Your Organization**, but only with respect to the performance of his or her duties as such on behalf of **Your Organization**;
- 3. any present or future **Employee** of **Your Organization** but only with respect to work done while acting within the scope of his or her employment and related to the conduct of **Your Organization's** business;

4. the lawful spouse, including any natural person qualifying as a domestic partner of any person identified in 2. or 3. above, but solely by reason of any act, error or omission of **You** other than such spouse or domestic partner;
5. in the event that the **Named Insured** is a partnership, limited liability partnership, or limited liability company, then any general or managing partner, principal, or owner thereof, but only while acting within the scope of his or her duties as such;
6. any person who previously qualified as **You** under 2, 3, or 4 above prior to the termination of the required relationship with **Your Organization**, but only with respect to the performance of his or her duties as such on behalf of **Your Organization**;
7. the estate, heirs, executors, administrators, assigns and legal representatives of any of **You** in the event of **Your** death, incapacity, insolvency or bankruptcy, but only to the extent that **You** would otherwise be provided coverage under this insurance;
8. any agent or independent contractor, including any distributor, licensee or sub-licensee, but only while acting on **Your** behalf, at **Your** direction, and under **Your** control; and
9. an **Additional Insured**.

## VI. LIMITS OF LIABILITY

- A.** The amount indicated in the Risk Details as stated within the Limits of Liability (herein the "**Policy Aggregate Limit**") is the most **We** will pay in the aggregate under this Policy, under all coverages combined, for:
1. all **Damages**, including **Regulatory Fines**, **Consumer Redress Funds** and all **Claim Expenses** from all **Claims**;
  2. all **Breach Response Costs** from all **Security Breaches**; and
  3. all **Losses**
- regardless of the number of acts, errors, or omissions, persons or entities covered by this Policy, claimants, **Claims**, **Losses** or **Security Breaches**, or Coverages triggered.
- B.** When purchased as indicated in the Risk Details as stated within the Limits of Liability the amount indicated as the sublimit (herein the "**Sublimit of Liability**") applicable to a Coverage, is the most **We** will pay under this Policy in the aggregate under the individual coverage, regardless of the number of acts, errors, or omissions, persons or entities covered by this Policy, claimants, **Claims**, **Losses** or **Security Breaches**. This **Sublimit of Liability** is part of and not in addition to the **Policy Aggregate Limit**.
- C.** If any **Claim** or any single **Claim** is covered under more than one coverage, the highest applicable **Sublimit of Liability** shall be the most **We** shall pay as to such **Claim** or single **Claim** and such **Claim** or single **Claim** shall be subject to the highest applicable retention.

## VII. RETENTIONS

- A. The retention for each Coverage is stated in the Risk Details. The applicable retention shall be first applied to **Damages, Claim Expenses, Losses** and **Breach Response Costs** covered by this Policy and **You** shall make direct payments within the retention to appropriate other parties designated by **Us**. **We** shall be liable only for the amounts in excess of the retention, not to exceed the applicable **Sublimit of Liability** or **Policy Aggregate Limit**.
- B. With respect to Coverages A, B, C, E G and H the retention shall be satisfied by **Your** payments of **Damages** and **Claim Expenses** resulting from **Claims** first made and reported to **Us** during the **Policy Period** or **Extended Reporting Period**. With respect to Coverage D, the retention shall be satisfied by **Your** payments of **Breach Response Costs** resulting from a **Security Breach** that occurred during the **Policy Period** and is reported by **You** to **Us** during the **Policy Period** or **Extended Reporting Period**.
- C. With respect to Coverage G.1, if the **Network Disruption** has exceeded the waiting period in hours set forth in the Risk Details, then **Business Income Loss** will be subject to the applicable retention set forth in the Risk Details and shall be computed as of the commencement of the **Network Disruption**.
- D. One retention shall apply to each single **Claim** or **Loss** under such Coverages as per VI.C.
- E. At **Our** sole and absolute discretion, **We** may pay all or part of the applicable retention, in which case **You** agree to repay **Us** immediately after **We** notify **You** of the payment. The applicable retention shall first be applied to any **Loss** covered by this Policy that is paid by **Us**, or by **You** with **Our** prior written consent.

## VIII. EXTENDED REPORTING PERIOD

A. Basic **Extended Reporting Period**:

In the event of cancellation or non-renewal of this Policy by **You** or **Us**, an **Extended Reporting Period** of thirty (30) days immediately following such cancellation or non-renewal shall be automatically granted hereunder at no additional premium. Such **Extended Reporting Period** shall cover **Claims** first made and reported to **Us** during such thirty (30) day **Extended Reporting Period** but only in respect of any act, error, or omission committed prior to the date of cancellation or non-renewal, and subject to all other terms, conditions, and exclusions of this Policy. No **Claim** in such thirty (30) day extended reported period shall be covered under this Policy if **You** are entitled to indemnity under any other insurance or would have been entitled to indemnity under such insurance but for the exhaustion thereof.

B. Optional **Extended Reporting Period**:

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, the percentage of the annual premium shown below, to have issued an endorsement providing an optional **Extended Reporting Period** from the cancellation or non-renewal date, as below:

12 months – 100% of the annual premium shown in the Risk Details  
24 months – 150% of the annual premium shown in the Risk Details  
36 months – 200% of the annual premium shown in the Risk Details

Such optional **Extended Reporting Period** shall cover **Claims** made and reported to **Us** during this optional **Extended Reporting Period**, but only in respect of any **Claim** arising out of any act, error, or omission committed prior to the date of cancellation or non-renewal, and subject to all other terms, conditions, and exclusions of the Policy.

In order for **You** to invoke the optional **Extended Reporting Period**, the payment of additional premium as stated in this provision must be paid to **Us** within thirty (30) days of the non-renewal or cancellation.

At the commencement of the optional **Extended Reporting Period**, the entire premium shall be deemed fully earned, and in the event **You** terminate the optional **Extended Reporting Period** for whatever reason prior to its natural expiration, **We** will not be liable to return any premium paid for the optional **Extended Reporting Period**.

**C. Terms and conditions of basic and optional **Extended Reporting Period****

1. At renewal of this Policy, **Our** quotation of different premium, retention or limit of indemnity or changes in policy language shall not constitute non-renewal by **Us** for the purposes of granting the optional **Extended Reporting Period**.
2. The right to the **Extended Reporting Period** shall not be available to **You** where **We** cancel or non-renew due to non-payment of premium.
3. The limit of liability for the **Extended Reporting Period** shall be part of, and not in addition to, the limit of liability for the **Policy Period**.
4. All notices and premium payments with respect to the **Extended Reporting Period** shall be directed to **Us** through the entity named in the Risk Details.

**IX. TERMS AND CONDITIONS**

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

1. If any **Claim** is made against **You** during the **Policy Period**, then as soon as practicable after **Your Control Group** first becomes aware of such **Claim** and no later than 60 days after the expiry of the **Policy Period**, **You** must forward to **Us** through persons named in the Risk Details every demand, notice, summons or other process **You** or **Your** representative receive.
2. If during the **Policy Period**, **Your Control Group** first becomes aware of any act, error or omission that might reasonably give rise to a **Claim** or **Loss**, **You** may give written notice to **Us** through persons named in the Risk Details as soon as practicable during the **Policy Period** of:
  - a. the specific details of the act, error or omission that might reasonably give rise to a **Claim** or **Loss**;
  - b. the possible damage which may result or has resulted from the act, error or omission;
  - c. the facts by which **You** first became aware of the act, error, omission or **Loss**; and

- d. any **Computer System** security and event logs which provide evidence of the act, error or omission.

Any subsequent **Claim** made against **You** arising out of such act, error or omission or **Loss** which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to **Us**.

3. A **Claim** or **Loss** shall be considered to be reported to **Us** when notice is first given to **Us** through persons named in the Risk Details or when notice of a Wrongful Act which might reasonably give rise to a **Claim** is first provided in compliance with IX.A.2 above.
4. If **You** report any **Claim, Loss** or request any payment under this Policy knowing such **Claim, Loss** or request to be false or fraudulent, as regards amounts or otherwise, this Policy shall become null and void and all coverage hereunder shall be forfeited.
5. Whenever coverage under this Policy would be lost because of non-compliance of Section IX.A.1. relating to the giving of notice of **Claim** or **Loss** to **Us** with respect to which any other of **You** shall be in default solely because of the failure to give such notice or concealment of such failure by one or more of **You** responsible for the loss or damage otherwise insured hereunder, then **We** agree that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those of **You** who did not personally commit or personally participate in committing or personally acquiesce in such failure to give notice, provided that those of **You** entitled to the benefit of this provision under Section IX.A.1. have complied with such condition promptly after obtaining knowledge of the failure of any others of **You** to comply therewith, and any such **Claim** or **Loss** was reported during the **Policy Period** or **Extended Reporting Period**, if applicable.

However, such insurance as afforded by this provision shall not cover a **Claim** or **Loss** against **Your Organization** if a current principal, partner, director, or officer failed to give notice as required by Section IX.A.1. for a **Claim** or **Loss** against **Your Organization** arising from acts, errors, or omissions that were known to a current principal, partner, director, or officer.

## **B. ASSISTANCE AND COOPERATION**

1. **You** shall cooperate with **Us** in all investigations. **You** shall execute or cause to be executed all papers and render all assistance as requested by **Us**. Part of this assistance may require **You** to provide soft copies of **Your** system security and event logs.
2. 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** because of acts, errors, or omissions 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.
3. **You** shall not admit liability, make any payment, assume any obligation, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without **Our** written consent, unless otherwise provided under Section II and/or as per the provisions of **Breach Response Costs** definition.

4. As soon as practicable after **You** give **Us** notice of any **Claim**, circumstance, **Loss**, or **Security Breach**, **You** must also give **Us** copies of reports, photographs, investigations, pleadings and all other papers in connection therewith, including allowing **Us** to question **You** under oath at such times as may be reasonably required regarding **Your Organization's** books, records, and any other matters relating to such **Security Breach** or **Claim**.
5. In the event of a **Security Breach** or **Loss**, **You** must take all reasonable steps to protect **Computer Systems** and personally identifiable, non-public information from further access, disclosure, loss or damage.

**C. DUTIES IN THE EVENT OF A LOSS (applicable to Coverage G only)**

**You** must see that the following are done if **You** send **Us** a **Loss** Notification:

1. at **Our** request, notify the police, FBI, CERT or other applicable law enforcement authority, central reporting or investigative organization that **We** may designate, if it appears that a law may have been broken;
2. immediately take all reasonable steps and measures necessary to limit or mitigate the **Loss**;
3. send **Us** copies of every demand, notice, summons, or any other applicable information **You** receive;
4. if requested, permit **Us** to question **You** under oath at such times and places as may be reasonably required about matters relating to this insurance, including **Your** books and records;
5. send **Us** a sworn statement of **Loss** containing the information **We** request to resolve, settle or otherwise handle the **Loss**. **We** will provide **You** with the necessary forms;
6. cooperate with **Us** and counsel **We** may appoint in the investigation of any **Loss** covered by this Policy;
7. assist **Us** and counsel **We** may appoint in the investigation or settlement of **Losses**;
8. assist **Us** in protecting and enforcing any right of subrogation, contribution or indemnity against any person, organization or other entity that may be liable to **You**, including attending depositions, hearings and trials; and
9. otherwise assist in securing and giving documentation and evidence, and obtaining the attendance of witnesses.



#### **D. SUBROGATION**

In the event of any payment under this Policy, **You** agree to give **Us** the right to any subrogation and recovery to the extent of **Our** payments. **You** agree to execute all papers required and will do everything that is reasonably necessary to secure these rights to enable **Us** to bring suit in **Your** name. **You** agree to fully cooperate in **Our** prosecution of that suit. **You** agree not to take any action that could impair **Our** right of subrogation without **Our** written consent whether or not **You** have incurred any un-reimbursed Loss. However, subject to **our** prior written consent **We** agree that **You** may waive these rights of subrogation when required in a contract with an **Additional Insured**. Any recoveries shall be applied first to subrogation expenses, second to **Damages** and **Claim Expenses** paid by **Us**, and third to the Retention. Any additional amounts recovered shall be paid to **You**.

#### **E. INSPECTIONS AND SURVEYS**

**We** may choose to perform inspections or surveys of **Your** operations, conduct interviews and review documents as part of **Our** underwriting, **Our** decision whether to provide continued or modified coverage, or **Our** processing of any **Loss**. If **We** make recommendations as a result of these inspections, **You** should not assume that every possible recommendation has been made or that **Your** implementation of a recommendation will prevent a **Loss**. **We** do not indicate by making an inspection or by providing **You** with a report that **You** are complying with or violating any laws, regulations, codes or standards.

#### **F. OTHER INSURANCE**

This insurance shall apply in excess of any other valid and collectible insurance available to **You**, including any retention or deductible portion thereof, unless such other insurance is written only as specific excess insurance over the limit of liability of this Policy. However, this insurance shall act as primary and non-contributory in respect of any **Additional Insured**.

#### **G. ACTION AGAINST US**

No action shall lie against **Us** or **Our** representatives unless, as a condition precedent thereto: (1) there shall have been full compliance with all terms of this insurance; and (2) until the amount of **Your** obligation to pay shall have been finally determined either by judgment or award against **You** after trial, regulatory proceeding, arbitration or by written agreement between **You**, the claimant, and **Us**.

Any person or organization or the legal representative thereof who has secured such judgment, award, or written agreement shall thereafter be entitled to make a **Claim** under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have the 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.

**Your** bankruptcy or insolvency shall not relieve **Us** of **Our** obligations hereunder.



## H. ENTIRE AGREEMENT

By acceptance of the 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 Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy signed by **Us**.

## I. NEW SUBSIDIARIES/CHANGES IN NAMED INSURED OR YOUR ORGANIZATION

1. During the **Policy Period**, if **You** acquire another corporation whose annual revenues are more than twenty percent (20%) of **Your Organization's** annual revenues as set forth in its most recent audited financial statements there shall be no coverage under this Policy for acts, errors, or omissions committed or allegedly committed by the newly acquired **Subsidiary** unless **You** give **Us** written notice of the acquisition containing full details thereof, and **We** have agreed to add coverage for the newly acquired **Subsidiary** upon such terms, conditions, and limitations of coverage and such additional premium as **We**, in **Our** sole discretion, may require.
2. During the **Policy Period**, if the **Named Insured** consolidates or merges with or is acquired by another entity, or sells substantially all of its assets to another entity, or a receiver, conservator, trustee, liquidator, or rehabilitator, or any similar official is appointed for or with respect to the **Named Insured**, then all coverage under this Policy shall continue to the expiration of the **Policy Period**. However, coverage shall only apply for losses, acts, errors, or omissions that occurred prior to the date of such consolidation, merger or appointment. Unless the **Named Insured**:
  - a. gives written notice **Us** within thirty (30) days of such consolidation, merger or appointment;
  - b. promptly provides **Us** with all such further information as **We** shall require;
  - c. obtains **Our** written consent to continue some or all of the coverages provided by this Policy;
  - d. accepts any special terms, conditions, exclusions and other modifications to coverage required by **Us**; and
  - e. pays any additional premium required by **Us**.
3. Should a corporation cease to be a **Subsidiary** after the inception date of this Policy, coverage with respect to such corporation shall continue as if it was still a **Subsidiary** until the expiration date of this Policy, but only with respect to a **Claim** that arises out of any act, error, or omission committed by such corporation prior to the date that it ceased to be a **Subsidiary**.
4. All notices and premium payments made under this paragraph shall be directed to **Us** through the entity named in the Risk Details.

**J. ASSIGNMENT**

**Your** interest under this Policy may not be assigned to any other person or organization, whether by operation of law or otherwise, without **Our** written consent. If **You** shall die or be adjudged incompetent, such insurance shall cover **Your** legal representative as **You** as would be covered under this Policy.

**K. CANCELLATION**

1. This Policy may be cancelled by **You**, by surrender thereof to **Us** or by mailing to **Us** through the entity named in the Risk Details, written notice stating when the cancellation shall be effective.
2. This Policy may be cancelled by **Us** by mailing to **You** at the address shown in the Risk Details written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if **We** cancel this Policy because **You** have failed to pay a premium when due, this Policy may be cancelled by **Us** by mailing a written notice of cancellation to **You** at the address shown in the Risk Details stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. Mailing of notice shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery (where permitted by law) of such written notice either by **You** or by **Us** shall be equivalent of mailing.
3. If **You** cancel this Policy, the earned premium shall be computed in accordance with the Lloyd's short rate table (NMA45, as attached) and procedure, provided that the premium shall be deemed fully earned if any **Claim** has been notified to **Us** under this Policy. In that event, **We** agree that the Policy will not be cancelled midterm solely on the basis of any valid **Claim** notified to **Us**.
4. If **We** cancel this Policy prior to any **Claim** or **Security Breach** being reported under this Policy, the earned premium shall be computed pro rata. The premium shall be deemed fully earned if any **Claim** or **Security Breach** under this Policy is reported to **Us** on or before the date of cancellation.
5. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

**L. 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 the Policy. Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

**M. NAMED INSURED AUTHORIZATION**

The **Named Insured** first specified in the Risk Details has the right and duty to act on **Your** behalf for:

1. the giving and receiving of notice of cancellation;
2. the payment of premiums, including additional premiums;

3. the receiving of any return premiums;
4. the acceptance of any endorsements added after the effective date of coverage;
5. the payment of any retentions;
6. the receiving of any loss payments; and
7. otherwise corresponding with **Us**.

**N. SERVICE OF SUIT CLAUSE**

1. It is agreed that in the event of **Our** failure to pay any amount claimed to be due under this Policy, at **Your** request **We** 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 the Risk Details, and that in any suit instituted against any one of **Us** upon this contract, **We** will abide by the final decision of such court or of any appellate court, in the event of an appeal.
2. **Our** representative designated in the Risk Details 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.
3. 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 **Our** true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of **You** or any beneficiary hereunder arising out of this Policy, and hereby designate **Our** representative listed in the Risk Details as the person to whom the said officer is authorized to mail such process or a true copy thereof.

**O. CHOICE OF LAW**

As per Risk Details.

**P. DISPUTE RESOLUTION**

**We** and **You** agree to submit any dispute arising out of or relating to this Policy, including but not limited to its construction, application and validity, or any breach thereof, to non-binding mediation or binding arbitration in accordance with the commercial arbitration rules of the appropriate Arbitration Association ("AA") of the country that is identified as **Your** address in this Policy, in effect at the time of the dispute. If all parties agree, a different form of alternative dispute resolution ("ADR") may be used.

**You** shall have the right to choose the type of ADR process to resolve a dispute under this Policy.

Each party shall bear its own fees and costs in connection with any ADR process, but the costs incurred through AA, including the fees and expenses of the arbitrator, shall be shared equally by the parties, unless the arbitration award provides otherwise. All arbitration proceedings shall be held only in a city where either **We** or **You** has a place of business in that country, at the election of the party commencing arbitration. The decision of the arbitrator/s is final and binding and any award may be confirmed and enforced in any court of competent jurisdiction.

Nothing in this Section shall prevent the parties from litigating a dispute in an appropriate court in the event non-binding ADR fails to produce a resolution.

### NEW SHORT RATE CANCELLATION TABLE ENDORSEMENT

Notwithstanding anything to the contrary contained herein and in consideration of the premium for which this Insurance is written it is agreed that in the event of cancellation thereof by the Assured the Earned Premium shall be computed as follows:-

### SHORT RATE CANCELLATION TABLE

A. For insurances written for one year: -

Days Insurance in Force		Per cent. of One Year Premium		Days Insurance in Force		Per cent. of One Year Premium
1-73	.....	30		201 – 205	.....	65
74 - 76	.....	31		206 – 209	.....	66
77 - 80	.....	32		210 – 214	(7 months) ..	67
81 - 83	.....	33		215 – 218	.....	68
84 - 87	.....	34		219 – 223	.....	69
88 - 91	(3 months) ..	35		224 - 228	.....	70
92 - 94	.....	36		229 - 232	.....	71
95 - 98	.....	37		233 - 237	.....	72
99 - 102	.....	38		238 - 241	.....	73
103 - 105	.....	39		242 - 246	(8 months) ..	74
106 - 109	.....	40		247 - 250	.....	75
110 - 113	.....	41		251 - 255	.....	76
114 - 116	.....	42		256 - 260	.....	77
117 - 120	.....	43		261 - 264	.....	78
121 - 124	(4 months) ..	44		265 - 269	.....	79
125 - 127	.....	45		270 - 273	(9 months) ..	80
128 - 131	.....	46		274 - 278	.....	81
132 - 135	.....	47		279 - 282	.....	82
136 - 138	.....	48		283 - 287	.....	83
139 - 142	.....	49		288 - 291	.....	84
143 - 146	.....	50		292 - 296	.....	85
147 - 149	.....	51		297 - 301	.....	86
150 - 153	(5 months) ..	52		302 - 305	(10 months) ..	87
154 - 156	.....	53		306 - 310	.....	88
157 - 160	.....	54		311 - 314	.....	89
161 - 164	.....	55		315 - 319	.....	90
165 - 167	.....	56		320 - 323	.....	91
168 - 171	.....	57		324 - 328	.....	92
172 - 175	.....	58		329 - 332	.....	93
176 – 178	.....	59		333 - 337	(11 months) ..	94
179 – 182	(6 months) ..	60		338 - 342	.....	95
183 – 187	.....	61		343 - 346	.....	96
188 – 191	.....	62		347 - 351	.....	97

192 – 196	.....	63		352 - 355	.....	98
197 – 200	.....	64		356 - 360	.....	99
				361 - 365	(12 months)..	100

B. For Insurances written for more or less than one year:-

1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
2. If insurance has been in force for more than 12 months:
  - (a) Determine full annual premium as for an insurance written for a term of one year.
  - (b) Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata Earned Premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
  - (c) Add premium produced in accordance with items (a) and (b) to obtain Earned Premium during full period insurance has been in force.

**NMA45**



**SANCTION LIMITATION AND EXCLUSION CLAUSE**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

15/09/10

LMA3100

## **DATA PROTECTION SHORT FORM INFORMATION NOTICE**

Your personal information notice

Who we are

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

The basics

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

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

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

The way insurance works means that your information may be shared with, and used by, a number of third parties in the insurance sector for example, insurers, agents or brokers, reinsurers, loss adjusters, sub-contractors, regulators, law enforcement agencies, fraud and crime prevention and detection agencies and compulsory insurance databases. We will only disclose your personal information in connection with the insurance cover that we provide and to the extent required or permitted by law.

Other people's details you provide to us

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

Want more details

For more information about how we use your personal information please see our full privacy notice(s), which is/are available online on our website(s) or in other formats on request. Contacting us and your rights You have rights in relation to the information we hold about you, including the right to access your information. If you wish to exercise your rights, discuss how we use your information or request a copy of our full privacy notice(s), please contact us, or the agent or broker that arranged your insurance who will provide you with our contact details at:

Arthur J. Gallagher (UK) Limited  
The Walbrook Building, 25 Walbrook, London, EC4N 8AW  
United Kingdom

LMA9151

**ENDORSEMENT 1 – BREACH VENDOR PANEL**

The following vendors have been approved to support **You** in the event of a **Security Breach**. **You** do not require **our** prior written consent to incur reasonable costs with vendors under 1 and 2:

1. Forensic Consultants appointed by **You** with **Our** prior agreement:

Ankura  
Arete  
FireEye/Mandiant  
Kivu Consulting, Inc.  
Verizon  
Navigant  
Kroll  
Stros Friedberg  
ID Experts

2. Privacy Attorneys:

United States of America

**Baker & Hostetler LLP**

Ted Kobus  
1-212-271-1504  
[tkobus@bakerlaw.com](mailto:tkobus@bakerlaw.com)  
24/7 breach response hotline – **1-855-217-5204**

**Lewis Brisbois Bisgard & Smith LLP**

[www.lewisbrisbois.com](http://www.lewisbrisbois.com)

3. Notification Providers appointed by **You** with **Our** prior agreement.

Epiq  
NPC Immersion  
Experian Consumer Services  
ID Experts

4. Credit Monitoring Services appointed by **You** with **Our** prior agreement:

Experian  
TransUnion  
Equifax  
AllClearID  
ID Experts

5. Public Relations Firms appointed by **You** with **Our** prior agreement:

Levick, LLC

## **ENDORSEMENT 2 – BRICKING ENDORSEMENT**

The contract is amended as follows:

Endorsement Effective Date:

Definition TT is deleted in its entirety and replaced as follows:

TT. **Restoration Costs** means the actual, reasonable and necessary costs **You** incur to replace, restore, or re-create **Your Digital Assets** to the level or condition at which they existed prior to sustaining any **Loss**. If such **Digital Assets** cannot be replaced, restored or recreated, then **Restoration Costs** will be limited to the actual, reasonable and necessary costs **You** incur to reach this determination. **Restoration Costs** do not include:

1. any costs or expenses incurred to update, upgrade, replace, restore or otherwise improve **Your Digital Assets** or **Computer System** to a level beyond that which existed prior to sustaining any **Loss**; or
2. the economic or market value of any **Digital Assets**, including trade secrets.

**Restoration Costs** also means the actual, reasonable and necessary costs **You** incur to replace **Your Computer Hardware** which has not suffered physical damage but has been rendered non-functional or useless for any part of its intended use or purpose by any **Unauthorized Access** to, **Unauthorized Use** of, or the transmission of **Malicious Code** to **Your Computer System**.

**Computer Hardware** shall be deemed to be non-functional or useless if:

- a) it cannot be restored to functionality after reasonable efforts have been made; or
- b) the cost to replace **Your Computer Hardware** is less than the cost to restore or recreate the **Digital Assets** installed on **Your Computer Hardware** to a level that is functionally equivalent to the level that existed prior to the **Unauthorized Access** to, **Unauthorized Use** of, or transmission of **Malicious Code** to **Your Computer System** occurring.

The costs to replace **Your Computer Hardware** will be determined using the cost to replace such items with identical or commercially equivalent items and will be subject to an aggregate Sublimit of Liability of USD 10,000,000 in the aggregate (including claims expenses). This forms part of the limit of liability and is not in addition.

For the purposes of this Endorsement the following exclusion is deleted in its entirety and replaced as follows:

U. the physical loss of, damage to or destruction of tangible property, including the loss of use thereof; provided, however, "tangible property" does not include **Digital Assets**.

Solely with respect to Coverage G.2, this exclusion shall not apply to the loss of use of **Computer Hardware** which has not suffered physical damage but has been rendered non-functional or useless for any part of its intended use or purpose by any **Unauthorized Access** to, **Unauthorized Use** of, or transmission of **Malicious Code** to **Your Computer System**.

For the purposes of this Endorsement the following definition is added:

HHH. **Computer Hardware** means the physical, tangible parts and components of a computer and related devices and does not include software or any other **Digital Assets**.

For the purposes of this Endorsement the following definition is deleted in its entirety and replaced as follows:

QQ. **Property Damage** means physical injury to or destruction of any tangible property, including the loss thereof. Data is not considered tangible property.

Solely with respect to Coverage G.2, **Property Damage** does not include the loss of use of **Computer Hardware** which has not suffered physical damage but has been rendered non-functional or useless for any part of its intended use or purpose by any **Unauthorized Access** to, **Unauthorized Use** of, or transmission of **Malicious Code** to **Your Computer System**.

### **ENDORSEMENT 3 – VOLUNTARY SHUTDOWN**

In consideration of the premium charged, it is agreed that Clause V. Definitions. HH is deleted and replaced as follows:

HH. **Network Disruption** means any of the following events:

1. A detectable failure, interruption or degradation of the operation of **Your Computer System**
2. The denial, restriction, or hindrance of access to or use of **Your Computer System** or **Your Digital Assets** by any party who is otherwise authorized to have access
3. **Voluntary shutdown**

More than one such event that results from the same or related underlying facts, circumstances, situations, transactions or **System Failure** shall be considered a single **Network Disruption** which commences on the date of the earliest of such events

It is further agreed that the following definition is added to Clause V. Definitions:

- III. **Voluntary Shutdown** means **You**, deliberately take **Your Computer System** offline with **Our** prior written consent, where **we** agree that it is reasonable and necessary, to manage a **Multimedia Wrongful Act, Privacy breach, Security breach, Security Wrongful Act, Cyber-Extortion Threat** or breach of **Privacy regulations**.

All other terms and conditions of this policy remain unchanged.



**ENDORSEMENT 4 – CYBER EXTORTION SUBLIMIT ENDORSEMENT**

It is hereby noted and agreed by that the following conditions shall be added in respect of Coverages D, F and G; for the following Entities only:

- The University of Tennessee
- Tennessee Board of Regents

Notwithstanding any other provision of this Policy or endorsement hereto:

In respect of any **Cyber-Extortion Threat** received and reported to **Us**, an aggregate sublimit of twenty five percent (25%) of the **Policy Aggregate Limit** (this sublimit being part of and not in addition to the **Policy Aggregate Limit**) shall apply for all **Breach Response Costs, Cyber-Extortion Expenses, Cyber-Extortion Payments, Business Income Loss, and Restoration Payments** combined in respect of such **Cyber-Extortion Threat**. For the avoidance of doubt, any **Security Breach** or **System Failure** arising from the same or related **Cyber-Extortion Threat** shall be deemed a single loss, to which the twenty-five percent (25%) sublimit shall apply for all resulting **Breach Response Costs, Cyber-Extortion Expenses, Cyber-Extortion Payments, Business Income Loss, and Restoration Payments** combined.

**We** shall pay fifty percent (50%) of such **Breach Response Costs, Cyber-Extortion Expenses, Cyber-Extortion Payments, Business Income Loss, and Restoration Payments** as detailed above up to the applicable twenty-five (25%) sublimit, provided that **You** bear the remaining fifty percent (50%) uninsured and at **Your** own risk (the 'Co-Insurance Percentage'). **Your** payment of the 'Co-Insurance Percentage' shall not reduce the **Policy Aggregate Limit**.

All other term and condition remain unchanged.

**ENDORSEMENT 5 – BIOMETRIC EXCLUSION ENDORSEMENT**

It is understood and agreed that the following exclusion is added to Section IV. EXCLUSIONS:  
Any **Claim** based upon, arising out of or resulting from any actual or alleged failure to protect the security or confidentiality of biometric information or data, or any actual or alleged violation of, breach of or failure to comply with **Privacy Regulations** which govern, or could be used to govern, the collection, use, processing, retention, storage or disposal of biometric information or data, including the Illinois Biometric Information Privacy Act.  
All other term and condition remain unchanged.

### **COMPLAINTS PROCEDURE**

Whilst we make every effort to maintain the highest standards, we recognise that there may be occasions when we fail to satisfy the particular requirements of our customers. We therefore, have in place, procedures to investigate and remedy any areas of concern.

If you wish to register a complaint, in first instance you should contact your Account Executive.

Alternatively you can contact the complaints team direct on:

E-mail: [UK.Gallagher.LondonComplaints@ajg.com](mailto:UK.Gallagher.LondonComplaints@ajg.com)

Tel: 0141 285 3539 or

Complaints Team  
Glasgow Office  
7<sup>th</sup> Floor Spectrum Building  
55 Blythswood Street  
Glasgow  
G2 7AT

Once we receive your complaint, we undertake to:

- Try and resolve the complaint within 3 working days and write to you confirming if we have done so;
- Acknowledge any formal complaints promptly;

Respond fully to your concern or complaint within four weeks or less. If for any reason this is not possible, we will write to you to explain why we have been unable to conclude the matter quickly. If we have been unable to resolve your complaint in eight weeks, we will write to you explaining the reason as to why this has not been possible.

### **AJG SHORT FORM PRIVACY NOTICE**

Arthur J. Gallagher (UK) Limited is the data controller of any personal information you provide to us or personal information that has been provided to us by a third party. We collect and process information about you in order to arrange insurance policies and to process claims. Your information is also used for business purposes such as fraud prevention and detection and financial management. This may involve sharing your information with third parties such as insurers, reinsurers, other brokers, claims handlers, loss adjusters, credit reference agencies, service providers, professional advisors, our regulators, police and government agencies or fraud prevention agencies.

We may record telephone calls to help us monitor and improve the service we provide. For further information on how your information is used and your rights in relation to your information please see our privacy notice at <https://www.ajginternational.com/Privacy-Policy/>. If you are providing personal data of another individual to us, you must tell them you are providing their information to us and show them a copy of this notice.

**SPECIAL CANCELLATION CLAUSE**

In the event that an Insurer:

- (a) ceases underwriting (wholly) or formally announces its intention to do so, or
- (b) is the subject of an order or resolution for winding up or formally proposes a scheme of arrangement, or
- (c) has its authority to carry on Insurance business withdrawn, or
- (d) rating falls below "A-" Standard and Poors or "A-" AM Best

the Insured may terminate that Insurer's participation on this risk forthwith by giving notice and the premium payable to that Insurer shall be pro rata to the time on risk unless there is a claim or circumstance, in which event the premium is fully earned.

NMA 2975 (Amended)



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