

Arch CyProSM Policy

This policy contains a clause which may limit the amount payable.

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A. INSURING AGREEMENTS

FIRST PARTY COVERAGE PART

1. INCIDENT RESPONSE EXPENSE COVERAGE

The **Insurer** shall pay on behalf of the **Insured Entity** for **Incident Response Expense Loss** in excess of the applicable Self-Insured Retention, resulting from an actual or reasonably suspected **Network Security Breach** or **Privacy Violation** first discovered by an **Insured** during the **Policy Period** and reported to the **Insurer** pursuant to the terms of this Policy.

2. BUSINESS INTERRUPTION COVERAGE

The **Insurer** shall reimburse the **Insured Entity** for **Business Interruption Loss** in excess of the applicable Self-Insured Retention, incurred by the **Insured Entity** during the **Business Interruption Period of Recovery** or the **Extended Business Interruption Period of Recovery**, that results from a **Business Interruption** that:

- I. first occurs during the **Policy Period**;
- II. exceeds the **Business Interruption Waiting Period**; and
- III. is reported to the **Insurer** pursuant to the terms of this Policy.

3. DATA RECOVERY EXPENSE COVERAGE

The **Insurer** shall pay on behalf of the **Insured Entity** for **Data Recovery Expense Loss** in excess of the applicable Self-Insured Retention that is incurred by an **Insured Entity**, resulting from a **Network Security Breach** or **Privacy Violation** which is first discovered by an **Insured** during the **Policy Period** and is reported to the **Insurer** pursuant to the terms of this Policy.

4. CYBER EXTORTION EXPENSE COVERAGE

The **Insurer** shall pay on behalf of the **Insured Entity** for **Cyber Extortion Expense Loss** in excess of the applicable Self-Insured Retention that is incurred by an **Insured Entity**, resulting from a **Ransomware Event** which is first discovered by an **Insured** during the **Policy Period** and is reported to the **Insurer** pursuant to the terms of this Policy.

5. REPUTATIONAL HARM COVERAGE

The **Insurer** shall reimburse the **Insured Entity** for **Reputational Harm Loss** in excess of the applicable Self-Insured Retention, incurred by the **Insured Entity** during the **Reputational Harm Period of Recovery**, that results from **Adverse Publicity** that:

- I. first occurs during the **Policy Period**;
- II. exceeds the **Reputational Harm Waiting Period**; and
- III. is reported to the **Insurer** pursuant to the terms of this Policy.

THIRD PARTY COVERAGE PART

6. NETWORK SECURITY AND PRIVACY LIABILITY

The **Insurer** shall pay on behalf of the **Insured** for **Network Security and Privacy Liability Loss** in excess of the applicable Self-Insured Retention, resulting from a **Claim** for a **Network Security Breach or Privacy Violation Wrongful Act** that is committed prior to the end of the **Policy Period**, and the **Claim** is first made against the **Insured** during the **Policy Period** or Extended Reporting Period (If applicable) and is reported to the **Insurer** pursuant to the terms of this Policy.

7. MEDIA LIABILITY COVERAGE

The **Insurer** shall pay on behalf of the **Insured** for **Media Liability Loss** in excess of the applicable Self-Insured Retention, resulting from a **Claim** for a **Media Wrongful Act** that is committed on or subsequent to the **Retroactive Date** and prior to the end of the **Policy Period**, and the **Claim** is first made against the **Insured** during the **Policy Period** or Extended Reporting Period (If applicable) and is reported to the **Insurer** pursuant to the terms of this Policy.

8. TECHNOLOGY AND PROFESSIONAL SERVICES LIABILITY

The **Insurer** shall pay on behalf of the **Insured** for **Technology or Professional Services Liability Loss** in excess of the applicable Self-Insured Retention, resulting from a **Claim** for a **Technology or Professional Services Wrongful Act** that is committed on or subsequent to the **Retroactive Date** and prior to the end of the **Policy Period**, and the **Claim** is first made against the **Insured** during the **Policy Period** or Extended Reporting Period (If applicable) and is reported to the **Insurer** pursuant to the terms of this Policy.

CYBER CRIME COVERAGE PART

9. SOCIAL ENGINEERING COVERAGE

The **Insurer** shall reimburse the **Insured Entity** for **Social Engineering Loss** in excess of the applicable Self-Insured Retention that is incurred by an **Insured Entity**, resulting from a **Fraudulent Instruction** first discovered by an **Insured** during the **Policy Period** and reported to the **Insurer** pursuant to the terms of this Policy.

10. SERVICE FRAUD COVERAGE

The **Insurer** shall reimburse the **Insured Entity** for **Services Fraud Loss** in excess of the applicable Self-Insured Retention that is incurred by an **Insured Entity**, resulting from **Services Fraud** first discovered by an **Insured** during the **Policy Period** and reported to the **Insurer** pursuant to the terms of this Policy.

11. INVOICE MANIPULATION COVERAGE

The **Insurer** shall reimburse the **Insured Entity** for **Invoice Manipulation Loss** in excess of the applicable Self-Insured Retention that is incurred by an **Insured Entity**, resulting from **Invoice Manipulation** first discovered by an **Insured** during the **Policy Period** and reported to the **Insurer** pursuant to the terms of this Policy.

B. DEFINITIONS

The following terms shall have the meanings specified below:

1. **“Additional Insured”** means any natural person or entity that the **Insured Entity** has agreed in a written contract or agreement to add as an **Insured** under this Policy.
2. **“Adverse Publicity”** means the dissemination via any medium by a third party (including but not limited to dissemination via print, video, audio, electronic, or digital or digitized form) of previously non-public information specifically concerning an actual **Network Security Breach** or **Privacy Violation** affecting an **Insured’s** customers, clients, or patients.

Such **Network Security Breach** or **Privacy Violation** must first be discovered by an **Insured** during the **Policy Period**.

3. **“Advertising Services Platform”** means a social media advertising platform that is used to promote products, services, ideas, concepts, or issues through publications or advertisements of text, image or video on such platform.
4. **“Affiliate”** means:
 - I. Any person or entity:
 - a. which is operated, controlled or managed by an **Insured**; or
 - b. in which any **Insured** has an ownership interest;

At any time during or after the performance of **Professional Services** giving rise to a **Claim**; or

- II. Any entity of which any natural person **Insured** is a director, officer, trustee, regent, governor, independent contractor or equivalent executive at the time a **Claim** is made.

Affiliate does not include a **Subsidiary**.

5. **“Application”** means:
 - I. The application for this Policy, including any information or materials submitted, in connection with or incorporated therein; and
 - II. Any application, including any information or materials submitted, in connection with or incorporated therein, for any insurance policy in an uninterrupted series of policies issued by the **Insurer**, or any insurance company controlling, controlled by or under common control with the **Insurer**, of which this Policy is a direct or indirect renewal or replacement.

All such information and materials submitted will be deemed attached to and incorporated into this Policy.

6. **“Bodily Injury”** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress that results from such physical injury, sickness, disease, or death.
7. **“Bricking”** means damage or loss of use of hardware or electronic equipment included in the **Insured Entity’s Computer System** caused by the reprogramming of the software (including the firmware) of such hardware or electronic equipment rendering it useless for its intended purpose.
8. **“Business Interruption”** means the actual, measurable, full or partial interruption, suspension, or degradation of the **Insured Entity’s** business operations resulting from a:

- I. **Network Security Breach** of the **Insured Entity's Computer System** if Item **6.B.I.** Business Interruption (Network Security Breach) is elected in the Declarations;
- II. **Voluntary Shutdown** of the **Insured Entity's Computer System** if Item **6.B.I.** Business Interruption (Network Security Breach) is elected in the Declarations;
- III. **System Failure** of the **Insured Entity's Computer System** if Item **6.B.II.** Business Interruption (System Failure) is elected in the Declarations;
- IV. **Network Security Breach** of the **Technology Contractor's Computer System** if Item **6.B.III.** Business Interruption – Technology Contractor (Network Security Breach) is elected in the Declarations;
- V. **System Failure** of the **Technology Contractor's Computer System** if Item **6.B.IV.** Business Interruption – Technology Contractor (System Failure) is elected in the Declarations;
- VI. **Network Security Breach** of the **Dependent Business's Computer System** if Item **6.B.V.** Business Interruption – Dependent Business (Network Security Breach) is elected in the Declarations; and
- VII. **System Failure** of the **Dependent Business's Computer System** if Item **6.B.VI.** Business Interruption – Dependent Business (System Failure) is elected in the Declarations.

The above-referenced **Network Security Breach** or **System Failure** must first be discovered by any **Insured** during the **Policy Period**.

9. **"Business Interruption Loss"** means the actual loss sustained by an **Insured** as measured by:

- I. Net income (net profit or net loss before income taxes), that could have reasonably been earned or incurred but for a **Business Interruption**; plus
- II. Continuing normal operating expenses incurred by the **Insured Entity** (including payroll) but only to the extent that such operating expenses must necessarily continue during the **Business Interruption Period of Recovery** or **Extended Business Interruption Period of Recovery**; plus
- III. Reasonable and necessary extra expenses that would not have been incurred but for a **Business Interruption** and incurred during the **Business Interruption Period of Recovery** or **Extended Business Interruption Period of Recovery** to minimize, reduce or avoid the loss described in Paragraph **9.I.** or **9.II.** above.

Business Interruption Loss shall not include:

- I. Net income (net profit before income taxes) that would likely have been earned as a result of:
 - a. an increase in volume of business due to favorable business conditions; or
 - b. unfavorable business conditions;
- II. Liability to any third party, contractual penalties, loss of market, provision of any service credits by an **Insured**, or any other consequential loss; or
- III. Loss covered under:
 - a. The **First Party Coverage Part** except Business Interruption Coverage;

- b. The **Third Party Coverage Part**;
 - c. The **Cyber Crime Coverage Part**; or
- IV. Loss that would have otherwise been covered but for the reduction or exhaustion of any Limit of Insurance of the **First Party Coverage Part** (Except Business Interruption Coverage), **Third Party Coverage Part**, or **Cyber Crime Coverage Part**.
10. “**Business Interruption Period of Recovery**” means the period of time that:
- I. Begins on the date the **Business Interruption** first commences; and
 - II. Ends on the earliest of:
 - a. The date when the **Insured Entity’s Computer System, Technology Contractor’s Computer System, or Dependent Business’s Computer System** is repaired or restored to the condition that existed immediately prior to the **Business Interruption**;
 - b. The date when the **Insured Entity’s Computer System, Technology Contractor’s Computer System, or Dependent Business’s Computer System** could have been repaired or restored with due diligence and dispatch to the same or substantially similar condition that existed immediately prior to the **Business Interruption**; or
 - c. One Hundred Eighty (180) days after the date the **Business Interruption** first commenced.

In no event will the **Business Interruption Period of Recovery** exceed One Hundred Eighty (180) days. The expiration date of this Policy will not cut short the **Business Interruption Period of Recovery**.

11. “**Business Interruption Waiting Period**” means the number of hours set forth in Item 6.B. of the Declarations that must elapse once the **Business Interruption** has begun.
12. “**Claim**” means any of the following:
- I. A written demand for services or monetary, non-monetary or injunctive relief, commenced by the **Insured’s** receipt of such demand;
 - II. A written request for mediation or arbitration, or to toll or waive an applicable statute of limitations, commenced by the **Insured’s** receipt of such request;
 - III. A civil proceeding for services or monetary, non-monetary or injunctive relief, commenced by the receipt by, or the service upon, the **Insured** of a complaint or similar pleading; or
 - IV. A **Regulatory Action**, commenced by the receipt by, or the service upon, the **Insured** of an investigative demand, request for information, complaint or similar pleading.

Paragraphs I. through IV. include any appeal from the actions described therein.

All **Claims** arising from, or in any way related to the same or a series of related, repeated or continuing acts, errors, omissions, **Wrongful Acts, Incidents, or Related Events** will be considered a single **Claim** for the purposes of this Policy.

All such **Claims** will be deemed to have been made at the earlier of:

- I. The first of any such **Claim** described in Paragraphs I. through IV., above; or

- II. When the earliest **Incident** comprising a **Related Event** was first discovered by an **Insured**,
- even if such **Claim** is deemed to have been made prior to the inception of the **Policy Period**.
13. **“Claims Manager”** means any natural person who holds the position (or the functional equivalent) of:
- I. Chief Executive Officer;
 - II. Chief Financial Officer;
 - III. General Counsel;
 - IV. Chief Technology Officer;
 - V. Chief Information Officer;
 - VI. Chief Information Security Officer; or
 - VII. Risk Manager;
- of the **Insured Entity**.
14. **“Computer System”** means any hardware, computer, network, or other electronic equipment, electronic mobile device, peripheral devices, software, firmware, application, platform, and components thereof including **Data** stored thereon. The **Computer System** shall also include any **Voice Computer System** or **Operational Technology**.
15. **“Continuity Date”** means the applicable date set forth in Item 6. of the Declarations with respect to each coverage.
16. **“Coverage Parts”** means the following combined:
- I. **First Party Coverage Part**;
 - II. **Third Party Coverage Part**; and
 - III. **Cyber Crime Coverage Part**.
17. **“Cyber Crime Coverage Part”** means the combined coverages described in Insuring Agreements 9. Social Engineering Coverage, 10. Service Fraud Coverage, and 11. Invoice Manipulation Coverage of this Policy.
18. **“Cyber Extortion Expense Loss”** means the following reasonable and necessary expenses incurred by the **Insured Entity**, with the **Insurer’s** prior written consent (such consent shall not be unreasonably withheld), to negotiate, terminate or end a **Ransomware Event** that would otherwise result in harm to the **Insured Entity**:
- I. Fees and costs incurred to retain a third party to determine the validity, severity, and cause of a **Ransomware Event**; and
 - II. Any type of monetary consideration paid as a ransom payment, including but not limited to money, securities, bonds or commodities, digital assets, virtual currency, or non-fungible token (NFT).

Cyber Extortion Expense Loss shall not include any legal expenses, fees, or costs of any type.

SPECIMEN

19. “**Cyberterrorism**” means any harmful act conducted using a **Computer System** (or series of related, repeated or continuing harmful acts conducted using one or more **Computer Systems**) directed against one or more **Computer Systems**, or any explicit threat to commit such harmful act(s), by an individual or group of individuals with the intention to further social, ideological, religious, political, or similar objectives.

Cyberterrorism shall not include any such activities which are part of, connected to, or related to any **War** or **Cyber War**.

20. “**Cyber War**” means any harmful act conducted using a **Computer System** (or series of related, repeated or continuing harmful acts conducted using one or more **Computer Systems**) directed against one or more **Computer Systems** that is committed by or at the direction or under the control of, or on behalf of a sovereign state, and which:

- I. is connected to, related to or part of a **War**; or
- II. causes a sovereign state to become an **Impacted State**.

21. “**Damages**” means any settlement, judgment, pre-judgment or post-judgment interest, or punitive, exemplary or multiple damages that the **Insured** becomes legally obligated to pay.

The insurability of such punitive, exemplary or multiple damages shall be governed by the laws of the applicable jurisdiction that most favors coverage for such damages.

22. “**Data**” means any software, electronic code, digital data or electronic representation of information that exists in a **Computer System**.

23. “**Data Recovery Expense Loss**” means the reasonable and necessary expenses incurred by the **Insured Entity**, with the **Insurer’s** prior written consent (such consent shall not be unreasonably withheld), to retain a third party computer restoration and recovery expert:

- I. To regain access to, recover, replace, restore or recreate **Data** that is lost, altered, damaged or destroyed as a result of a **Network Security Breach**. If **Data** cannot reasonably be accessed, recovered, replaced, restored or recreated, then only the expenses incurred by the **Insured Entity** to reach this determination shall be included; or
- II. To replace or restore hardware and electronic equipment which is part of the **Computer System** as a result of **Bricking**. The maximum aggregate amount the **Insurer** shall pay for all **Data Recovery Expense Loss** described in this Paragraph 23.ii. shall be the Bricking Sub-Limit of Insurance stated in the Declarations. The Bricking Sub-Limit of Insurance shall be part of, and not in addition to, the Data Recovery Expense Coverage Limit of Insurance stated in the Declarations.

Data Recovery Expense Loss shall not include any legal expenses, fees, or costs of any type.

24. “**Defense Expenses**” means reasonable and necessary legal expenses, fees or costs incurred solely in the defense of a **Claim**.

- I. **Defense Expenses** shall include the premium for any appeal, attachment or similar bond, provided that the **Insurer** will have no obligation to furnish such bond.
- II. **Defense Expenses** shall not include any compensation, benefit expenses or overhead of, or paid to, any **Insured**.

25. “**Dependent Business**” means an entity other than an **Insured, Technology Contractor, Internet Infrastructure Provider, Utilities Provider** or a **Financial Services Market**, that provides necessary business services to an **Insured Entity** pursuant to a written contract or agreement.
26. “**Dependent Business’s Computer System**” means any **Computer System** that is owned or leased by, and under the operational control of any **Dependent Business**.
27. “**Distributed Denial-Of-Service Attack**” means a malicious attack intended by the perpetrator to overwhelm the capacity of a **Computer System** by sending an excessive volume of electronic data to such **Computer System** in order to prevent authorized access to such **Computer System**.
28. “**Domestic Partner**” means any natural person who enters into a civil union or qualifies as a domestic partner under any federal, state, provincial, territorial or local law or under the provisions of any formal program established by the **Named Insured**.
29. “**Essential Service**” means a service that is essential for the maintenance of vital functions of a sovereign state, including but not limited to **Financial Institutions**, the **Financial Services Market(s)** and associated financial market infrastructure, emergency services, health care services, services provided by a **Utilities Provider** or **Internet Infrastructure Provider**, or services that are essential for the maintenance of the food, energy or transportation sector.
30. “**Extended Business Interruption Period of Recovery**” means the period of time that:
- I. Begins on the date the **Business Interruption Period of Recovery** ends; and
 - II. Ends on the earliest of:
 - a. The date when the **Insured Entity’s** business operations are restored to the condition that existed immediately prior to the **Business Interruption**;
 - b. The date when the **Insured Entity’s** business operations could have been restored with due diligence and dispatch to the same or substantially similar condition that existed immediately prior to the **Business Interruption**; or
 - c. Sixty (60) days after the date the **Business Interruption Period of Recovery** ends.

In no event will the **Extended Business Interruption Period of Recovery** exceed sixty (60) days. The expiration date of this Policy will not cut short the **Extended Business Interruption Period of Recovery**.

31. “**Financial Institution**” means any:
- I. Entity subject to supervision by any state, provincial, territorial or federal bank or credit union supervisory authority; or
 - II. Licensed broker or dealer of securities, bonds or commodities.
32. “**Financial Services Market**” means an operator, other than an **Insured Entity**, of a financial exchange or financial market.
33. “**First Party Coverage Part**” means the combined coverages described in Insuring Agreements 1., Incident Response Coverage, 2. Business Interruption Coverage, 3. Data Recovery Expenses Coverage, 4. Cyber Extortion Expenses Coverage, and 5. Reputational Harm Coverage of this Policy.

34. **“Fraudulent Instruction”** means any instruction provided by a natural person or entity that is not an **Insured** which purports to be from and approved by a customer, vendor, business affiliate, principal, partner, executive officer, director, employee or independent contractor of the **Insured Entity** but is not actually from such customer, vendor, business affiliate, principal, partner, executive officer, director, employee or independent contractor, and directs an **Insured** or **Financial Institution** to transfer, pay or deliver money, securities, bonds or commodities, digital assets, virtual currency, or non-fungible tokens (NFT).

35. **“Fraudulent Invoice”** means:

I. An invoice that:

- a. is furnished to a customer of the **Insured Entity**;
- b. purports to be from the **Insured Entity**, but is not actually from such **Insured Entity**;
- c. requests the customer to transfer, pay or deliver money, securities, bonds, commodities, digital assets, virtual currency, or non-fungible tokens (NFT); and
- d. results from a **Network Security Breach**; or

II. A purchase order that:

- a. is furnished to the **Insured Entity**;
- b. purports to be from a customer of the **Insured Entity**, but is not actually from such customer;
- c. requests the **Insured Entity** to:
 - i. provide services; or
 - ii. transfer or deliver goods, products, or other tangible property; and
- d. results from a **Network Security Breach**.

36. **Impacted State** means a sovereign state where a **Cyber War** has resulted in a harmful impact on:

- I. The operations of that sovereign state due to disruption to the availability, integrity or delivery of any **Essential Services** in that sovereign state; or
- II. The security or defense of that sovereign state.

37. **“Incident”** means any **Network Security Breach, Privacy Violation, Business Interruption, Ransomware Event, Adverse Publicity, Fraudulent Instruction, Services Fraud, or Invoice Manipulation**.

All **Incidents** that are part of a series or combination of related, repeated or continuing **Incidents** that have a common nexus of facts, circumstances, situations, events, transactions, or causes, or series of causally connected facts, circumstances, situations, events, transactions or causes shall be considered a single **Incident** for purposes of this Policy.

With respect to the **Crime Coverage Part**, Incident Response Expense Coverage, Data Recovery Expense Coverage, and Cyber Extortion Expense Coverage, all such **Incidents** will be deemed to have been discovered at the time the earliest **Incident** was first discovered by an **Insured**, even if such **Incident** is deemed to have been discovered prior to the inception of the **Policy Period**.

With respect to the Business Interruption Coverage and Reputational Harm Coverage, all such **Incidents** will be deemed to have occurred at the time the earliest **Incident** was first discovered by an **Insured**, even if such **Incident** is deemed to have occurred prior to inception of the **Policy Period**.

38. “Incident Response Expense Loss” means reasonable and necessary fees and expenses incurred by an **Insured**, with the **Insurer’s** prior written consent (such consent shall not be unreasonably withheld), for:

- I. Legal services by a lawyer selected by the **Insurer** regarding any **Network Security Breach** or **Privacy Violation**, including evaluating the **Insured’s** obligations pursuant to **Privacy Law**;
- II. Computer forensic investigatory services by a third party data forensics incident response professional services firm selected by the **Insurer** to:
 - a. Determine the existence, cause and scope of an actual or reasonably suspected **Network Security Breach** or **Privacy Violation**;
 - b. Identify those who may have been victims of any **Privacy Violation**; and
 - c. Assist in containing a **Network Security Breach**, if such **Network Security Breach** is actively in progress on the **Insured Entity’s Computer System**.
- III. Public relations or crisis management firm to mitigate reputational damage resulting from any **Network Security Breach** or **Privacy Violation**;
- IV. PCI Forensic Investigator to investigate the existence and extent of an actual or reasonably suspected **Network Security Breach** or **Privacy Violation** involving payment card data;
- V. PCI certified Qualified Incident Response Assessor (QIRA) to certify and assist in attesting to the **Insured’s** PCI compliance, as required under a **PCI-DSS Agreement**;
- VI. Notifying individuals as required by any **Privacy Law**, or on a voluntary basis to minimize potential harm;
- VII. Credit monitoring services, identity theft education and identity theft insurance offered to those persons notified pursuant to Paragraph VI. above; or
- VIII. Identity theft call center services, but only for those persons notified pursuant to Paragraph VI. above.

Incident Response Expense Loss shall not include any continuing normal operating expenses, compensation or overhead of any **Insured**.

39. “Insured(s)” means:

- I. The **Insured Entity**;

- II. Any natural person who is or was a principal, partner, officer, director or employee of the **Insured Entity**, but only with respect to acts or omissions committed within the scope of such natural person's duties related to the conduct of the **Insured Entity's** business;
- III. Any independent contractor that is a natural person and has entered into a written contract or agreement with an **Insured Entity**, wherein the **Insured Entity** has agreed to indemnify the independent contractor in such contract. The independent contractor shall be an **Insured** solely for work the independent contractor performs for or on behalf of the **Insured Entity** pursuant to such contract; and
- IV. Any **Additional Insured**, but only with respect to:
 - a. Acts or omissions committed by the **Insured Entity** or any persons identified in Paragraphs II. or III., above; and
 - b. **Loss** that occurs subsequent to the execution of the contract or agreement.

The insurance afforded to such **Additional Insured(s)** described in this Paragraph IV.:

- a. Only applies to:
 - i. The **Third Party Coverage Part**;
 - ii. The extent permitted by law; and
 - iii. The period of time required by the contract or agreement;
- b. Will not be broader than that which the **Insured Entity** is required by the contract or agreement to provide for such **Additional Insured**; and
- c. Will not exceed the amount of insurance:
 - i. Required by the contract or agreement; or
 - ii. Available under the applicable limits of insurance of this Policy,Whichever is less.

No natural person or entity shall be an **Additional Insured** with respect to any **Claim** or **Loss** arising out of such natural person's or entity's independent act(s) or omission(s).

40. "**Insured Entity**" means:

- I. The **Named Insured**; or
- II. Any **Subsidiary**.

41. "**Insured Entity's Computer System**" means any **Computer System** that is owned or leased by, and under the operational control of:

- I. An **Insured Entity**; or
- II. A principal, partner, executive officer, director, employee or any independent contractor of an **Insured Entity**.

42. **“Insured’s Technology Products”** means computer or telecommunications hardware, electronic equipment, software, firmware, platforms or applications designed, created, developed, manufactured, assembled, licensed, leased, or sold by an **Insured**.
43. **“Insurer”** means the organization specified in Item 9. of the Declarations.
44. **“Internet Infrastructure Provider”** means an entity that is an Internet Services Provider (“ISP”), including any provider of internet connectivity, any Domain Name System (“DNS”) or any Certificate Authority (“CA”).
45. **“Invoice Manipulation”** means the use of a **Fraudulent Invoice** to fraudulently induce:
- I. The transfer, payment or delivery of:
 - a. money, securities, bonds, commodities, digital assets, virtual currency, or non-fungible tokens (NFT); or
 - b. goods, products, or other tangible property; or
 - II. The provision of services.
46. **“Invoice Manipulation Loss”** means direct financial loss incurred by the **Insured Entity** as a result of **Invoice Manipulation**, including the inability to collect payment for any goods, products, or services after such goods, products, or services have been transferred, delivered, or provided.
- Invoice Manipulation Loss** shall not include any profit to the **Insured Entity** as a result of the transferring, delivering, or providing goods, products, or services to a third party.
47. **“Loss”** means the following:
- I. **Incident Response Expense Loss;**
 - II. **Business Interruption Loss;**
 - III. **Cyber Extortion Expense Loss;**
 - IV. **Data Recovery Expense Loss;**
 - V. **Reputational Harm Loss;**
 - VI. **Network Security and Privacy Liability Loss;**
 - VII. **Media Liability Loss;**
 - VIII. **Technology or Professional Services Liability Loss;**
 - IX. **Social Engineering Loss;**
 - X. **Services Fraud Loss;** and
 - XI. **Invoice Manipulation Loss.**
48. **“Malicious Code”** means any virus, Trojan, worm or other similar malicious software program, code or script designed to harm a **Computer System**.
49. **“Media Activities”** means the publishing, dissemination, releasing, transmission, production, webcasting, or other distribution of **Media Content** to the general public.

50. “**Media Content**” means any **Data**, text, sounds, images or similar matter disseminated in any form, including but not limited to advertising and matters disseminated electronically on the **Insured’s Computer System**.

Media Content shall not include:

- I. An **Insured’s Technology Products** or **Third Party Technology Products**;
- II. **Data**, text, sounds, images or similar matter incorporated into or otherwise a part of an **Insured’s Technology Products** or **Third Party Technology Products**; or
- III. The actual goods, products or services described, including but not limited to those illustrated or displayed in **Media Content**.

51. “**Media Liability Loss**” means **Damages** and **Defense Expenses** resulting from a **Media Wrongful Act**.

52. “**Media Wrongful Act**” means any actual or alleged negligent act, error or omission, misstatement, misleading statement, or breach of duty or neglect by any **Insured**, or by any other person for whom the **Insured** is legally responsible, solely in the performance of or failure to perform **Media Activities** that results in:

- I. **Personal Injury**, infliction of emotional distress, mental anguish, outrage or outrageous conduct;
- II. False light, public disclosure of private facts, or the intrusion and commercial appropriation of a name, persona or likeness;
- III. Plagiarism, piracy or the misappropriation or unauthorized use of advertising ideas, advertising material, titles, literary or artistic formats, styles or performances; or
- IV. Infringement of copyright, domain name, trademark, trade name, title, slogan or service name.

However, a **Media Wrongful Act** shall not include any actual or alleged negligent act, error or omission, misstatement, misleading statement, or breach of duty or neglect that results in a **Claim** containing any allegation of:

- I. Misappropriation, theft, plagiarism, infringement, disclosure or violation of any:
 - a. Patent;
 - b. Software, source code, or software licensing; or
 - c. Trade dress or service mark of any goods, products or services, including goods, products or services displayed or contained in **Media Content**;
- II. False advertising or misrepresentation in advertising of an **Insured’s** goods, products or services; or
- III. Failure of any goods, products or services to conform with an advertised quality or performance.

53. “**Named Insured**” means the organization specified in Item 1. of the Declarations.

54. “**Network Security and Privacy Liability Loss**” means:

- I. **Damages;**
- II. **Defense Expenses;**
- III. **PCI-DSS Loss;** or
- IV. Civil fines or penalties imposed by a governmental agency and arising from a **Regulatory Action**, including any monetary amount an **Insured** is required to deposit in a consumer redress fund,

resulting from an actual or alleged **Network Security Breach or Privacy Violation Wrongful Act**.

The insurability of such civil fines or penalties described in Paragraph **IV**, shall be governed by the laws of the applicable jurisdiction that most favors coverage for such damages.

55. “**Network Security Breach**” means any:

- I. Unauthorized access to, or unauthorized use of, a **Computer System;**
- II. Transmission of **Malicious Code** into or from a **Computer System;**
- III. **Distributed Denial-Of-Service Attack** against a **Computer System;**
- IV. Access to, loss or theft of a **System Password;**
- V. **Ransomware Event;** or
- VI. **Cyberterrorism**, but only to the extent such **Cyberterrorism** results from a **Network Security Breach** as defined in Paragraphs **I** through **V** above.

56. “**Network Security Breach or Privacy Violation Wrongful Act**” means any actual or alleged negligent act, error or omission, misstatement, misleading statement, or breach of duty or neglect by any **Insured**, or by any other person for whom the **Insured** is legally responsible, that results in a **Network Security Breach or Privacy Violation**.

57. “**Operational Technology**” means hardware, software, or peripheral devices that interact with the physical environment, including but not limited to, programmable logic controllers, sensors, actuators, remote terminal units, distributed control systems, industrial control systems, supervisory control and data acquisition (SCADA) systems, building management systems, computer numerical control systems (CNC), computer aided manufacturing (CAM) or similar type of system.

58. “**PCI-DSS Agreement**” means a written contract between the **Insured** and any Payment Card Association (MasterCard, Visa, Discover, American Express or JCB Co., Ltd. or bank that processes payment card transactions (i.e., an acquiring bank)) that contains generally accepted and published Payment Card Industry Data Security Standards for data security (commonly referred to as “PCI-DSS”).

59. “**PCI-DSS Loss**” means any fine, fee, assessment or penalty imposed by any Payment Card Association (MasterCard, Visa, Discover, American Express or JCB Co., Ltd. or bank that processes payment card transactions (i.e., an acquiring bank)) under the terms of a **PCI-DSS Agreement**, as a result of a **Network Security Breach or Privacy Violation**. **PCI-DSS Loss** shall not include any charge backs.

60. **“Personal Information”** means any:

- I. Information for which an individual may be uniquely and reliably identified, including without limitation the individual's:
 - a. Name;
 - b. Address;
 - c. Telephone number;
 - d. Social insurance or social security number;
 - e. Driver's license number or any other state, provincial or territorial identification number;
 - f. Biometric identifier or biometric information; or
 - g. Medical or healthcare data, including personal health information;
- II. Credit, debit or other account numbers and associated security codes, access codes, passwords or pin numbers associated with such credit, debit or other account numbers; or
- III. Personal information as defined in any **Privacy Law**.

61. **“Personal Injury”** means any actual or alleged:

- I. False arrest, detention, imprisonment or malicious prosecution;
- II. Wrongful entry or eviction;
- III. Invasion of the right of privacy;
- IV. Libel, slander or other defamatory or disparaging material of a person, organization or product; or
- V. Publication or an utterance in violation of an individual's right of privacy.

62. **“Policy Period”** means the period of time specified in Item 3. Of the Declarations, subject to any cancellation prior to the expiration date stated in the Declarations.

63. **“Pollutants”** means any solid, liquid, gaseous, biological, radiological or thermal contaminant or irritant including without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, mold, fungi, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos containing products, waste or any electric, magnetic or electromagnetic field of any frequency. **Pollutants** also includes, without limitation, materials to be recycled, reconditioned or reclaimed.

64. **“Privacy Demand”** means any threat or demand, or connected series of threats or demands to use, publicly disclose or destroy **Private Information** misappropriated from an **Insured** for the purpose of demanding any type of monetary consideration from an **Insured** including but not limited to, money, securities, bonds or commodities, digital assets, virtual currency, or non-fungible tokens (NFT).

65. **“Privacy Law”** means those parts of the following statutes or regulations regulating the use, disclosure, and protection, but not those parts regulating collection, of non-public and/or personal information (as such terms are defined in such statutes or regulations):
- I. *Personal Information Protection and Electronic Documents Act*, S.C. 2000 c. 5 (PIPEDA), and all comparable provincial laws;
 - II. Health Insurance Portability and Accountability Act of 1996 (HIPAA);
 - III. Gramm-Leach Bliley Act of 1999 (GLBA);
 - IV. Security breach notification laws that require notice to individuals of the actual or potential theft of their non-public personal information, including but not limited to the California Security Breach Notification Act of 2003 (CA SB1386);
 - V. European Union General Data Protection Regulation (GDPR);
 - VI. California Consumer Privacy Act (CCPA); or
 - VII. Any other similar federal, state, provincial, territorial or foreign privacy laws for non-public personal information, or a privacy policy limiting the sale, disclosure or sharing of non-public personal information or providing individuals with the right to access or correct non-public personal information.
66. **“Privacy Violation”** means any:
- I. Failure to protect **Private Information** while in the care, custody or control of an **Insured**, or in the care, custody or control of a third party on any **Insured’s** behalf;
 - II. Violation of a **Privacy Law** by an **Insured** in connection with Paragraph I., above;
 - III. Violation of an **Insured’s** privacy policy with respect to provisions prohibiting any **Insured** from disclosing **Private Information**; or
 - IV. **Ransomware Event**.
67. **“Private Information”** means any of the following information:
- I. **Personal Information**; or
 - II. Confidential or proprietary business information of a third party that is not an **Insured** that is not available to the general public,
that exists in any format and that is in the care, custody or control of any **Insured**, or in the care, custody or control of a third party on any **Insured’s** behalf.
68. **“Professional Services”** means those services rendered by the **Insured** for others for a fee and described in Item 7. of the Declarations.
69. **“Property Damage”** means:
- I. Physical injury to, loss or destruction of, tangible property, including loss of use thereof; or
 - II. Loss of use of tangible property which has not been physically injured, lost, damaged or destroyed, provided however this will not apply to **Data Recovery Expense Loss** resulting from **Bricking**.

Provided, however **Data** is not tangible property.

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70. “**Ransomware Event**” means any:

- I. **Privacy Demand**; or
- II. **Security Demand**.

Any such event shall be considered a **Ransomware Event** regardless of:

- a. The specific amount of the demand;
- b. Whether the demand is actually paid;
- c. Whether the threat or demand is communicated; and
- d. Whether any **Private Information** is unlawfully used, publicly disclosed or destroyed at any time.

71. “**Regulatory Action**” means:

- I. An administrative or regulatory proceeding; or
- II. An administrative or regulatory investigation which may reasonably be expected to give rise to an administrative or regulatory proceeding,

brought or made by a local, state, provincial, territorial, federal or foreign governmental agency or authority that alleges a **Network Security Breach** or a **Privacy Violation**. A **Regulatory Action** shall not include any criminal demands, requests, proceedings or investigations.

72. “**Related Event**” means any series or combination of related, repeated or continuing **Incident(s)** or **Wrongful Act(s)** that have a common nexus of facts, circumstances, situations, events, transactions or causes, or series of causally connected facts, circumstances, situations, events, transactions or causes.

73. “**Reputational Harm Loss**” means net income (net profit or net loss before income taxes), that could have reasonably been earned by the **Insured** during the **Reputational Harm Period of Recovery** resulting from **Adverse Publicity**.

Reputational Harm Loss shall not include:

- I. Net income (net profit or net loss before income taxes) that would likely have been earned as a result of an increase in volume of business due to favorable business conditions;
- II. Loss incurred as a result of unfavorable business conditions;
- III. Legal expenses, fees, or costs of any type; or
- IV. Loss arising or resulting from any contractual penalties, or indirect or consequential loss arising from a **Technology Contractor** or **Dependent Business**.

74. “**Reputational Harm Period of Recovery**” means the period of time that:

- I. Begins on the date the **Adverse Publicity** first commences; and
- II. Ends on the earliest of:

- a. The date when the **Insured Entity's** net income (net profit or net loss before income taxes), is restored to the level that existed immediately prior to the **Adverse Publicity**;
- b. The date when the **Insured Entity's** net income (net profit or net loss before income taxes), would have been restored to the condition that existed immediately prior to the **Adverse Publicity**, if the **Insured Entity** exercised due diligence and dispatch; or
- c. Ninety (90) days after the date when the **Adverse Publicity** first commenced.

In no event will the **Reputational Harm Period of Recovery** exceed ninety (90) days. If the **Insured Entity** incurs **Adverse Publicity** for a period of time exceeding ninety (90) days from the date the **Adverse Publicity** first commenced, the **Insurer** will only be obligated to pay such **Reputational Harm Loss** that is incurred during the first ninety (90) days. The expiration date of this Policy will not cut short the **Reputational Harm Period of Recovery**.

75. "**Reputational Harm Waiting Period**" means the number of days set forth in Item 6.E. of the Declarations that must elapse once the **Adverse Publicity** has begun.

76. "**Retroactive Date**" means:

- I. The date set forth in Item 6.G. of the Declarations for Media Liability Coverage; and
- II. The date set forth in Item 6.H. of the Declarations for Technology Services and Products and Professional Liability Coverage.

77. "**Security Demand**" means any threat or demand, or connected series of threats or demands against a **Computer System** for the purpose of demanding any type of monetary consideration from an **Insured** including but not limited to, money, securities, bonds or commodities, digital assets, virtual currency, or non-fungible tokens (NFT).

78. "**Services Fraud**" means the manipulation of any:

- I. **Voice Computer System** for the purpose of selling long distance call minutes to a third party;
- II. **Insured Entity's Computer System** for the purpose of exploiting processing power; or
- III. **Advertising Services Platform** for the purpose of exploiting advertising resources, resulting from a **Network Security Breach**.

79. "**Services Fraud Loss**" means additional charges incurred by the **Insured Entity** for services provided by a **Utilities Provider**, **Internet Infrastructure Provider** or **Advertising Services Platform**, resulting from **Services Fraud**.

Services Fraud Loss shall not include expenses charged to the **Insured** at a flat fee that does not scale with the rate or use of the respective provider.

80. "**Setoff Amounts**" means the amounts, including credits, that any **Insured** has recovered from any third party (including any insurance company) to which **Loss** under this Policy would otherwise apply.

81. "**Social Engineering Loss**" means direct financial loss incurred by the **Insured Entity** resulting from a **Fraudulent Instruction**.

- I. In the event any **Fraudulent Instruction** is received by an **Insured**:
 - a. Such **Fraudulent Instruction** must be authenticated and verified with reasonable due diligence by the **Insured** prior to making the transfer, payment or delivery; and
 - b. Such reasonable due diligence must include at least two methods of authentication and verification, of which one method must rely solely on information (including contact information) outside of the **Fraudulent Instruction**.
- II. In the event any **Fraudulent Instruction** is received by a **Financial Institution**:
 - a. Such **Financial Institution** must offer at least two methods of transaction authentication to the **Insured**; and
 - b. The **Insured** must utilize such methods of transaction authentication, prior to making the transfer, payment or delivery.

Social Engineering Loss shall not include loss arising or resulting from:

- I. Any **Fraudulent Instruction** that does not meet the requirements of Paragraphs I. or II. above, whichever is applicable;
- II. Any **Fraudulent Instruction** involving transfer, payment or delivery of money, securities, bonds or commodities, digital assets, virtual currency, or non-fungible tokens (NFT) that are owned wholly or partially by a third party who is not an **Insured** or a **Financial Institution**;
- III. Any investment in securities, bonds or commodities, digital assets, virtual currency, or non-fungible tokens (NFT); or the ownership in any corporation, partnership, or similar instrument, whether or not such investment is genuine; or
- IV. Any money, securities, bonds or commodities, while in the mail or in the custody of any carrier for hire, including but not limited to any armored motor vehicle company.

82. "Subsidiary" means:

Any entity that the **Named Insured** directly or indirectly owns interests representing more than 50% of the voting, appointment or designation power for the selection of:

- I. A majority of the board of directors of a corporation;
- II. The members of the board of managers of a limited liability company; or
- III. The general partners of a limited partnership.

83. "System Failure" means an unintentional and unplanned outage of a Computer System that is not part of or caused by a Network Security Breach.

84. "System Password" means a confidential and protected string of characters which identifies or authenticates a person or entity and permits that person or entity to gain access to the Computer System.

85. **“Technology Contractor”** means any entity other than an **Insured, Dependent Business, Internet Infrastructure Provider, Utilities Provider, Advertising Services Platform, or Financial Services Market**, that:
- I. An **Insured Entity** depends on to conduct its business;
 - II. Provides necessary information technology or **Operational Technology** services, including but not limited to, data hosting, cloud services or computing, co-location, data back-up, data storage, data processing, platforms, software, network infrastructure-as-a-service, web hosting, systems integration or other managed technology services in order for the **Insured Entity** to operate the **Insured Entity’s Computer System**; and
 - III. Provides the information technology or **Operational Technology** services described in Paragraph II. above, pursuant to a written contract or agreement with an **Insured Entity**.
86. **“Technology Contractor’s Computer System”** means any **Computer System** that is owned or leased by, and under the operational control of any **Technology Contractor**.
87. **“Technology or Professional Services Liability Loss”** means **Damages and Defense Expenses** resulting from a **Technology or Professional Services Wrongful Act**.
88. **“Technology or Professional Services Wrongful Act”** means any actual or alleged negligent act, error or omission, misstatement, misleading statement, or breach of duty or neglect by any **Insured**, or by any other person for whom the **Insured** is legally responsible, solely in the performance of or failure to perform **Technology Services** or **Professional Services**.
89. **“Technology Services”** means information technology or **Operational Technology** services rendered by any **Insured** for others for a fee, including but not limited to:
- I. Technology consulting services in connection with an **Insured’s Technology Products** or **Third Party Technology Products**, including the analysis, design, programming, integration, installation, hosting, management, repair or maintenance of an **Insured’s Technology Products** or **Third Party Technology Products**;
 - II. **Data** processing;
 - III. Provision of cloud or hosted services including Software as a Service (SaaS), Platform as a Service (PaaS), Infrastructure as a Service (IaaS), Network as a Service (NaaS) or Block chain as a Service (BaaS), including **Data** associated therein;
 - IV. Custom software, website, platform or application design, development, integration, installation or maintenance;
 - V. Backup, disaster recovery or **Data** and record retrieval; or
 - VI. Education and training services related to **Technology Services**.
90. **“Third Party Coverage Part”** means the combined coverages described in Insuring Agreements **6. Network Security and Privacy Liability Coverage, 7. Media Liability Coverage, and 8. Technology and Professional Services Liability Coverage** of this Policy.
91. **“Third Party Technology Products”** means computer or telecommunications hardware, electronic equipment, software, firmware, platforms or applications designed, created, developed, manufactured, assembled, licensed, leased, or sold by any person or entity that is not an **Insured**.

92. **“Utilities Provider”** means any entity that provides power, electricity, fossil fuels (including oil, natural gas, coal or any derivative thereof), water, steam, mechanical, satellite, telecommunications or other utility service.
93. **“Voice Computer System”** means a system which functions as a Voice over Internet Protocol (VoIP), Private Branch Exchange (PBX), voice mail processor, automated call attendant or provider of similar capability used for the direction or routing of telephone calls in a voice communications network.
94. **“Voluntary Shutdown”** means the voluntary and intentional shutdown of any part of the **Insured Entity’s Computer System** after the **Insured Entity’s** discovery of a **Network Security Breach** of an **Insured’s Computer System, Technology Contractor’s Computer System, or Dependent Business’s Computer System**. Such shutdown shall be:
- I. Conducted at the direction of a **Claims Manager** or ordered by a local, state, provincial, territorial, federal or foreign governmental agency or authority;
 - II. Commenced with the **Insurer’s** prior written consent (such consent shall not be unreasonably withheld); and
 - III. With a reasonable expectation that it will minimize, avoid, or reduce the **Business Interruption Loss** that would otherwise be incurred.
95. **“War”** means the use of physical force by a sovereign state in any:
- I. Declared or undeclared war against another sovereign state;
 - II. Warlike action, including action in hindering or defending against an actual or expected attack by any government, sovereign state or other authority using military power, personnel, or other agents; or
 - III. Civil war, rebellion, revolution, insurrection, usurped power, or any action taken in hindering or defending against any of these.
96. **“Wrongful Act”** means any **Network Security Breach or Privacy Violation Wrongful Act, Media Wrongful Act, or Technology or Professional Services Wrongful Act**.

C. EXCLUSIONS

(I) EXCLUSIONS APPLICABLE TO ALL COVERAGE PARTS

The following Exclusions are applicable to all **Coverage Parts**:

This Policy shall not apply to any **Loss** based upon, arising out of, attributable to, or resulting from, directly or indirectly:

1. Any actual or alleged:
 - I. Dishonest, fraudulent, criminal, malicious or intentional act, error or omission, or any intentional or knowing violation of the law by an **Insured**; or
 - II. Gaining in fact of any profit, restitution, remuneration or financial advantage to which any **Insured** was not legally entitled.

However, this Exclusion shall not apply to **Defense Expenses** until there is a final, non-appealable adjudication against, binding arbitration against, adverse admission by, or plea of

nolo contendere or no contest, by the **Insured** as to such conduct or violation, at which time the **Insured** shall reimburse the **Insurer** for any **Defense Expenses** paid by the **Insurer**.

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Provided that:

- I. No conduct pertaining to any natural person Insured shall be imputed to any other natural person **Insured**; and
 - II. Any conduct pertaining to any past, present, or future **Claims Manager**, other than a **Claims Manager** acting outside of his or her capacity as such, shall be imputed to an **Insured Entity**.
2. Any **Incident, Wrongful Act** or circumstance that:
- I. Occurred prior to the applicable **Continuity Date**, if as of such date any **Claims Manager** knew or could have reasonably foreseen that such **Incident, Wrongful Act** or circumstance could give rise to a **Claim or Loss**; or
 - II. Was the subject of any notice given under any prior policy of which this Policy is a renewal or replacement.
3. Any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the United States of America, Canada, European Union or United Kingdom, or any similar law.
4. Any actual or alleged **Bodily Injury or Property Damage**.
5. Any **Insured's** liability, whether assumed or otherwise, under any contract, warranty, guarantee, cost estimate or promise. Provided however, this Exclusion does not apply to:
- I. The extent liability would attach to an **Insured** in the absence of such contract(s), warranty(ies), guarantee(ies), cost estimate(s) or promise(s);
 - II. Any obligation to comply with a **PCI-DSS Agreement**; or
 - III. With respect to a **Privacy Violation**, any liability or obligation under a confidentiality or non-disclosure provision of any agreement.
6. Any **Claim** brought by or on behalf of any:
- I. **Insured**;
 - II. **Affiliate**; or
 - III. Person or entity not identified in the Declarations which has an ownership interest in any **Insured**.
- However, this Exclusion shall not apply to any **Claim** brought by or on behalf of any:
- a. **Insured** that alleges a violation of any law described in Paragraph IV. of the definition of **Privacy Law** in connection with a **Network Security Breach or Privacy Violation**; or
 - b. Person or entity qualifying as an **Insured** under Paragraph IV. of the definition of **Insured**.
7. Any actual or alleged violation of any intellectual property law, including but not limited to misappropriation, theft, plagiarism, infringement, disclosure or violation of any patent, copyright, trademark, trade secret, trade dress, trade name, service mark, service name, title, slogan, or rights protecting intangible property, products of human intelligence and creation, ideas or manufacturing secrets. However, this Exclusion shall not apply to any:

- I. **Media Wrongful Act;**
- II. **Claim** for an actual or alleged disclosure or theft of **Private Information** resulting from a **Network Security Breach** made under Insuring Agreement 6., Network Security and Privacy Liability; or
- III. **Claim** for a **Technology** or **Services Wrongful Act**, but only if such **Claim**:
- a. Is brought against an **Insured** by a client or customer of such **Insured** for the loss of use of **Technology Services**, and
 - b. Alleges a violation of any law relating to the misappropriation, theft, plagiarism, misuse, infringement, or disclosure of software, source code or software license.
8. Any actual, alleged or threatened discharge, dispersal, seepage, migration, release, emission, escape or transportation of **Pollutants**, including, without limitation, any direction, request or order to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of **Pollutants**.
9. Any gambling, sports wagering, casino games, contests, games of chance or skill, lottery or promotional games, including any prizes, awards, tickets, coupons or other incentives related thereto, or any over-redemption or under-redemption of payments given in excess or under the total contracted or expected amount.
10. Any actual or alleged:
- I. Unsolicited electronic faxes, emails, telephone calls or communications, including without limitation, **Claims** arising out of unsolicited electronic messages, chat room postings, bulletin board postings, newsgroup postings, "pop-up" or "pop-under" internet advertising or fax-blasting, direct mailing or telemarketing;
 - II. Wire tapping, tracking or monitoring, or audio or video recording;
 - III. Violations of:
 - a. *Telecommunications Act*, SC 1993, c 38;
 - b. *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23;
 - c. Provincial or territorial consumer credit reporting legislation;
 - d. *Personal Information Protection and Electronic Documents Act*, S.C. 2000 c. 5 (PIPEDA), and all comparable provincial laws;
 - e. The Telephone Consumer Protection Act;
 - f. The Controlling the Assault of Non-Solicited Pornography and Marketing Act;
 - g. The Drivers Privacy Protection Act;

- h. The Fair Credit Reporting Act;
- i. The Fair and Accurate Credit Transaction Act;
- j. The Electronic Communication Privacy Act;
- k. The Video Privacy Protection Act; or
- l. Any similar law to those listed in Paragraphs a. through k., above.

However, this Exclusion shall not apply to a **Network Security Breach**.

11. Any actual or alleged:

- I. Wrongful, unauthorized, unlawful or illegal collection, use, tracking, monitoring, sharing, sale, distribution, or purchase of **Private Information**, (including but not limited to the collection, tracking, or monitoring of **Private Information** using cookies, spyware, **Malicious Code**, or any other type of tracking or monitoring tool); or
- II. Failure to provide adequate disclosure or notice or obtain consent in connection with the collection, use, tracking, monitoring, sharing, sale, distribution, or purchase of **Private Information**.

12. Any actual or alleged violation of:

- I. The Racketeer Influenced and Corrupt Organizations Act;
- II. The Employee Retirement Income Security Act of 1974;
- III. *Securities Act* (Ontario), R.S.O. 1990, c. S.5, and other provincial and territorial equivalents;
- IV. Any securities laws, including but not limited to, the Securities Act of 1933, Securities Exchange Act of 1934, Investment Company Act of 1940, Investment Advisors Act; or any blue sky laws; or
- V. Any similar law to those listed in Paragraphs I. through IV., above.

However, Paragraphs III. And IV. shall not apply to any **Claim** that alleges a **Network Security Breach** and a violation of any law described in Paragraph IV. of the definition of **Privacy Law**.

13. Any actual or alleged:

- I. Price fixing, restraint of trade, monopolization, including violations of the Sherman Anti-Trust Act, the Clayton Act, Robinson-Patman Act, or any similar law;
- II. Unfair, false or deceptive trade practices or violation of consumer protection laws, including violations of the Federal Trade Commission Act.

However, Paragraph II. shall not apply to any **Claim** that alleges a **Network Security Breach** and a violation of any law described in Paragraph IV. of the definition of **Privacy Law**.

14. Any actual or alleged employment-related practices by any **Insured**, including but not limited to, any actual or alleged hostile work environment, wrongful dismissal, discharge or termination, retaliation, wrongful disciplinary action, deprivation of career opportunity, failure to employ or promote, inadequate work place policies or procedures, negligent evaluation of employees or violation of applicable employment standards legislation or the Fair Labor Standard Act.

This Exclusion shall not apply to any **Claim** brought by or on behalf of any individual that is or was a current, former, or prospective employee of an **Insured** and such **Claim** alleges **Loss** resulting from a violation of any law described in Paragraph IV. of the definition of **Privacy Law** in connection with a **Network Security Breach** or **Privacy Violation**.

15. Any actual or alleged discrimination, humiliation or harassment in any form or manner, including, but not limited to, race, creed, color, religion, ethnic background, national origin, age, handicap, disability, gender, sex, sexual orientation or preference, pregnancy, marital status, retaliation, or any other protected class under any federal, state, provincial, territorial, local or other law.

16. Any actual or alleged violation of:

- I. Any workers' compensation, unemployment, social security, disability or pension benefits laws;
- II. The National Labor Relations Act;
- III. The Worker Adjustment and Retraining Notification Act;
- IV. The Consolidated Omnibus Budget Reconciliation Act of 1985;
- V. The Occupational Safety and Health Act; or
- VI. Any similar law to those listed in Paragraphs I. through V., above.

17. Any **Insured's** service at any time as a director, officer, trustee, regent, governor, independent contractor or equivalent executive, or as an employee, of any entity other than an **Insured** even if such service is with the knowledge and consent, or at the request, of an **Insured**.

18. Any fire, flood, earthquake, smoke, riot, civil commotion, falling objects, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, solar storm, electromagnetic pulse, act of God or other physical event.

19. Any **War** or **Cyber War**.

20. Any seizure, nationalization, confiscation, or destruction of property or data by order of any governmental authority.

21. Any actual or alleged:

- I. **Network Security Breach, System Failure**, error, degradation, or malfunction sustained by any **Utilities Provider, Internet Infrastructure Provider** or **Financial Services Market**; or
- II. Inability of any **Utilities Provider, Internet Infrastructure Provider** or **Financial Services Market** to provide any service.

22. Any actual or alleged **System Failure** intentionally caused by any **Insured, Technology Contractor** or **Dependent Business**.
23. Any actual or alleged:
- I. Trading losses, trading liabilities, or change in value of accounts in connection thereto;
 - II. Change in value of money, securities, bonds or commodities, digital financial assets, virtual currency, non-fungible tokens (NFT), or any derivatives thereof; or
 - III. Loss, transfer or theft of money, securities, bonds or commodities, digital financial assets, virtual currency, non-fungible tokens (NFT) or any derivatives thereof.

Provided, however Paragraphs II. and III. shall not apply to the **Cyber Crime Coverage Part**.

(II) EXCLUSIONS APPLICABLE TO FIRST PARTY COVERAGE PART

The following Exclusions are applicable to the **First Party Coverage Part**:

1. **Loss** shall not include:
 - I. **Defense Expenses;**
 - II. Costs, expenses, loss, or damages arising out of or resulting from liability to any third party, including any payments made as compensation for any injury or damages; or
 - III. Costs or expenses to update, upgrade, or enhance, any part of any **Computer System**, to a level beyond that which existed prior to sustaining **Loss**.

However this Exclusion shall not apply to any costs or expenses incurred with the **Insurer's** prior written consent (Such consent shall not be unreasonably withheld), to make reasonable updates, upgrades, or enhancements to the **Insured Entity's Computer System**, but only if:

- a. the updates, upgrades, or enhancements reduce the **Loss** that would otherwise be incurred; or
- b. the **Data** or any other parts of the **Insured Entity's Computer System** that need to be replaced or restored were discontinued, outdated or not available anymore.

(III) EXCLUSIONS APPLICABLE TO THIRD PARTY COVERAGE PART

The following Exclusions are applicable to the **Third Party Coverage Part**:

1. This Policy shall not apply to any **Loss** based upon, arising out of, attributable to, or resulting from, directly or indirectly:
 - I. Inaccurate, inadequate or incomplete description of the price of goods, products or services, cost guarantees, cost representations, or contract price estimates; or
 - II. The failure of any goods or services to conform with any represented quality or performance. However, this Paragraph II. shall not apply to the representation

of the quality or performance of **Technology Services** or **Professional Services**.

2. Loss shall not include:

- I. Any loss covered under the **First Party Coverage Part** or any loss that would have otherwise been covered but for the exhaustion or reduction of any Limit of Insurance of the **First Party Coverage Part**;
- II. Return or offset of fees, service credits, charges or commissions charged by or owed to an **Insured** for goods or services already provided or contracted to be provided;
- III. Taxes or loss of tax benefits;
- IV. Fines, sanctions or penalties imposed by law; provided, however this Paragraph IV. shall not apply to fines, sanctions or penalties resulting from a **PCI-DSS Loss** or **Regulatory Action**;
- V. Liquidated damages, but only to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement;
- VI. Amount for which the **Insured** is not liable or for which the claimant(s) are without legal recourse to the **Insured**;
- VII. Fees, deposits, commissions or charges;
- VIII. Matters that are uninsurable pursuant to applicable law;
- IX. Expenses incurred by any **Insured** or others for the reprinting, reposting, recalling, repairing, withdrawing, replacing, upgrading, supplementing, removing or disposing of any products or services from or in the marketplace, including but not limited to **Media Content, Insured's Technology Products** or **Third Party Technology Products**, or for any loss of use by any **Insured** or others that arises out of the above; or
- X. Expenses to comply with orders granting injunctive or non-monetary relief, including specific performance or any agreement to provide such relief.

(IV) EXCLUSIONS APPLICABLE TO CYBER CRIME COVERAGE PART

The following Exclusions are applicable to the **Cyber Crime Coverage Part**:

1. This Policy shall not apply to any **Loss** based upon, arising out of, attributable to, or resulting from, directly or indirectly:
 - I. The processing of, or failure to process, credit, cheque, debit, personal identification number, electronic benefit transfers or mobile payments for merchant accounts;
 - II. Accounting or arithmetical errors or omissions, or the failure, malfunction, inadequacy or illegitimacy of any product or service;
 - III. The extension of any loan, credit or similar promise to pay; or
 - IV. Any liability to any third-party, including any payments made as compensation for any injury or damages.

2. **Loss** shall not include:

- I. Any continuing normal operating expenses, compensation or overhead of any **Insured**; or
- II. **Defense Expenses** or legal expenses of any type.

D. COVERAGE TERRITORY

This Policy shall apply on a worldwide basis. Regarding the **Coverage Parts**, when a **Claim** is made or **Loss** is incurred outside of Canada, the following additional provisions apply:

1. The **Insurer** shall have the right but not the duty to investigate, defend or settle any such **Claims** brought against an **Insured**.
2. If the **Insurer** elects not to investigate, defend or settle any such **Claim**, the **Insured** shall, under the **Insurer's** supervision, arrange for such investigation and defense thereof as is reasonably necessary and subject to the **Insurer's** prior authorization, and shall effect such settlement thereof as the **Insurer** and the **Insured** deem expedient.
3. The **Insurer** shall reimburse the **Insured** for the reasonable cost of such investigation and defense and the amount of any settlement or judgment in excess of the applicable Self-Insured Retention, all subject to and within the **Limits of Insurance**.

E. AUTOMATIC AND OPTIONAL EXTENDED REPORTING PERIODS

This Section **E.** shall only apply to the **Third Party Coverage Part**. If the **Named Insured** does not obtain replacement coverage as of the effective date of cancellation or non-renewal of this Policy, then the following provisions shall apply:

1. **Automatic Extended Reporting Period**

Upon the effective date of such cancellation or non-renewal, the **Named Insured** will automatically be provided a period of sixty (60) days (the "Automatic Extended Reporting Period") to give written notice to the **Insurer** of any **Claim** first made against the **Insured** during the **Policy Period** or the Automatic Extended Reporting Period for any **Wrongful Act** committed on or subsequent to the **Retroactive Date** (if applicable) and prior to the end of the **Policy Period**. The Automatic Extended Reporting Period is provided at no additional charge.

2. **Optional Extended Reporting Period**

I. Upon the effective date of such cancellation or non-renewal, the **Named Insured** will have the right to elect a continuation of coverage afforded by this Policy for the additional period stated in Item **8.** of the Declarations (the "Optional Extended Reporting Period"). If elected, the Optional Extended Reporting Period will commence upon the effective date of such cancellation or non-renewal. The Optional Extended Reporting Period shall only apply to a **Claim** that is first made against the **Insured** during the Optional Extended Reporting Period for a **Wrongful Act** committed on or subsequent to the **Retroactive Date** (if applicable) and prior to the end of the **Policy Period**. The Optional Extended Reporting Period shall be provided by an Optional Extended Reporting Period Endorsement for an additional premium.

II. The **Named Insured's** rights described in this Paragraph **E.2.** will terminate unless a written notice of election together with the additional premium due stated in Item **8.** of

the Declarations is received by the **Insurer** within thirty (30) days after the effective date of cancellation or non-renewal.

- III. The additional premium for the Optional Extended Reporting Period will be fully earned at the inception of the Optional Extended Reporting Period.

3. Application of Extended Reporting Periods

- I. There are no separate Limits of Insurance for the Automatic Extended Reporting Period or the Optional Extended Reporting Period. An Extended Reporting Period shall not increase or reinstate any Limit of Insurance.
- II. An Extended Reporting Period cannot be cancelled.
- III. The Optional Extended Reporting Period, if purchased, shall run concurrently with the Automatic Extended Reporting Period for the first sixty (60) days of the Optional Extended Reporting Period.

F. LIMITS OF INSURANCE AND SELF-INSURED RETENTIONS

1. Limits of Insurance

The Limits of Insurance shown in the Declarations (and any applicable endorsement) apply in excess of the applicable Self-Insured Retention. Regardless of the number of **Insureds**, persons or entities directly or indirectly impacted by any **Incident, Wrongful Act, or Related Events, Claims** made or brought, or persons or entities making or bringing **Claims**:

I. Coverage Limit(s) of Insurance

The Limit of Insurance for any one coverage stated in Item 6. of the Declarations shall be the maximum aggregate amount the **Insurer** shall pay for all **Loss** under the applicable coverage. Such Limit of Insurance shall be part of, and not in addition to, the Policy Period Aggregate Limit of Insurance stated in Item 5. of the Declarations.

II. Policy Period Aggregate Limit of Insurance

The Policy Period Aggregate Limit of Insurance stated in Item 5. of the Declarations shall be the maximum aggregate amount the **Insurer** shall pay for all **Loss** under all **Coverage Parts**.

The **Insurer** shall not be responsible to pay any **Loss** upon exhaustion of the applicable Limit of Insurance.

2. Self-Insured Retentions

- I. The **Insurer** shall only be liable for the amount of **Loss** that exceeds the applicable Self-Insured Retention stated in Item 6. of the Declarations. A separate Self-Insured Retention shall apply to each coverage. The **Loss** within the Self-Insured Retentions must be borne by the **Insured** and shall be uninsured.
- II. With respect to the **Third Party Coverage Part**, the Self Insured Retention(s) shall apply to each **Claim**. With respect to the **First Party Coverage Part** or **Crime Coverage Part**, the Self Insured Retention(s) shall apply to each **Incident** (or **Related Event**, if applicable) that triggers coverage.
- III. With respect to any **Incident, Claim, or Related Event** that triggers more than one coverage, the single highest Self-Insured Retention will apply to such **Incident, Claim, or Related Event**.

- IV. Any **Business Interruption Loss** incurred by an **Insured Entity** during the **Business Interruption Waiting Period** will erode the applicable Self-Insured Retention, but the **Insurer** will not pay any **Business Interruption Loss** until the Self-Insured Retention is met and the **Business Interruption Waiting Period** has expired.
- V. Any **Reputational Harm Loss** incurred by an **Insured** during the **Reputational Harm Waiting Period** will not erode the Self-Insured Retention. The Self-Insured Retention will not begin to be eroded until the **Reputational Harm Waiting Period** has expired. The **Insurer** will not pay any **Reputational Harm Loss** until the Self-Insured Retention is met and the **Reputational Harm Waiting Period** has expired.
- VI. The **Insurer** may at its sole discretion advance payment for **Loss** within the Self-Insured Retention. Any **Loss** first paid by the **Insurer** within the Self-Insured Retention shall, upon written demand by the **Insurer**, be paid by the **Insured** to the **Insurer** within thirty (30) days upon receipt of such written demand.

G. DEFENSE AND SETTLEMENT OF CLAIMS AND INSURED'S OBLIGATIONS

1. The **Insurer** shall have the right and duty to defend the **Insured** for each **Claim** alleging **Loss** covered under this Policy for which the **Insurer** receives notice that meets the requirements of the notice provisions of this Policy, even if such **Claim** is groundless, false or fraudulent. The **Insurer** may, at the **Insurer's** discretion, make any investigation it deems appropriate.
2. The **Insurer's** right and duty to defend any **Claim** will end upon exhaustion of the applicable Limit of Insurance. If the Limit of Insurance is exhausted, the premium for this Policy will be deemed fully earned.
3. The **Insured** shall not:
 - I. Admit or assume any liability unless required by law;
 - II. Make any settlement offer of monetary or non-monetary consideration;
 - III. Enter into any settlement agreement;
 - IV. Stipulate to any judgment;
 - V. Incur any **Defense Expenses**; or
 - VI. Make any offer to negotiate, terminate or end any **Ransomware Event**, or enter into any agreement in connection with a **Ransomware Event**,
without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** will not be liable for any admission, assumption, offer, settlement, stipulation, or **Defense Expenses** to which it has not consented.
4. The **Insurer** may, with the written consent of the **Insured**, settle any **Claim** for a monetary amount that the **Insurer** deems reasonable. If any **Insured** refuses to consent to the settlement of a **Claim** recommended by the **Insurer** and acceptable to a claimant, then the **Insurer** will not pay **Loss** for such **Claim** in excess of the sum of:
 - I. The amount of the proposed settlement plus **Defense Expenses** incurred prior to such refusal; and
 - II. 70% of **Loss** incurred for such **Claim** in excess of the amount specified in 4.I. above.

H. CONDITIONS

1. PROOF OF LOSS

With respect to the **Crime Coverage Part** and **First Party Coverage Part**, the **Insured** shall provide a detailed proof of **Loss** statement within one hundred twenty (120) days of notice to the **Insurer** of such **Loss**. Such proof of **Loss** statement shall include a detailed calculation of **Loss** incurred and all documents and materials that reasonably relate to or form part of the basis of the proof of such **Loss**.

2. ASSISTANCE AND COOPERATION

- I. The **Insured** will reasonably cooperate with the **Insurer** and upon request of the **Insurer**:
 - a. Assist the **Insurer** in the investigation of any **Wrongful Act, Incident, or Claim**;
 - b. Attend hearings, depositions, trials and other such proceedings;
 - c. Assist the **Insurer** in effecting settlements and defending **Claims**;
 - d. Secure and provide evidence which includes, but is not limited to, obtaining the attendance of witnesses;
 - e. Allow the **Insurer** to participate in the handling and management of any **Claim**;
 - f. Assist the **Insurer** in enforcing any right, contribution or indemnity against a third party (including any person, entity, organization, or insurer) which may be liable to the **Insured**;
 - g. Provide to the **Insurer** all information that the **Insurer** reasonably requires, including the full details of the dates, persons, and entities involved in a **Wrongful Act, Incident, or Claim**; and
 - h. Allow a third party data forensics incident response professional services firm access to systems, files and information.
- II. The **Insured** will take all reasonable steps to limit and mitigate any **Loss** arising from any **Wrongful Act or Incident** for which coverage may be, or is, sought under this Policy. The **Insured** will do nothing which in any way may prejudice the **Insurer's** position.

3. SPOUSAL, DOMESTIC PARTNER, ESTATE AND LEGAL REPRESENTATIVE COVERAGE

Regarding the **Third Party Coverage Part** only, coverage will apply to a **Claim** made against the lawful spouse or **Domestic Partner** of an **Insured**, or if an **Insured** dies, becomes incapacitated, or files for bankruptcy, such **Insured's** trustee, estate, heirs, assignees, or legal representatives, provided that:

- I. The **Claim** arises solely out of such person's status as a spouse, **Domestic Partner**, trustee, estate, heir, assignee or legal representative of such **Insured**;
- II. Property that is either owned or in the custody of such person is sought as recovery for a **Wrongful Act**;

- III. The **Insured** and such person are both named in such **Claim**;
- IV. No coverage will apply to any **Claim** for a **Wrongful Act** committed by such person; and
- V. All of the terms and conditions of this Policy including, without limitation, all applicable Self-Insured Retentions apply to such **Claim**.

4. CURRENCY

All limits of insurance, premiums, retentions and any other amount or payment due under this Policy are stated in Canadian dollars, unless otherwise stated. If **Loss** is incurred in a currency other than Canadian dollars, payment under this Policy shall be made in Canadian dollars.

5. LOSS CALCULATIONS AND APPRAISAL

In determining the amount of **Loss** under the Business Interruption Coverage or the Reputational Harm Coverage, due consideration shall be given to:

- I. The prior experience of an **Insured Entity's** business before the commencement of the **Business Interruption** or **Adverse Publicity**; and
- II. The probable business an **Insured Entity** could have conducted had no **Business Interruption** or **Adverse Publicity** occurred during, or within a reasonable time after the end of the **Business Interruption Period of Recovery**, **Extended Business Interruption Period of Recovery** or **Reputational Harm Period of Recovery**.

Provided, however, that such calculations shall not include, and this Policy will not cover, net income that would likely have been earned as a result of an increase in volume of business due to favorable business conditions caused by the impact of the **Business Interruption** or **Adverse Publicity** on other businesses.

6. NOTICE – CIRCUMSTANCES, CLAIMS OR INCIDENTS

- I. Regarding the **Third Party Coverage Part**:

- a. **Notice of Circumstance**

If any **Claims Manager** first becomes aware of any **Wrongful Act** during the **Policy Period** that may reasonably be expected to give rise to a **Claim** against an **Insured**, then written notice of such **Wrongful Act** may be given by the **Named Insured** to the **Insurer** during the **Policy Period**, specifying the following:

- i. Reasons for anticipating such a **Claim**;
 - ii. Nature and date of such **Wrongful Act**;
 - iii. Identity of the **Insured(s)** involved;
 - iv. Actual or alleged **Loss** incurred;
 - v. Names of potential claimants; and
 - vi. Manner in which the **Insured(s)** first became aware of the **Wrongful Act**.

Any **Claim** subsequently arising from such **Wrongful Act** will be deemed a **Claim** first made at the time the **Insurer** receives the written notice.

b. Notice of Claim

The **Named Insured** shall give the **Insurer** written notice of any **Claim** as soon as practicable after any **Claims Manager** first becomes aware of the **Claim**, but such notice shall not be given later than the end of the Automatic Extended Reporting Period, or the end of the Optional Extended Reporting Period, if applicable.

II. Regarding the First Party Coverage Part and Crime Coverage Part:

a. Notice of Incident

The **Named Insured** shall give the **Insurer** written notice of any **Incident** as soon as practicable after any **Claims Manager** first becomes aware of the **Incident**, but no later than sixty (60) days after the end of the **Policy Period**.

III. Regarding all Coverage Parts:

a. Law Enforcement Cooperation

The **Named Insured** may receive an authorized order from a law enforcement or other governmental authority to keep confidential certain information about an actual or reasonably suspected **Incident** or **Claim**. In such circumstances, a notice of such **Incident** or **Claim** shall be considered timely under this Policy if:

i. As soon as practicable after receipt of such request, any **Claims Manager** requests permission to share such information with the **Insurer**;

ii. The **Named Insured** only withholds from the **Insurer** that portion of the information that it has been instructed by a law enforcement or other governmental authority not to share with the **Insurer**; and

iii. The **Named Insured** provides full notice of such **Incident** or **Claim** to the **Insurer** as soon as practicable after the **Named Insured** is legally permitted.

To the extent the procedure set forth above is followed in connection with an authorized law enforcement or governmental authority order, any failure or delay in providing information to the **Insurer** shall not be the basis for denial of coverage under this Policy.

7. SUBROGATION AND RECOVERY

I. Subrogation

The **Insurer** will be subrogated to all of the **Insureds'** rights of recovery regarding any payment of **Loss** under this Policy. The **Insureds** will do everything necessary to secure and preserve such rights, including, without limitation, the execution of any documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insureds**. The **Insureds** will do nothing to prejudice the **Insurer's** position or any rights of recovery. However, if the **Insured** has waived any right of recovery against

any person or organization for all or part of any **Loss**, the **Insurer** will also waive such right of recovery, but only if the **Insured** waived its right of recovery pursuant to a written contract or agreement that was executed prior to the **Loss**.

SPECIMEN

II. Recovery By Insured

If any **Insured** recovers any **Setoff Amounts**, such **Insured** must give the **Insurer** prompt notice, and the **Insurer** shall have the right to apply the **Setoff Amounts** to any payment of **Loss**. If **Loss** has already been paid by the **Insurer**, then the **Insured** shall return the applicable amounts of **Loss** in accordance with Paragraph III. below.

III. Distribution

Recoveries for **Loss** paid under Paragraphs 7.I. and 7.II. above, less the actual cost of recovery, will be distributed as follows:

- a. First, the **Insurer** shall be reimbursed for the amount of the settlement paid by the **Insurer**;
- b. Second, the **Insured** shall be reimbursed for **Loss** equal to the applicable Self-Insured Retention amount paid by the **Insured**; and
- c. Third, the **Insured** shall be reimbursed for any remaining **Loss** exceeding the applicable Limit of Insurance and the applicable Self-Insured Retention.

8. OTHER INSURANCE

Coverage under this Policy will apply only in excess of the applicable Self-Insured Retention and over any other valid and collectible insurance regardless of whether such other insurance is stated to be primary, excess, contributory, contingent or otherwise, unless such other insurance is written specifically excess over the Limits of Insurance of this Policy by reference in such other insurance to this Policy's policy number.

9. CHANGES IN CONTROL

I. Takeover of Named Insured

If, during the **Policy Period**:

- a. Any person or entity or group of persons and/or entities acting in concert acquires securities or voting rights resulting in ownership by such person(s) and/or entity(ies) of more than 50% of the outstanding securities representing the present right to vote for the election of directors or equivalent positions of the **Named Insured**; or
- b. The **Named Insured** merges into or consolidates with another organization such that the **Named Insured** is not the surviving organization;

then coverage for such **Named Insured** and its **Insureds** will continue under this Policy, but only if the following conditions are met:

- a. With respect to the **Third Party Coverage Part**, the **Wrongful Act** must have been committed prior to the effective date of the transaction;
- b. With respect to the **Crime Coverage Part**, the **Incident** must have been first discovered by an **Insured** prior to the effective date of the transaction; and

- c. With respect to the **First Party Coverage Part**:
 - i. Under the Incident Response Expense Coverage, Data Recovery Expense Coverage, and Cyber Extortion Expense Coverage, the **Incident** must first have been discovered by an **Insured** prior to the effective date of the transaction; and
 - ii. Under the Business Interruption Coverage and the Reputational Harm Coverage, the **Incident** must have first occurred and have been first discovered by an **Insured** prior to the effective date of the transaction.

Upon the effective date of such transaction, the entire premium for this Policy will be deemed fully earned.

II. Acquisition or Creation of Subsidiary by Named Insured

If, during the **Policy Period**, any **Named Insured**:

- a. Acquires or creates a **Subsidiary**; or
- b. Merges with another organization such that the **Named Insured** is the surviving entity,

then coverage for such **Subsidiary** or organization that merged will continue under this Policy, but only if the following conditions are met:

- a. With respect to the **Third Party Coverage Part**, the **Wrongful Act** must have been committed after the effective date of the transaction;
- b. With respect to the **Crime Coverage Part**, the **Incident** must have first been discovered by an **Insured** after the effective date of the transaction; and
- c. With respect to the **First Party Coverage Part**:
 - i. Under the Incident Response Expense Coverage, Data Recovery Expense Coverage, and Cyber Extortion Expense Coverage, the **Incident** must have first been discovered by an **Insured** after the effective date of the transaction; and
 - ii. Under the Business Interruption Coverage and the Reputational Harm Coverage, the **Incident** must have first occurred and have been first discovered by an **Insured** after the effective date of the transaction.

III. Loss of Subsidiary Status

If, during the **Policy Period**, any entity ceases to be a **Subsidiary**, then coverage for such entity and its **Insureds** will continue under this Policy, but only if the following conditions are met:

- a. With respect to the **Third Party Coverage Part**, the **Wrongful Act** must be committed prior to the effective date of the transaction;
- b. With respect to **Crime Coverage Part**, the **Incident** must have first been discovered by an **Insured** prior to the effective date of the transaction; and
- c. With respect to the **First Party Coverage Part**:

- i. Under the Incident Response Expense Coverage, Data Recovery Expense Coverage, and Cyber Extortion Expense Coverage, the **Incident** must have first been discovered by an **Insured** prior to the effective date of the transaction; and
- ii. Under the Business Interruption Coverage and the Reputational Harm Coverage, the **Incident** must have first occurred and have been first discovered by an **Insured** prior to the effective date of the transaction.

With respect to Paragraphs **I. Takeover of Named Insured** and **III. Loss of Subsidiary Status**, the **Named Insured** will give the **Insurer** written notice of the transaction as soon as practicable, but not later than thirty (30) days after the effective date of such transaction. Subject to the expiration of the **Policy Period**, any continuation of coverage beyond thirty (30) days after the effective date of such transaction will be subject to a review and written acceptance by the **Insurer**. The **Insurer** shall have the right to amend the terms and conditions of this Policy, including but not limited to premiums, Limits of Insurance, Self-Insured Retentions or exclusions.

With respect to Paragraph **II. Acquisition or Creation of Subsidiary by Named Insured**, if the current annual gross revenues of any newly acquired or merged organization exceeds 15% of the current annual gross revenues of the **Named Insured** as reflected in the most recent **Application**, then the **Named Insured** will give the **Insurer** written notice of the acquisition or merger as soon as practicable but not later than thirty (30) days after the effective date of such transaction. Subject to the expiration of the **Policy Period**, any continuation of coverage for beyond thirty (30) days after the effective date of such transaction will be subject to a review and written acceptance by the **Insurer**. The **Insurer** shall have the right to amend the terms and conditions of this Policy, including but not limited to premiums, Limits of Insurance, Self-Insured Retentions or exclusions.

10. APPLICATION AND SEVERABILITY

- I. The **Insureds** represent and agree that the statements and information contained in the **Application** are true, accurate and complete; that each representation is deemed material to the acceptance of the risk assumed by the **Insurer** and that this Policy is issued in reliance upon the truth and accuracy of such representations contained within the **Application**. This Policy embodies all of the agreements existing between the **Insureds** and the **Insurer** and any of its representatives.
- II. If the **Application** contains misrepresentations or omissions made with the intent to deceive or that materially affects the acceptance of the risk or the hazard assumed by the **Insurer**, the **Insurer** shall not pay **Loss** for, based upon, arising out of, or in any way related to any:
 - a. Natural person **Insured** who knew at the inception of the **Policy Period** of such information; or
 - b. **Insured Entity**, if any of the **Insured Entity's Claims Managers** or the person signing the **Application** knew at the inception of the **Policy Period** of such information.

This Paragraph **II.** shall apply regardless of whether the natural person **Insured**, the **Insured Entity's Claims Manager**, or the person signing the **Application** was aware that the above described information had been misrepresented or omitted from the **Application**.

Notwithstanding any provision of this Policy, the **Insurer** shall not rescind this Policy.

11. SUITS AGAINST THE INSURER

- I. No suit or other proceeding will be commenced by any **Insured** against the **Insurer** unless there has been full compliance with all of the terms and conditions of this Policy.
- II. No person or organization will have any right under this Policy to join the **Insurer** as a party to any suit or other proceeding against the **Insured** nor will the **Insurer** be impleaded by the **Insured** in any such suit or other proceeding.

12. NAMED INSURED'S AUTHORITY

The **Named Insured** will act on behalf of all **Insureds** regarding all matters under this Policy, including, without limitation, cancellation, non-renewal, election of the Optional Extended Reporting Period, transmission and receipt of notices, reporting of **Claims, Incidents and Losses**, acceptance of endorsements, payment of premiums, and receipt of return premiums.

13. CANCELLATION

- I. The **Insurer** may cancel this Policy for non-payment of premium by giving notice of cancellation to the **Named Insured** by registered mail, which shall take effect not less than fifteen (15) days following receipt of such notice by the **Named Insured**. This Policy may not otherwise be cancelled by the **Insurer**.
- II. Except as otherwise provided, the **Named Insured** may cancel this Policy by sending written notice of cancellation to the **Insurer**. Such notice will be effective upon receipt by the **Insurer** unless a later cancellation date is specified therein.
- III. If the **Insurer** cancels this Policy, unearned premium will be calculated on a pro rata basis. If the **Named Insured** cancels this Policy, unearned premium will be calculated at the **Insurer's** customary short rates; Payment of any unearned premium will not be a condition precedent to the effectiveness of such cancellation. The **Insurer** will refund any unearned premium as soon as practicable.

14. BANKRUPTCY

- I. Bankruptcy or insolvency of any **Insured** will not relieve the **Insurer** of any of its obligations under this Policy, nor deprive the **Insurer** of any of its rights and defenses under this Policy.
- II. In the event of the bankruptcy or insolvency of any **Insured**, the **Insurer** will have the right to assert any appropriate claim or demand in such proceeding for payment of any obligations of any **Insured**, including, without limitation, any amounts which the **Insurer** may advance on behalf of any **Insured** within the Self-Insured Retention.

15. ATTRIBUTION OF A CYBER WAR TO A SOVEREIGN STATE

- I. The primary but not exclusive factor in determining attribution of a **Cyber War** shall be whether the government of the **Impacted State** (including its intelligence and security services) in which the **Computer System** affected by the **Cyber War** is physically located attributes the **Cyber War** to another sovereign state or those acting on its behalf.
- II. Pending attribution by the government of the **Impacted State** (including its intelligence and security services) in which the **Computer System** affected by the **Cyber War** is physically located, the **Insurer** may rely upon an inference which is

objectively reasonable as to attribution of the **Cyber War** to another sovereign state or those acting on its behalf. It is agreed that during this period no **Loss** shall be paid.

III. In the event that the government of the **Impacted State** (including its intelligence and security services) in which the **Computer System** affected by the **Cyber War** is physically located either:

- a. Takes an unreasonable length of time to make an attribution;
- b. Does not make an attribution; or
- c. Makes an attribution that the **Insurer** deems unreasonable;

then it shall be the duty of the **Insurer** to prove attribution by reference to such other evidence as is available. Such evidence shall include, but not be limited to:

- a. Publicly available intelligence information provided by:
 - i. A Group of Seven (G7) or European Union nation;
 - ii. The Royal Canadian Mounted Police, or the Canadian Security Intelligence Service;
 - iii. The United States Federal Bureau of Investigation, United States Secret Service, United States Department of Homeland Security, or United States Department of State; or
- b. Information received from the perpetrator(s).

16. NOTICES

- I. Notices to the **Insured** will be sent to the **Named Insured** at the address specified in Item 1. of the Declarations.
- II. Notices to the **Insurer** will be sent to the applicable e-mail, facsimile, or other address specified in Item 9. of the Declarations and shall include the policy number of this Policy.

17. DISPUTE RESOLUTION

In the event that a dispute arises in connection with rights and obligations owed under this Policy, the **Insured(s)** and the **Insurer** will participate in a non-binding mediation in which the parties will attempt in good faith to resolve such dispute. Either the **Insured(s)** or the **Insurer** will have the right to commence a judicial proceeding, or if the parties agree, submit the dispute to a binding arbitration, in order to resolve such dispute. However, no judicial proceeding or arbitration will be commenced prior to the termination of the mediation and until at least ninety (90) days have passed from the termination of the mediation. The expenses of any mediation, or any arbitration, shall be split equally by the parties.

18. ALTERATION, ASSIGNMENT AND TITLES

- I. Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or change in any part of this Policy nor prevent the **Insurer** from asserting any right under the terms of this Policy.
- II. Assignment of any interest under this Policy will not bind the **Insurer** unless such assignment is acknowledged by a written endorsement issued by the **Insurer**.

- III. The titles of the sections of, and endorsements to, this Policy are for reference only and shall not be used to interpret coverage under this Policy. Such titles will not be part of the terms and conditions of coverage.

19. REFERENCES TO LAWS

- I. Any statute, act, or code mentioned in this Policy will be deemed to include all amendments of, and rules and regulations promulgated under, such statute, act, or code.
- II. Any statute, act, or code mentioned in this Policy that is followed by the phrase "any similar law" will be deemed to include all similar laws of all jurisdictions throughout the world, including, without limitation, any common law.

20. ENTIRE AGREEMENT

This Policy, including the Declarations, written endorsements, and the **Application** will constitute the entire agreement between the **Insurer** and the **Insureds**, or any of its agents regarding the insurance provided hereunder.

21. POLICY CHANGES

This Policy will not be changed in any manner except by a written endorsement issued by the **Insurer**.

22. COVERAGE COORDINATION

If there is coverage available for a **Loss** under two or more coverages, the **Insurer** will be entitled to determine how to apportion such **Loss** between coverages at its sole discretion.

23. ALLOCATION

If any **Insured** incurs **Loss** under the **Third Party Coverage Part** that is only partially covered by this Policy because of any **Wrongful Act, Claim, or Related Event** that includes both covered and uncovered matters, **Loss** will be allocated as follows:

- I. One hundred (100%) percent of **Defense Expenses** incurred by the **Insureds** will be allocated to covered **Loss**; and
- II. With respect to all **Loss** other than **Defense Expenses**, such **Loss** will be allocated between covered and non-covered **Loss** based on the relative legal exposure of the parties to covered and non-covered matters.

24. LIMITATION OF ACTIONS

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act* (for actions or proceedings governed by the laws of Alberta and British Columbia), *The Insurance Act* (for actions or proceedings governed by the laws of Manitoba), or other applicable legislation.

25. GOVERNING LAW

The relationship between the Insurer and the Named Insured shall be governed by the laws of the Canadian province or territory of the Named Insured's head office at the time the insurance coverage hereunder comes into effect.

SPECIMEN