

Insuring Agreements

First Party

The First Party Insuring Agreements below provide coverage on a discovered and reported basis and apply only to incidents discovered by the **Insured** during the **Policy Period** and reported to the **Insurer** in accordance with General Conditions, [Notice of First Party Incident provision](#) of this policy.

Incident Response Expenses

The **Insurer** will pay **Incident Response Expenses** incurred by an **Insured Entity** because of an actual or reasonably suspected **Security Incident** or **Privacy Incident**.

Business Interruption Loss

The **Insurer** will reimburse **Business Interruption Loss** incurred by an **Insured Entity** resulting directly from the partial or complete interruption of the **Insured Entity's** business operations caused by a **Security Incident, System Failure, or Preventative Shutdown**.

Dependent Business Interruption Loss

The **Insurer** will reimburse **Business Interruption Loss** incurred by an **Insured Entity** resulting directly from the partial or complete interruption of the **Insured Entity's** business operations caused by a **Dependent Security Incident** or **Dependent System Failure**.

Extortion Loss

The **Insurer** will reimburse the **Insured Entity** for **Extortion Loss** paid by an **Insured Entity** because of an **Extortion Threat**.

Data Restoration

The **Insurer** will pay **Data Restoration Costs** incurred by an **Insured Entity** as a direct result of a **Security Incident** or **System Failure**.

Hardware Replacement

The **Insurer** will pay **Hardware Replacement Costs** incurred by an **Insured Entity** as a direct result of a **Security Incident**.

Cyber Crime

The **Insurer** will reimburse the **Direct Financial Loss** sustained by an **Insured Entity** as a direct result of **Fraudulent Instruction** or **Funds Transfer Fraud**.

The **Insurer** will reimburse the **Direct Net Loss** incurred by an **Insured Entity** as a direct result of **Invoice Manipulation**.

Utility Fraud

The **Insurer** will pay or reimburse the **Direct Financial Loss** sustained by an **Insured Entity** as a direct result of **Cryptojacking** or **Telephone Fraud**.

Reputation Loss

The **Insurer** will pay or reimburse the **Reputation Loss** sustained by an **Insured Entity** as a direct result of an **Adverse Publication**.

Liability

The Liability Insuring Agreements below provide coverage on a **Claims** made and reported basis and apply only to **Claims** and **Regulatory Proceedings** first made against the **Insured** during the **Policy Period** or the Optional Extended Reporting Period, if purchased, and reported to the **Insurer** in accordance with General Conditions, Notice of **Claim** provision of this policy. Amounts incurred as **Claims Expenses** under this policy will reduce and may exhaust the limit of liability and are subject to the applicable Retention(s) as set forth in the Declarations Page of this policy.

Network Security and Privacy Liability

The **Insurer** will pay **Damages** and **Claims Expenses** that the **Insured** is legally obligated to pay because of a **Claim** made against an **Insured** for a **Security Incident** or a **Privacy Incident**.

Data Subject Liability

The **Insurer** will pay **Damages** and **Claims Expenses** that the **Insured** is legally obligated to pay because of a **Claim** made against an **Insured** for **Data Subject Rights**.

Regulatory

The **Insurer** will pay **Regulatory Fines** and **Claims Expenses** that the **Insured** is legally obligated to pay because of a **Regulatory Proceeding** made against an **Insured** for a **Security Incident**, **Privacy Incident**, or **Data Subject Rights**.

Payment Card

The **Insurer** will reimburse the **Insured Entity** for **PCI Fines and Expenses** which it is legally obligated to pay because of a **Claim** made against an **Insured** for a **Privacy Incident**.

Media

The **Insurer** will pay **Damages** and **Claims Expenses** that the **Insured** is legally obligated to pay because of a **Claim** made against an **Insured** for a **Media Incident**.

Definitions

Additional Insured means any natural person or entity that the **Insured Entity** has entered into a written agreement to provide insurance coverage under this policy but only for **Claims** arising from acts, errors, omissions, incidents, or events committed by, or on behalf of, the **Insured Entity** under such agreement and the subject act, error, omission, incident, or event first occurs after the **Insured Entity** has entered into such agreement.

Adverse Publication means:

1. any communication of an actual **Security Incident, Privacy Incident** or **Extortion Threat** by a media outlet; or
2. notification of individuals in response to a **Privacy Incident**

that first occurs during the **Policy Period**.

Multiple **Adverse Publications** arising from the same or a series of related, repeated, or continuing **Security Incidents, Privacy Incidents, or Extortion Threats**, will be considered a single **Adverse Publication**, and will be deemed to occur at the time of the first such **Adverse Publication**.

Business Interruption Loss means:

1. **Income Loss** and **Extra Expense** incurred by the **Insured Entity** during the **Period of Restoration**; and
2. reasonable and necessary costs incurred by a forensic accountant retained with the **Insurer's** prior written consent to assist in the preparation of a proof of loss setting forth any **Income Loss** and **Extra Expense**.

Business Interruption Loss will not include any: (i) loss arising out of any liability to any third party; (ii) legal costs or legal expenses; (iii) loss incurred as a result of unfavorable business conditions; (iv) loss of market share or any other consequential loss; (v) costs incurred to replace or improve a **Computer System**; (vi) costs incurred to identify or remediate **Computer System** errors or vulnerabilities; (vii) investment income; (viii) contractual penalties; (ix) **Data Restoration Costs**; or (x) **Hardware Replacement Costs**.

Claim means :

1. a written demand for monetary damages or injunctive relief;
2. a written request to toll or waive a statute of limitations; and
3. solely with respect to the Regulatory Insuring Agreement, a **Regulatory Proceeding**.

Multiple **Claims** arising from the same or a series of related, repeated, or continuing acts, errors, omissions, incidents, or 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 time of the first such **Claim**.

Claims Expenses means the reasonable and necessary:

1. attorney's fees, mediation costs, arbitration expenses, expert witness fees, and other fees and costs incurred by the **Insurer**, or by an **Insured** with the **Insurer's** prior written consent, in the investigation and defense of a **Claim**; and
2. premiums for any appeal bond, attachment bond or similar bond, although the **Insurer** will have no obligation to apply for or furnish such bond.

Claims Expenses will not include wages, salaries, other compensation, overhead or other charges by the **Insured**.

Computer System means computers and related components, Internet of Things (IoT) devices, systems and applications software, terminal devices, related communications networks, mobile devices (handheld and other wireless computing devices), storage devices, and back up devices that are:

1. leased, owned, or operated by the **Insured Entity**; or
2. operated for the **Insured Entity's** benefit by a third party pursuant to a written contract for the provision of hosted computer application services.

Confidential Information means:

1. any information about an individual that is required by any local, state, federal, or foreign law or regulation to be protected from unauthorized access, acquisition, or public disclosure; or
2. any other third party confidential or proprietary information:
 - i. provided to an **Insured** and protected under a nondisclosure agreement; or
 - ii. which an **Insured** is legally obligated to maintain in confidence.

Control Group means any principal, partner, corporate officer, director, general counsel (or most senior legal counsel), or risk manager of the **Insured Entity** and any individual in a substantially similar position.

Cryptojacking means the unauthorized use of a **Computer System** by a third party to mine cryptocurrency or any other digital or electronic currency that directly results in increased billings incurred by the **Insured Entity** for electricity, natural gas, oil, or internet use. Provided such billings: (i) are charged to the **Insured Entity** in a billing statement by the provider of such services or resources pursuant to a contract or agreement between the **Insured Entity** and the provider that was first entered into before the **Cryptojacking** first occurred; and (ii) are not charged as a flat fee that does not scale with the rate of use of such service or resource.

Cybersecurity Risk Controls means **Elphaware** or the cybersecurity software confirmed in the application for this insurance.

Damages means any judgment, award of prejudgment or post-judgment interest, settlement, and amount which an **Insured** becomes legally obligated to pay on account of a **Claim**. **Damages** will not include:

1. any amount for which an **Insured** is not financially liable or legally obligated to pay;
2. taxes, fines, penalties or sanctions imposed against an **Insured**;
3. matters uninsurable under the laws pursuant to which this policy is construed;
4. punitive or exemplary damages or any damages which are a multiple of compensatory damages, unless insurable by law in any applicable venue that most favors coverage for such punitive, exemplary or multiple damages;
5. the cost to an **Insured** to comply with any injunctive, remedial, preventative, or other non-monetary or declaratory relief, including specific performance, or any agreement to provide such relief;
6. future profits, restitution, or unjust enrichment;
7. credits, refunds, discounts, coupons, prizes, awards, or other incentives offered by an **Insured**;
8. consideration owed or paid by or to an **Insured** including any royalties, restitution, reduction, disgorgement, or return of any payment, charges, or fees; or costs to correct or re-perform services; or for the reprint, recall, or removal of **Media Content**;
9. liquidated damages pursuant to a contract, 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; or
10. fines, costs, or other amounts an **Insured** is legally liable to pay under a **Merchant Services Agreement**.

Data Subject Rights means:

1. the **Insured Entity's** failure to provide notification to affected individuals in response to a **Privacy Incident**;
2. failure by the **Insured** to comply with those provisions of the **Insured Entity's** publicly posted privacy policy which:
 - a. prohibit or restrict the **Insured Entity's** disclosure, sharing or selling of **Confidential Information**;
 - b. require the **Insured Entity** to provide an individual access to **Confidential Information**;
 - c. require the **Insured Entity** to correct inaccurate **Confidential Information** after an individual makes such a request; or
 - d. mandate procedures and requirements to prevent the theft or loss of **Confidential Information**;
3. solely as it relates to the Regulatory Insuring Agreement, **Data Subject Rights** also means:
 - a. a violation of the California Consumer Privacy Act or any similar state statutes or state regulations specifically governing the **Insured Entity's** collection, use, disclosure, sharing, retention, access, or storage of personal information as defined in the California Consumer Privacy Act or similar state statutes or state regulations;
 - b. a violation of the EU General Data Protection Regulation (or legislation in the relevant jurisdiction implementing this Regulation).

Data Restoration Costs means the reasonable amounts incurred or paid by an **Insured Entity**, with the **Insurer's** prior written consent:

1. to restore or recover damaged, corrupted, or destroyed computer programs, software, or electronic data stored within a **Computer System**, to the condition it was immediately before a **Security Incident** or **System Failure**; or
2. to determine that such computer programs, software, or electronic data cannot be reasonably restored or recovered.

Data Restoration Costs will not include: (i) the monetary value of any computer programs, software, or electronic data including but not limited to the value of any trade secrets or other proprietary information; (ii) any profits, royalties, or lost market share related to computer programs, software or electronic data; (iii) legal costs or legal expenses; (iv) loss arising out of any liability to any third party; (v) **Extortion Loss**; (vi) costs to design, update, or improve the operation of computer programs or software; (vii) costs to recreate work product, research, or analysis; (viii) **Extra Expense**; (ix) **Hardware Replacement**, or (x) wages, benefits, or overhead of the **Insured Entity**.

Dependent Business means any entity that is not a part of the **Insured Entity** but which provides necessary services to the **Insured Entity** pursuant to a written contract.

Dependent Security Incident means:

1. the unauthorized access to or use of;
2. a denial-of-service attack against; or
3. the introduction of malicious code into,

a computer system operated by a **Dependent Business**.

Dependent System Failure means an unintentional and unplanned interruption of computer systems operated by a **Dependent Business**. **Dependent System Failure** does not include any interruption of computer systems resulting from (i) a **Dependent Security Incident** or (ii) the interruption of computer systems that are not operated by a **Dependent Business**.

Direct Financial Loss means the direct loss of **Money** by the **Insured Entity** as the direct result of **Fraudulent Instruction, Funds Transfer Fraud, Telephone Fraud, or Cryptojacking**.

Direct Net Loss means the direct net cost to the **Insured Entity** to provide goods, products, or services to a third party. **Direct Net Loss** does not include any anticipated profit to the **Insured Entity** as a result of providing such goods, products, or services.

Eligible Computers means laptops, desktops, workstations and on-premises servers leased, owned or operated by the **Insured Entity**.

Elphaware means Elpha Secure's proprietary cybersecurity software.

Extortion Loss means the following amounts incurred with the **Insurer's** prior written consent:

1. reasonable and necessary money (including any form of cryptocurrency or other form of digital or electronic currency), goods, property, or services surrendered as payment by or on behalf of the **Insured Entity** in order to prevent, limit, or respond to an **Extortion Threat**; and
2. reasonable and necessary costs charged by qualified third parties to conduct an investigation and advise the **Insured Entity** how to respond to and resolve an **Extortion Threat**.

Extortion Threat means a threat to an **Insured Entity** to:

1. access or disclose **Confidential Information** or an **Insured Entity's** information without authorization;
2. cause a **Security Incident**;
3. restrict or inhibit access to a **Computer System**;
4. interrupt **Computer Systems**; or
5. alter, destroy, damage, delete, or encrypt electronic data,

unless a payment is received by the **Insured Entity**.

Extra Expense means reasonable and necessary expenses incurred by the **Insured Entity** to minimize or avoid the interruption of the **Insured Entity's** business operations that exceed those expenses the **Insured Entity** ordinarily would have incurred to conduct its business had no **Security Incident, Preventative Shutdown, System Failure, Dependent Security Incident, or Dependent System Failure** occurred.

First Party Incident means **Security Incident, Privacy Incident, System Failure, Preventive Shutdown, Dependent Security Incident, Dependent System Failure, Extortion Threat, Fraudulent Instruction, Funds Transfer Fraud, Invoice Manipulation, Cryptojacking, and Telephone Fraud**. A **First Party Incident** will be deemed first discovered when such **First Party Incident** first becomes known to a member of the **Control Group**. Multiple **First Party Incidents** arising from the same or a series of related, repeated, or continuing acts, errors, omissions, incidents, or events will be considered a single **First Party Incident** for the purposes of this policy.

Fraudulent Instruction means the transfer, payment, or delivery of **Money** or **Securities** by an **Insured** in response to an instruction provided by a third party that is intended to mislead an **Insured** through the misrepresentation of a material fact and is relied upon by such an **Insured**, believing the material fact to be true.

Fraudulent Instruction does not include:

1. any transfer involving a third party who is not a natural person **Insured**, but had authorized access to the **Insured's** authentication mechanism;
2. the processing of, or the failure to process, credit, check, debit, personal identification number debit, electronic benefit transfers or mobile payments for merchant accounts; or

3. accounting or arithmetical errors or omissions, or the failure, malfunction, inadequacy or illegitimacy of any product or service.

Funds Transfer Fraud means the falsified instructions purportedly issued by the **Insured Entity** and issued to a financial institution directing such institution to transfer, pay, or deliver **Money** or **Securities** from any account maintained by the **Insured Entity** at such institution without the **Insured Entity's** knowledge or consent.

Funds Transfer Fraud does not include any event or incident:

1. that is the type or kind covered by the **Insured Entity's** financial institution bond or commercial crime policy; or
2. based upon or arising out of any:
 - i. actual or alleged fraudulent, dishonest or criminal act or omission by, or involving, any natural person **Insured**;
 - ii. theft, disappearance, destruction of, unauthorized access to, or unauthorized use of confidential information, including a PIN or security code;
 - iii. forged, altered, or fraudulent negotiable instruments, securities, documents, or instructions; or
 - iv. transfer, payment, or delivery of any form or cryptocurrency or other form of digital or electronic currency.

Hardware Replacement Costs means the reasonable and necessary expenses incurred by an **Insured Entity** with the **Insurer's** prior written consent to replace computers or related components operated by, and either owned by or leased to, the **Insured Entity** that are unable to function as intended due corruption or destruction of software or firmware.

Incident Response Expenses means the following expenses incurred by the **Insured Entity** with the **Insurer's** prior written consent in response to an actual or reasonably suspected **Security Incident** or **Privacy Incident**:

1. for an attorney to provide legal services to respond to a **Security Incident** or **Privacy Incident**;
2. for a computer security expert to determine the existence, cause and scope of an actual or reasonably suspected **Security Incident** or **Privacy Incident**, and to assist in containing the incident if still active;
3. for a public relations or crisis management firm to mitigate harm to the **Insured**;
4. for a Payment Card Industry (PCI) Forensic Investigator to investigate the existence and extent of an actual or reasonably suspected **Privacy Incident** involving payment card data and for a Qualified Security Assessor to certify and assist in attesting to the **Insured's** PCI compliance, as required by a **Merchant Services Agreement**;
5. to notify individuals affected by a **Privacy Incident** as required by law or on a voluntary basis;
6. to operate a call center;

7. to provide credit or identity monitoring and identity protection and restoration services for individuals affected by a **Privacy Incident**; and
8. any reasonable amount offered and paid for information not otherwise available which leads to the arrest and conviction of a person or an entity responsible for a **Security Incident** or **Privacy Incident** no later than 60 days following the end of the **Policy Period**.

Incident Response Expenses will be provided by any vendor on our list of Response Providers specified on the website shown in the Declarations. **Incident Response Expenses** do not include any internal salary or overhead expenses of the **Insured**.

Income Loss means pretax net profit the **Insured Entity** did not earn, and net loss the **Insured Entity** incurred. Continuing normal operating expenses and payroll are part of the pretax net profit or net loss calculation.

Income Loss for an **Insured Entity** that would have earned net profit will be calculated as follows:

The **Insured Entity's** reasonably expected net profits which would have been earned had the **Security Incident, System Failure, or Preventative Shutdown** not occurred, plus continuing normal operating expenses and payroll, but only to the extent: (i) such continuing normal operating expenses and payroll directly relates to that portion of the **Insured Entity's** business operations interrupted by the **Security Incident, System Failure, or Preventative Shutdown**, and (ii) such continuing normal operating expenses and payroll must necessarily continue during the **Period of Restoration**. The **Insured Entity's** net profit will be determined with due consideration to the **Insured Entity's** reasonably expected profit based on its financial results prior to the **Security Incident, System Failure, or Preventative Shutdown**.

Income Loss for an **Insured Entity** that would have incurred a net loss will be calculated as follows:

Income Loss for an **Insured Entity** that would have incurred a net loss shall only include continuing normal operating expenses and payroll, and only to the extent: (i) such continuing normal operating expenses and payroll directly relates to that portion of the **Insured Entity's** business operations interrupted by the **Security Incident, System Failure, or Preventative Shutdown**, and (ii) such continuing normal operating expenses and payroll must necessarily continue during the **Period of Restoration**.

Insured means:

1. **Insured Persons**;
2. **Insured Entities**; and
3. for the Liability Insuring Agreements only, **Additional Insureds**.

Insured Entity means:

1. the **Named Insured**; and

2. **Subsidiaries.**

Insured Person means:

1. any past or present principal, director, officer, partner, trustee, employee, leased employee, temporary employee, volunteer, or intern of the **Insured Entity** but only with respect to the performance of their duties on behalf of the **Insured Entity**;
2. any past or present independent contractor who performs labor or service for the **Insured Entity** pursuant to a written contract or agreement with the **Insured Entity** and the status of such an individual as an independent contractor will be determined as of the date of an alleged act, error, or omission by any such independent contractor;
3. the estate, heirs, executors, administrators, assigns, and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency, or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this policy; and
4. the lawful spouse, including any natural person qualifying as a domestic partner of any **Insured**, but solely by reason of any act, error or omission of an **Insured** other than such spouse or domestic partner.

Insurer means the insurance company providing this insurance.

Invoice Manipulation means the release or distribution of any fraudulent invoice or fraudulent payment instruction to a third party as a direct result of a **Security Incident** or **Privacy Incident** resulting in the **Insured Entity's** inability to collect payment for any goods, products or services after such goods, products or services have been transferred to a third party.

Loss means **Business Interruption Loss, Claims Expenses, Extortion Loss, Damages, Data Restoration Costs, Direct Financial Loss, Direct Net Loss, Hardware Replacement Costs, Incident Response Expenses, PCI Fines and Expenses, Regulatory Fines, Reputation Loss**, and any other amounts covered under this policy. Multiple **Losses** arising from the same or a series of related, repeated, or continuing acts, errors, omissions, incidents, or events will be considered a single **Loss** for the purposes of this policy. With respect to the First Party Insuring Agreements, all acts, errors, omissions, incidents, or events (or series of related, repeated or continuing acts, errors, omissions, incidents, or events) giving rise to a **Loss** or multiple **Losses** in connection with such Insuring Agreements will be deemed to have been discovered at the time the first such act, error, omission, incident, or event is discovered.

Media Content means content that is created or disseminated, via any form or expression, by or on behalf of the **Insured Entity**.

Media Content does not include: (i) tangible product designs; or (ii) content created or disseminated by the **Insured Entity** on behalf of a third party.

Media Incident means any of the following in the public display of **Media Content**:

1. the unauthorized use of copyright, title, slogan, trademark, trade dress, service mark, domain name, logo, or service name;
2. the unauthorized use of a literary or artistic format, character, or performance;
3. defamation, libel, slander, trade libel, or other tort related to disparagement or harm to the reputation or character of any person or entity;
4. the misappropriation of ideas under an implied contract;
5. improper deep-linking or framing; or
6. unfair competition, when alleged in connection with 1 through 5.

Merchant Services Agreement means a contract between the **Insured Entity** and an acquiring bank, or other acquiring institution, that establishes the terms and conditions for accepting and processing payment card transactions.

Money means currency, coin, bank notes, traveler's checks, certified or cashier's checks, money orders, or bullion. **Money** does not include **Securities**.

Named Insured means the entity shown in the Declarations.

PCI Fines and Expenses means:

1. the monetary amount owed by the **Insured Entity** under the terms of a **Merchant Services Agreement** as a direct result of a **Privacy Incident**. With **Insurer's** prior written consent, **PCI Fines and Expenses** also means reasonable and necessary legal costs and expenses incurred by the **Insured Entity** to appeal or negotiate an assessment of such monetary amount.

PCI Fines and Expenses does not include any charge backs, interchange fees, discount fees or other fees unrelated to a **Privacy Incident**.

Period of Restoration means the period of time beginning upon the interruption of the Insured Entity's business operations and ending on the earlier of 30 days or when the **Insured Entity's** business operations are restored, or could have been restored had the **Insured** acted with due diligence, to the condition that existed immediately prior to the **Security Incident, System Failure, Preventative Shutdown, Dependent Security Incident** or **Dependent System Failure**.

Policy Period means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration, or cancellation of this policy and specifically excludes any Optional Extended Reporting Period.

Preventative Shutdown means the voluntary and intentional shutdown of a **Computer System** by an **Insured Entity** if it is reasonably necessary to minimize the **Loss** incurred during an active **Security Incident**.

Privacy Incident means the actual or suspected loss, theft, unauthorized access, or unauthorized disclosure of **Confidential Information** that is in the care, custody, or control of the **Insured Entity** or a

third party whose theft, loss, unauthorized access, or unauthorized disclosure of **Confidential Information** the **Insured Entity** is legally liable.

Regulatory Fines means civil monetary fines, civil penalties, or amounts deposited in a consumer redress fund imposed in a **Regulatory Proceeding**, to the extent insurable in any applicable venue that most favors coverage. **Regulatory Fines** will not include:

1. criminal fines, disgorgement, or the multiple portion of any multiplied damage award;
2. costs to remediate or improve **Computer Systems**;
3. costs to establish, implement, maintain, improve, or remediate security or privacy practices, procedures, programs, or policies;
4. audit, assessment, compliance, or reporting costs; or
5. costs to protect the confidentiality, integrity, or security of **Confidential Information**.

Regulatory Proceeding means a suit, civil investigation, or civil proceeding by or on behalf of any federal, state, local, or foreign government commenced by the service of a notice, complaint, or similar pleading.

Reputation Loss means the net profit or loss before tax that the **Insured Entity** would have earned but for an **Adverse Publication**. There will be no coverage for **Reputation Loss** if there is an actual interruption of the **Insured Entity's** business operations for any period of time.

Reputation Loss does not include (i) loss arising out of any liability to any third party; (ii) legal costs or legal expenses of any type; (iii) loss incurred as a result of unfavorable business conditions; (iv) loss of market share or any other consequential loss; (v) **Incident Response Expenses**; or (vi) **Extortion Loss**.

Securities means negotiable or non-negotiable instruments or contracts representing either money or tangible property that has intrinsic value.

Security Incident means:

1. the unauthorized access or use of;
2. a denial-of-service attack against;
3. the introduction of malicious code into; or
4. transmission of malicious code from;

a **Computer System**.

Subsidiary means:

1. any entity which on or prior to the inception date of this policy, the **Named Insured** either:
 - a. owns more than 50% of the outstanding voting securities ("Management Control"); or
 - b. has the authority pursuant to by-laws, charter, or other written agreement to elect, appoint or designate the majority of the board of directors of a corporation, the

- management committee of a joint venture or partnership, or the management board of a limited liability company (“Management Control”); and
2. any entity which the **Named Insured** acquires Management Control after the inception date of this policy provided that
 - a. the gross revenue does not exceed 35% of the gross revenue of the **Named Insured**; or
 - b. if the gross revenues exceed 35% of the **Named Insured**, any such entity will only be provided coverage for 60 days after the **Named Insured** gains Management Control. Additional coverage may be negotiated beyond the 60 days.

This policy provides coverage only for acts, errors, omissions, incidents, or events that occur while the **Named Insured** has Management Control over an entity.

System Failure means an unintentional and unplanned partial or complete interruption of a **Computer System**. **System Failure** does not include any interruption caused by a **Security Incident** or the interruption of a third-party’s computer systems.

Telephone Fraud means unauthorized use of an **Insured Entity’s** telephone system by a third party for outbound long-distance service.

Waiting Period means the period of time that begins upon the interruption of the **Insured Entity’s** business operations caused by a **Security Incident, System Failure, Preventative Shutdown, Dependent Security Incident, or Dependent System Failure**, and ends after the elapse of the number of hours listed as the **Waiting Period** in the Declarations.

Exclusions

Assumed Liability

The **Insurer** will not pay **Loss** based upon or arising out of any liability assumed by an **Insured**. This exclusion does not apply:

1. when the **Insured** would have been liable in the absence of such assumption of liability;
2. to a **Claim** for **PCI Fines and Expenses**; or
3. to any privacy or confidentiality obligation that the **Insured** has agreed to under a publicly posted privacy policy or nondisclosure agreement.

Antitrust, Unfair Trade Practices, and Consumer Protection

The **Insurer** will not pay **Loss** based upon or arising out of any actual or alleged false, deceptive, or unfair trade practices, antitrust violation, restraint of trade, unfair competition (except as provided in the Media Insuring Agreement), false advertising, misrepresentation in advertising, violation of any consumer protection or consumer fraud laws or regulations, or violation of the Sherman Antitrust Act,

the Clayton Act, or the Robinson–Patman Act and any regulation promulgated under or pursuant to the foregoing, or any federal, state, or local laws analogous to the foregoing, whether such law is statutory, regulatory, or common law.

This exclusion will not apply to coverage under the Incident Response Expenses Insuring Agreement or coverage for a **Claim** for a **Regulatory Proceeding**, provided that no member of the **Control Group** participated or colluded in such **Regulatory Proceeding**.

Biometric Identifiers and Information

The **Insurer** will not cover any **Claim** based upon or arising out of any:

1. collection, use, processing, sharing, sale, possession, retention, security or destruction of, or profit from, biometric identifiers or biometric information or disclosure of genetic information, including but not limited to fingerprints, faceprints, hand scans, vein patterns, voiceprints, iris or retina scans, keystroke, gait or other physical patterns, sleep/health/exercise data, deoxyribonucleic acid (DNA) or genetic test results;
2. use of an **Insured's** products or services in furtherance of or in connection with an activity described in paragraph 1 above; or
3. cause of action under common law or any actual or alleged violation of any federal, state, local or foreign law in connection with an activity described in paragraphs 1 or 2 above, including but not limited to a private right of action under the Illinois Biometric Information Privacy Act, 740 ILCS 14/1-14/25 (BIPA) or Genetic Information Privacy Act, 410 ILCS 513/1-513/50 (GIPA).

This exclusion will not apply to a **Regulatory Proceeding**.

Bodily Injury/Property Damage

The **Insurer** will not pay **Loss** based upon or arising out of:

1. physical injury, sickness, disease, or death of a person.
2. damage or injury to or destruction of tangible property; or
3. impairment to or loss of use of tangible property, whether physically damaged, injured, destroyed or not, including tangible property that cannot be accessed, used, or is less useful.

This exclusion will not apply to any:

1. **Hardware Replacement Costs**; or
2. **Claim** for mental injury or anguish, including emotional distress, if directly resulting from a **Security Incident** or **Privacy Incident** that gives rise to a **Claim**.

Conduct

The **Insurer** will not pay **Loss** based upon or arising out of:

1. an **Insured's** criminal, dishonest, fraudulent, or malicious act or omission, or intentional or knowing violation of the law; or

2. the gaining of any profit, remuneration, or financial advantage to which any **Insured** was not legally entitled.

This exclusion will not apply to **Claims Expenses** unless a final non-appealable adjudication in the underlying action establishes such conduct occurred. In applying this exclusion, knowledge or conduct of an **Insured** will not be imputed to another **Insured**, except that knowledge of a **Control Group** member will be imputed to the **Insured Entity**.

Cybersecurity Software

The **Insurer** will not pay **Extortion Loss**, **Data Restoration Costs**, or **Business Interruption Loss** under the Business Interruption Insuring Agreement, originating from any **Eligible Computer** that is not operating **Cybersecurity Risk Controls**.

Employment Practices

The **Insurer** will not pay **Loss** based upon or arising out of:

1. any actual or alleged acts, errors, or omissions related to any of the **Insured Entity's** pension, healthcare, welfare, profit sharing, mutual or investment plans, funds, trusts, or employee benefits;
2. any employer-employee relations, policies, practices, acts, or omissions, or any actual or alleged refusal to employ any person, or misconduct with respect to employees; or
3. any actual or alleged discrimination.

This exclusion will not apply to coverage under the Incident Response Expenses Insuring Agreement or coverage for a **Claim** for a **Privacy Incident**, **Security Incident**, or **Data Subject Rights**, provided that no member of the **Control Group** participated or colluded in such **Privacy Incident**, **Security Incident**, or **Data Subject Rights**.

Force Majeure

The **Insurer** will not pay **Loss** based upon or arising out of fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, or act of God, however caused.

Infrastructure

The **Insurer** will not pay **Loss** based upon or arising out of any electrical, mechanical, Internet, telecommunication, cable, or satellite failure, fluctuation, or outage not under the direct operational control of the **Insured Entity**, however caused, including any electrical power interruption, short-circuit, surge, brownout, or blackout.

Insured v. Insured and Related Entities

The **Insurer** will not pay **Loss** based upon or arising out a **Claim** made by or on behalf of:

1. any **Insured**; however, this exclusion does not apply to a **Claim** made by an individual that is not a member of the **Control Group** under the Network Security and Privacy Insuring Agreement, or a **Claim** made by an **Additional Insured**; or
2. any business enterprise in which an **Insured Entity** has greater than 25% ownership interest or made by any parent company or other entity which owns more than 25% of the **Named Insured**;

Intellectual Property

The **Insurer** will not pay **Loss** based upon or arising out of any actual or alleged infringement, misappropriation, misuse or abuse, violation, or assertion of any right or interest in any copyright, service mark, trade name, trademark, patent, or trade secret, by or on behalf of an **Insured**. This exclusion will not apply to:

1. solely with respect to the Incident Response Expenses and Network Security and Privacy Liability Insuring Agreements, any **Claim** arising out of the actual or alleged disclosure or theft of **Confidential Information** resulting from a **Privacy Incident**; however, this exclusion will still apply to any **Loss** for the economic value of such service mark, trade name, trademark, patent, or trade secret; or
2. solely with respect to the Media Insuring Agreement, any **Claim** based upon or arising out of any infringement, violation, misappropriation, or assertion of any right or interest in any copyright, service mark, trade name, or trademark.

Governmental Actions

The **Insurer** will not pay **Loss** based upon or arising out of a **Claim** brought by or on behalf of any state, federal, local, or foreign governmental entity, in such entity's regulatory or official capacity; however, this exclusion does not apply to the Regulatory Insuring Agreement.

Pollution

The **Insurer** will not pay **Loss** based upon or arising out of:

1. asbestos, or any materials containing asbestos in whatever form or quantity;
2. any fungi, molds, spores, or mycotoxins of any kind;
3. any electromagnetic field, electromagnetic radiation, or electromagnetism;
4. nuclear reaction, radiation or contamination; or
5. any pollutants, such as solids, liquids, gaseous or thermal irritants or contaminants including gas, acids, alkalis, chemicals, heat, smoke, vapor, soot, fumes, or waste (including waste to be recycled, reconditioned, or reclaimed).

Prior Knowledge

The **Insurer** will not pay **Loss** based upon or arising out of any:

1. **Claim, Loss**, incident, event, or circumstance for which notice has been given and accepted under any prior policy of which this policy is a renewal or replacement;

2. **Claim** first made against the **Insured** before the inception date of this policy; or
3. act, error, omission, incident, or event committed or occurring prior to the Continuity Date of the policy, if any member of the **Control Group** knew or could have reasonably foreseen before the Continuity Date of the policy that such act, error or omission, incident, or event might be expected to be the basis of a **Claim** or **Loss**.

For purposes of part 3. of this exclusion only, if this policy is a renewal or replacement of a previous policy issued by the **Insurer**, and is part of a continuous chain of successive policies issued by the **Insurer**, the "Continuity Date of the policy" referenced in part 3. above will be the inception date of the first such policy issued by the **Insurer** to the **Named Insured**.

RICO

The **Insurer** will not pay **Loss** based upon or arising out of any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organizations Act, or "RICO") and any regulation promulgated under or pursuant to the foregoing or any federal, state, or local law analogous to the foregoing, whether such law is statutory, regulatory, or common law.

Securities

The **Insurer** will not pay **Loss** based upon or arising out of any actual or alleged purchase, sale, or offer or solicitation of an offer to purchase, sell, or solicit securities or any violation of a securities law, including the Securities Act of 1933, the Securities Exchange Act of 1934, and any regulation promulgated under or pursuant to the foregoing, or any federal, state, or local laws analogous to the foregoing (including "Blue Sky" laws), whether such law is statutory, regulatory, or common law.

Monetary Losses and Discounts

The **Insurer** will not pay **Loss** based upon or arising out of any actual or alleged:

1. trading losses, trading liabilities, or change in value of accounts;
2. loss, transfer, or theft of monies, securities, or tangible property of the **Insured** or others in the care, custody, or control of the **Insured Entity**;
3. monetary value of any transactions or electronic fund transfers by or on behalf of the **Insured** which is lost, diminished, or damaged during transfer from, into, or between accounts; or
4. value of coupons, price discounts, prizes, awards, or any valuable consideration given in excess of the total contracted or expected amount.

This exclusion does not apply to coverage under the Cyber Crime Insuring Agreement.

Unauthorized Collection

The **Insurer** will not pay **Loss** based upon or arising out of the unauthorized collection, acquisition, or use of **Confidential Information** by or on behalf of the **Insured**; however, this exclusion does to apply to an otherwise covered **Claim** under the Data Subject Rights Insuring Agreement.

Unsolicited Communications

The **Insurer** will not pay **Loss** based upon or arising out of any unsolicited email, telephone calls, text messages, direct mail, facsimiles, or other communications, wiretapping, audio or video recording, or telemarketing by or on behalf of the **Insured**.

War Exclusion

The **Insurer** will not pay **Loss** based upon or arising out of any act of war (whether war is declared or not), invasion, or the confiscation, nationalization or destruction of, or damage to, property under the order of government or other public authority, provided, however, this exclusion does not apply to “Cyber Terrorism.” For purposes of this exclusion only, “Cyber Terrorism” means an act or series of acts of any person or group of persons, whether acting alone or on behalf of or in connection with any organization, committed for social, political, economic, religious or ideological purposes. This shall include, but is not limited to, the intention to influence any government or to put the public in fear for such purposes by using activities perpetrated electronically or otherwise which result in a **Security Incident** involving an **Insured**, or that are directed towards the destruction, disruption or subversion of communication and information systems, infrastructure, computers, the internet, telecommunications or electronic networks, or the contents thereof.

Cyber Crime and Utility Fraud Exclusions

With respect to the Cyber Crime and Utility Fraud Insuring Agreements, this policy does not apply to any **Loss** based upon or arising out of any:

1. actual or alleged use of credit, debit, charge, access, convenience, customer identification, or other card;
2. liability to a third party (except for direct compensatory damages arising directly from **Funds Transfer Fraud**); legal costs or expenses; punitive, exemplary, or multiplied damages; fines, penalties, or loss of any tax benefit; or indirect or consequential loss of any kind;
3. costs to prove or establish the existence of **Fraudulent Instruction, Funds Transfer Fraud, Invoice Manipulation, Telephone Fraud, or Cryptojacking**; or
4. gross profit margin or loss of profit associated with any products or services provided by an **Insured**.

Media Exclusions

With respect to the Media Insuring Agreement, this policy does not apply to any **Loss** based upon or arising out of any:

1. actual or alleged contractual liability or obligation; however, this exclusion will not apply to a **Claim** for misappropriation of ideas under implied contract;
2. actual or alleged obligation to make licensing fee or royalty payments;
3. costs or expenses incurred or to be incurred by the **Insured** or others for the reprinting, reposting, recall, removal, or disposal of any **Media Content** or any other information, content,

or media, including any media or products containing such **Media Content**, information, content, or media;

4. **Claim** brought by or on behalf of any intellectual property licensing bodies or organizations;
5. actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products, or services, cost guarantees, cost representations, contract price estimates, or the failure of any goods or services to conform with any represented quality or performance;
6. actual or alleged gambling, contest, lottery, promotional game, or other game of chance; or
7. **Claim** made by or on behalf of any independent contractor, joint venturer, or venture partner arising out of or resulting from disputes over ownership of rights in **Media Content** or services provided by such independent contractor, joint venturer, or venture partner.

General Conditions

Limits of Insurance

The most the **Insurer** will pay for all **Loss** is the Maximum Aggregate Limit shown in the Declarations.

The most the **Insurer** will pay for all **Loss** under an Insuring Agreement is the applicable Limit for such Insuring Agreement shown in the Declarations.

The most the **Insured** will pay for all **Loss** with respect to an **Additional Insured** is the limit agreed to in the agreement between such **Additional Insured** and the **Insured Entity**, or the applicable Limit shown in the Declarations, whichever is less.

Once the Maximum Aggregate Limit is exhausted, the premium is fully earned, and all obligations of the **Insurer**, including any duty to defend, will cease.

Retention

The Retention listed in the Declarations applies separately to each incident, event, or series of related incidents, or events giving rise to a **Claim** or **Loss**. The **Insured** is solely responsible for payment of such Retention and payments by another insurer or payor cannot be used to satisfy, erode, or exhaust the Retention. The **Insurer's** obligation to pay any amounts under this policy is excess of the applicable Retention. The limits of insurance will not be reduced by the payment of any Retention.

Coverage for **Business Interruption Loss** will apply after the **Waiting Period** has elapsed and the **Insurer** will then indemnify the **Named Insured** for all **Business Interruption Loss** sustained during the **Period of Restoration** in excess of the Retention.

If any **Loss** arising out of an incident, event, or **Claim**, or a series of related incidents, events, or **Claims**, is subject to more than one Retention, the Retention for each applicable Insuring Agreement will apply to

such **Loss**, provided that the sum of such Retention(s) will not exceed the largest applicable individual Retention amount.

The **Insurer** may, but is under no obligation to, advance amounts for **Loss** within the Retention. In such event, the **Insured** agrees to promptly reimburse the **Insurer** any such amounts.

Defense and Settlement

The **Insurer** will have the right and duty to defend any covered **Claim** or **Regulatory Proceeding** except with respect to coverage under the Payment Card Insuring Agreement. The **Insurer** will select and appoint defense counsel. With respect to the Payment Card Insuring Agreement, legal counsel will be mutually agreed by the **Named Insured** and the **Insurer**. The **Insurer** has no duty to defend the **Insured** against any **Claim** to which this policy does not apply. The **Insurer's** duty to defend any **Claim** will end upon exhaustion of the limit of insurance applicable to such **Claim**. Upon the **Insured's** satisfaction of any applicable Retention amounts, **Claims Expenses** will reduce the applicable limit of liability shown in the Declarations.

The **Insurer** has the right, with the prior written consent of the **Insured**, which consent will not be unreasonably withheld, to settle a **Claim**. If the **Insured** refuses to consent to any such settlement recommended by the **Insurer** and agreed to by the claimant, then the **Insurer's** duty to defend ends and the **Insurer's** limit of liability for such **Claim** will not exceed the amount for which the **Insurer** could have settled such **Claim** had the **Insured** consented to settlement plus **Claim Expenses** incurred up to the time the **Insurer** made its settlement recommendation.

The **Insurer** agrees that the **Insured** may settle any **Claim** where the **Loss** does not exceed the Retention, provided that the entire **Claim** is resolved and the **Insured** obtains a full release on behalf of all the **Insureds** from all claimants.

Cybersecurity Risk Controls

Solely with respect to **Extortion Loss**, **Data Restoration Costs**, and **Business Interruption Loss** under the Business Interruption Insuring Agreement, the **Insured** must continually use **Cybersecurity Risk Controls** on **Eligible Computers**.

Notice of Circumstance

If during the **Policy Period** an **Insured** first becomes aware of any circumstance that may reasonably be expected to be the basis of a **Claim** against an **Insured** and if during the **Policy Period** the **Insured** elects to provide the **Insurer** written notice of such circumstance, then any resulting **Claim**, which is subsequently made against an **Insured** and reported to the **Insurer**, that arises out of such circumstance, will be considered made at the time such notice of circumstance was provided. Notice of such circumstance should be reported to the **Insurer** as shown in the Declarations and must include: (i) a description of the act, error, omission, event, or incident and the reasons for expecting such **Claim**; and (ii) all relevant dates, persons and entities involved.

Notice of Claim

As a condition precedent to the obligations of the **Insurer** under this policy, the **Insured** must provide written notice of a **Claim** to the **Insurer** as soon as reasonably practicable, but in no event later than the end of the **Policy Period**, or any applicable Optional Extended Reporting Period.

Notice of First Party Incident

As a condition precedent to the obligations of the **Insurer** under this policy, the **Insured** must provide written notice to the **Insurer** of a **First Party Incident** as soon as reasonably practicable after discovery by an **Insured**, but in no event later than the end of the **Policy Period**. If a **First Party Incident** involves facts that are subject to a law enforcement hold, the **Insured** must give written notice as soon as reasonably practicable once such court order or hold is no longer in effect.

Notice to Whom

Notice of a **Claim** and/or **First Party Incident** must be provided to the **Insurer's** address as stated in the Declarations. Notice to any incident hotline alone will not serve as proper notice under this policy. Notice provided by email or certified post mail will be deemed effective when received by the **Insurer**.

Optional Extended Reporting Period

Effective upon the date of expiration or cancellation of the policy for any reason other than nonpayment of premium, the **Named Insured** will have the right to purchase an Optional Extended Reporting Period of one, two, or three years in which to provide written notice to the **Insurer** of a **Claim** first made against the **Insured** during the Optional Extended Reporting Period for an act, error, omission, incident, or event that takes place prior to the end of the **Policy Period**. Such right must be exercised by the **Named Insured** within 30 days of the date of expiration or cancellation of the policy by providing written notice to the **Insurer** and remitting the amount of additional premium described below:

1. one year, one hundred percent (100%) of the policy annual premium;
2. two years, one hundred fifty percent (150%) of the policy annual premium; or
3. three years, one hundred seventy-five percent (175%) of the policy annual premium.

The Optional Extended Reporting Period cannot be cancelled and any additional premium charged for the Optional Extended Reporting Period will be fully earned at inception. The Optional Extended Reporting Period will not modify, reinstate, or increase the limits of liability of this policy, or alter the terms and conditions of this policy, and any payment made during the Optional Extended Reporting Period will reduce the available limits of liability.

Change in Control

If, during the **Policy Period**, the **Named Insured** consolidates or merges with or is acquired by another entity, or sells more than 50% of its assets to another entity, then the policy will remain in full force until the end of the **Policy Period** but only with respect to an act, error or omission, or **First Party Incident** involving the **Named Insured** that took place prior to the date of the consolidation, merger, sale, or

acquisition of the **Named Insured**. The above provision may be waived in writing by the **Insurer** and the **Named Insured** has agreed to any additional premium and terms of coverage required by the **Insurer**.

Other Insurance

This policy is excess over any other valid and collectible insurance unless such other insurance is expressly written to be excess of this policy.

Allocation

In the event that any **Claim** or **First Party Incident** involves both covered matters and matters not covered, a fair and proper allocation of any **Loss** will be made between **Insured** and **Insurer** taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.

In the event a **First Party Incident** involves both **Eligible Computers** that are operating **Cybersecurity Risk Controls** and **Eligible Computers** that are not operating **Cybersecurity Risk Controls**, the allocation for **Business Interruption Loss** under the Business Interruption insuring agreement will be allocated and calculated by (a) dividing the total amount of **Business Interruption Loss** equally among all **Eligible Computers** and (b) reducing the **Business Interruption Loss** by the portion of the **Eligible Computers** that were not operating **Cybersecurity Risk Controls** when the **Security Incident, System Failure, or Preventative Shutdown** first occurred.

In the event any **Extortion Loss** involves both **Eligible Computers** that are operating **Cybersecurity Risk Controls** and **Eligible Computers** that are not operating **Cybersecurity Risk Controls**, the allocation for **Extortion Loss** will be calculated by dividing the **Extortion Loss** under paragraph 1 equally among all **Eligible Computers** and reducing the **Extortion Loss** by the portion of the **Eligible Computers** that were not operating **Cybersecurity Risk Controls** when the **Extortion Threat** was made.

Sanction Limitations

The **Insurer** will not be liable to pay any **Loss** or provide any benefit under this policy to the extent that the provision of such benefit or payment of such **Loss** would expose the **Insurer** to any sanction, prohibition, or restriction under United Nations resolutions or any trade or economic sanctions, laws, or regulations of the European Union, United Kingdom, or United States of America. It is hereby agreed that any payment under this policy will only be made in full compliance with all United States of America economic and trade sanction laws or regulations, including, but not limited to, sanctions, laws, and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

Assistance and Cooperation

The **Insured** will reasonably cooperate with the **Insurer** and upon request of the **Insurer**:

1. assist the **Insurer** in the investigation of any **Claim** or **First Party Incident**, including allowing a computer security expert access to systems, files, and information;
2. attend hearings, depositions, and trials;

3. assist the **Insurer** in defending and effecting settlements of **Claims**;
4. secure and provide evidence, including obtaining the attendance of witnesses;
5. allow the **Insurer** to participate in the handling and management of any suit or proceeding;
and
6. assist the **Insurer** in enforcing any right, contribution, or indemnity against a third party which may be liable to the **Insured**.

The **Insured** will take any other actions to assist the **Insurer** as the **Insurer** may request from time to time.

The **Insured** agrees not to take any action which in any way increases the **Insurer's** exposure under this policy and will take all reasonable steps to limit and mitigate any **Loss** arising from any act, error, omission, or **First Party Incident** for which coverage may be or is sought under the policy. The **Insured** will do nothing which in any way increases the **Insurer's** exposure under the policy or in any way prejudices the **Insurer's** potential or actual rights of recovery. Except as provided in DEFENSE AND SETTLEMENT and with respect to **Business Interruption Loss**, the **Insured** will not, except at the **Insured's** own cost, voluntarily make any payment, assume or admit any liability, or incur any expense without the prior written consent of the **Insurer**.

Assignment

The **Insured** may not assign any rights, remedies, privileges, or protections under the policy.

Named Insured Sole Agent

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

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

Policy Changes

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

Subrogation

In the event of payment of **Loss** by the **Insurer** under the policy, the **Insurer** is subrogated to all of the **Insured's** rights of recovery against any person or entity, including any rights to contribution from another insurer. The **Insured** warrants and agrees to execute and deliver instruments and papers and

do whatever else is required by the **Insurer** to secure, prosecute, and collect on such rights. The **Insured** further warrants and agrees not to prejudice such rights. If, prior to any act, error, omission, incident, or event giving rise to a **Claim** or **Loss**, the **Insured Entity** has waived its rights to recovery against a third-party in any written contract or agreement, then the **Insurer** will waive its rights to subrogation against such person or entity to the same extent as the **Insured Entity's** waiver, provided such written contract or agreement was entered into prior to any such act, error, omission, incident, or event giving rise to the **Claim** or **Loss**. Any recovery obtained through subrogation, after expenses incurred in such subrogation are deducted by the **Insurer**, will be applied first to the **Insured** to the extent of any payments in excess of the limit of coverage, if any; then to the **Insurer** to the extent of its payment under the policy; and then to the **Insured** to the extent of its Retention.

Action against the Insurer

No action may be brought against the **Insurer** unless:

1. the **Insured** has fully complied with all of the terms, conditions, and other provisions of the policy; and
2. the **Insured's** obligation has been finally determined, either by judgment against the **Insured** after a trial and appeal or by written agreement by the claimant, **Insured**, and **Insurer**.

No person or entity will have the right under the policy to:

1. join the **Insurer** or its agents and representatives as a defendant, co-defendant, or other party in any action against the **Insured** to determine the **Insured's** liability; or
2. implead the **Insurer** or its agents and representatives in any such action.

Bankruptcy

The **Insured's** bankruptcy or insolvency of the **Named Insured** will not relieve the **Insurer** of its obligations hereunder.

Cancellation

1. Cancellation by the **Named Insured**. Except for nonpayment of premium, as set forth below, the **Named Insured** has the exclusive right to cancel the policy. Cancellation may be effected by mailing to the **Insurer** written notice stating when such cancellation will be effective. In such event, the **Insurer** will retain the pro-rata portion of earned premium.
2. Cancellation by the **Insurer**. The **Insurer** may only cancel this policy for nonpayment of premium when due. The **Insurer** will provide not less than 15 days written notice stating the reason for cancellation and when the policy will be canceled. Notice of cancellation will be sent to the **Named Insured**.
3. Non-Renewal of Coverage. The **Insurer** is under no obligation to renew the policy upon its expiration. If the **Insurer** elects to non-renew the policy, the **Insurer** will deliver or mail to the **Named Insured** written notice stating such at least 60 days prior to the policy's expiration date, as shown in the Declarations. The offering of terms and conditions different from the expiring

terms and conditions, including limits of liability, Retention, or premium, will not constitute a refusal to renew or a cancellation of the policy.

Representations

All **Insureds** agree that the statements contained the information and materials provided to the **Insurers** in connection with the underwriting and issuance of this policy are true, accurate and are not misleading, and that the **Insurers** issued this policy, and assumed the risks hereunder, in reliance upon the truth thereof. Any material misrepresentation, concealment, or misstatement by the **Insured** will render the policy null and void with respect to any natural person **Insured** who knew of such material misrepresentation, concealment, or misstatement (with respect to the **Insured Entity**, if a **Control Group** member knew of such material misrepresentation, concealment, or misstatement) and will relieve the **Insurer** from all obligations and liability herein with regard to said **Insured** parties.

Alternative Dispute Resolution

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

Service of Suit

In the event of the **Insurer's** failure to pay any amount claimed to be due under this insurance, the **Insurer** will, at the **Insured's** request, submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this provision constitutes or should be understood to constitute a waiver of the **Insurer's** rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or seek a transfer of a case to another court as permitted by the laws of the United States or any state in the United States. It is further agreed that service of process such suit may be made upon the Insurer's representative listed in the Declarations and that in any suit instituted against any one of them upon this contract, the **Insurer** will abide by the final decision of such court of any appellate court in the event of an appeal.

The **Insurer's** representative listed in the Declarations is authorized and directed to accept service of process on the **Insurer's** behalf in any such suit and/or upon the Insured's request to give a written undertaking to the **Insured** that they will enter a general appearance upon the **Insurer's** behalf in the event such a suit shall be instituted.

Pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the **Insurer** hereby designate the Superintendent, Commissioner, or Director of Insurance or other officer specified for that purpose in the statute, or his successor in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on the **Insured's** behalf or any beneficiary hereunder arising out of this Policy, and hereby designate the person or entity named above as the persons to whom said officer is authorized to mail such process or a true copy thereof.

Territory

This policy applies to **Claims** made, acts, errors, or omissions committed, or **Loss** occurring anywhere in the world.

Singular Form of a Word

Whenever the singular form of a word is used herein, the same will include the plural when required by context.