

ACCELERATOR CYBER INSURED POLICY

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ACCELERATOR CYBER INSURED POLICY

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms and conditions of this policy, the **Insured** and the **Company** agree as follows:

SECTION I – INSURING AGREEMENTS

Refer to those Insuring Agreements purchased, shown in Item 4 of the Declarations, to determine the coverage afforded.

A. Third Party Liability Insuring Agreements

1. Data Breach Liability

The **Company** will pay on behalf of the **Insured** those **Damages** and **Claim Expenses** in excess of the applicable **Retention** that such **Insured** is legally obligated to pay:

- a. As a result of a **Claim** first made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting Period** for a **Data Breach Wrongful Act**; and
- b. Provided that such **Data Breach Wrongful Act** first occurs:
 - (1) On or after the **Retroactive Date**; and
 - (2) Prior to the end of the **Policy Period**.

2. Regulatory Defense And Penalties

The **Company** will pay on behalf of the **Insured** all **Privacy Regulatory Fines** and **Claim Expenses** in excess of the applicable **Retention** that such **Insured** is legally obligated to pay:

- a. As a result of a **Privacy Regulatory Proceeding** first made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting Period** for a **Data Breach Wrongful Act**; and
- b. Provided that such **Data Breach Wrongful Act** first occurs:
 - (1) On or after the **Retroactive Date**; and
 - (2) Prior to the end of the **Policy Period** or **Extended Reporting Period**, if applicable.

3. PCI Fines And Assessments

The **Company** will pay on behalf of the **Insured**, **PCI Fines and Assessments** in excess of the applicable **Retention** that such **Insured** is legally obligated to pay:

- a. As a result of a **Claim** first made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting Period** for a **Data Breach Wrongful Act**; and
- b. Provided that such **Data Breach Wrongful Act** first occurs:
 - (1) On or after the **Retroactive Date**; and
 - (2) Prior to the end of the **Policy Period** or **Extended Reporting Period**, if applicable.

4. Electronic, Social And Printed Media Liability

The **Company** will pay on behalf of the **Insured** all **Damages** and **Claim Expenses** in excess of the applicable **Retention** that such **Insured** is legally obligated to pay:

- a. As a result of a **Claim** first made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting Period** for a **Media Injury**; and
- b. Provided that such **Media Injury** first occurs:
 - (1) On or after the **Retroactive Date**; and

(2) Prior to the end of the **Policy Period** or **Extended Reporting Period**, if applicable.

B. First Party Insuring Agreements

1. Cyber Incident And Crisis Management Response

The **Company** will pay **Cyber Incident Response Expenses** in excess of the applicable **Retention** incurred by an **Insured** in response to a **Data Breach Wrongful Act** first discovered by any **Senior Executive** during the **Policy Period**.

2. Business Interruption And Extra Expenses

The **Company** will pay the **Business Interruption Loss** and **Extra Expenses** incurred by an **Insured**:

- a. During the **Period of Restoration**;
- b. Due to the actual and measurable interruption or suspension of the **Insured's Computer System**; and
- c. Resulting directly from a **Security Failure** first discovered by the **Insured** during the **Policy Period**.

3. Network Data Recovery

The **Company** will reimburse the **Network Data Recovery Costs** in excess of the applicable **Retention** incurred by an **Insured**, resulting directly from a **Security Failure** first discovered by the **Insured** during the **Policy Period**.

4. Network Extortion

The **Company** will reimburse **Extortion Expenses** in excess of the applicable **Retention** incurred by an **Insured** in response to a **Network Extortion Threat** first made against the **Insured** during the **Policy Period**.

SECTION II – DEFENSE AND SETTLEMENT

- A. The **Company** shall have the right and duty to defend any **Claim** brought against an **Insured**, even if the allegations are groundless, false or fraudulent.
- B. The **Company** shall consult and endeavor to reach an agreement with the **Insured** regarding the appointment of defense counsel. In the absence of such agreement, the **Company's** decision shall be final. The **Company** has the right to investigate any **Claim**.
- C. No **Insured** shall:
 1. Settle any **Claim**;
 2. Incur any **Claim Expenses**; or
 3. Otherwise assume any contractual obligation or admit any liability with respect to any **Claim**without the **Company's** prior written consent. Such consent shall not be unreasonably withheld.
- D. The **Company** shall not settle any **Claim** without the written consent of the **Named Insured**. If the **Named Insured** refuses to consent to a settlement recommended by the **Company** and acceptable to the claimant, then the **Company's** applicable Limit of Liability under this policy with respect to such **Claim** shall be reduced to:
 1. The amount for which the **Claim** could have been settled plus all **Claim Expenses** incurred prior to the date of the settlement offer;
 2. Plus sixty percent (60%) of all subsequent covered **Third Party Loss** and **Claim Expenses** combined that are incurred after the date of the **Insured's** refusal to consent to the settlement. The remaining forty percent (40%) of all subsequent covered **Third Party Loss** and **Claims Expenses** shall be borne by the **Insureds** uninsured and at their own risk. However, this provision does not apply to any potential settlement that is within the **Retention**.

- E. The **Company** shall not be obligated to investigate, defend, pay or settle any **Claim**:
1. After any applicable Limit of Liability has been exhausted; or
 2. After the **Company** has deposited the remainder of any unexhausted applicable Limit of Liability into a court of competent jurisdiction.

In either such case, the **Company** shall have the right to withdraw from the further investigation, defense, payment or settlement of such **Claim** by tendering control of such **Claim** to the **Insured**.

- F. The **Insureds** shall cooperate with the **Company** and provide to the **Company** all information and assistance which the **Company** reasonably requests including:
1. Attending hearings, depositions and trials;
 2. Assistance in effecting settlements;
 3. Securing and giving evidence;
 4. Obtaining the attendance of witnesses; and
 5. Assisting the defense of any **Claim** covered by this policy.

The **Insured** shall do nothing that may prejudice the **Company's** position. The **Insureds** shall immediately forward to the **Company**, at the address shown in Item 9A. of the Declarations, every demand, notice, summons, or other process or pleading received by an **Insured** or its representatives.

SECTION III – LIMITS OF LIABILITY

- A. The Aggregate Limit of Liability, shown in Item 3 of the Declarations, is the **Company's** maximum liability for **Loss** under all Insuring Agreements combined, regardless of the number of:
1. **Claims** or **First Party Events**; or
 2. Individuals or entities making **Claims**.
- B. The maximum Limit of Liability payable under each Insuring Agreement is shown in Item 4 of the Declarations, regardless of the number of:
1. **Claims** or **First Party Events**; or
 2. Individuals or entities making **Claims**.

Such Limits of Liability shall be part of, and not in addition to, the Aggregate Limit of Liability shown in Item 3 of the Declarations.

- C. If the Aggregate Limit of Liability shown in Item 3 of the Declarations is exhausted by the payment of **Loss**, all obligations of the **Company** under this policy will be completely fulfilled. The **Company** will have no further obligations under this policy of any kind, and the premium as respects the policy will be fully earned.
- D. **Claim Expenses** are part of, and not in addition to, the Aggregate Limit of Liability and Limits of Liability shown in Items 3 and 4 of the Declarations. Payment by the **Company** of **Claim Expenses** shall reduce and may exhaust such Aggregate Limit(s) of Liability.
- E. If an **Extended Reporting Period** is purchased by the **Insured** pursuant to Section VII of this policy, the Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the applicable Limits of Liability shown in Item 3 of the Declarations.

SECTION IV – RETENTION

- A. Subject to all other terms and conditions of this policy, the **Company** shall only be liable for the amount of **Loss** arising from each **Claim** or **First Party Event** which is in excess of the applicable **Retention** amount shown in Item 4 of the Declarations for each Insuring Agreement. The **Retention** amount shall be borne by the **Insureds** and remain uninsured.

- B. The application of a **Retention** to **Loss** under one Insuring Agreement shall reduce the **Retention** that applies to **Loss** under any other Insuring Agreement. If different **Retention** amounts apply to different parts of a single **Loss**, the **Retention** amount shall be the single largest applicable **Retention** amount.
- C. With respect to Insuring Agreement **B.2.**, Business Interruption and Extra Expenses, any **Business Interruption Loss** incurred during the **Waiting Period** shall not be covered **Business Interruption Loss**.

SECTION V – EXCLUSIONS

This policy does not apply to any **Claim** or **First Party Event** alleging, based upon, arising out of or attributable to:

A. Antitrust Or Unfair Trade Practices

Any:

1. Price fixing, restraint of trade, or monopolization;
2. Interference with economic relations (including interference with contractual relations or with prospective advantage);
3. Unfair competition, unfair business or unfair trade practices; or
4. Violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving paragraphs 1., 2. or 3. of this exclusion, including any associated amendments to or any rules or regulations promulgated under, any similar federal, state, or common law.

However, this exclusion shall not apply:

- a. Solely with respect to Insuring Agreement **A.1.**, a **Claim** resulting directly from a **Data Breach Wrongful Act**; or
- b. Solely with respect to Insuring Agreement **A.4.**, a **Claim** for **Media Injury**.

B. Bodily Injury

Any **Bodily Injury**. However, solely with respect to Insuring Agreements **A.1.** and **A.4.**, this exclusion shall not apply to any **Personal Injury** resulting from a **Data Breach Wrongful Act** or **Media Injury**.

C. Consumer Protection Laws

Any violation by an **Insured** of the:

1. Truth In Lending Act;
2. Fair Debt Collection Practices Act; or
3. Fair Credit Reporting Act

or any amendments thereto or any rules or regulations promulgated thereunder, including the Fair and Accurate Credit Transactions Act, and any amendments thereto or any rules or regulations promulgated pursuant to any of these laws, amendments thereof, or any similar federal, state or common law. However, solely with respect to Insuring Agreement **A.1.**, this exclusion shall not apply to a **Claim** arising out of the actual or alleged disclosure or theft of **Personally Identifiable Information** or **Confidential Business Information** resulting from a **Data Breach Wrongful Act**.

D. Contest Or Game Of Chance

Solely with respect to Insuring Agreement **A.4.**, any gambling, contest, game of chance or skill, lottery, or promotional game, including tickets or coupons or related over-redemption.

E. Contract

Breach of any express, implied, actual or constructive contract, warranty, guarantee, or promise, including any actual or alleged liability assumed by an **Insured**, unless such liability would have attached to the **Insured** even in the absence of such contract, warranty, guarantee, or promise. However, this exclusion shall not apply to:

1. Insuring Agreement **A.3.**;
2. Insuring Agreements **A.1** and **B.1.**, with respect to an **Insured's** contractual obligation to maintain the confidentiality or security of **Personally Identifiable Information** or **Confidential Business Information**; or
3. Insuring Agreement **A.4.**, with respect to the **Insured's** misappropriation of ideas under implied contract.

F. Deliberate Acts And Personal Profit

1. Any error, act or omission by an **Insured** which is dishonest, fraudulent, criminal, malicious, intentional, or an intentional or knowing violation of the law; or
2. The gaining in fact of any profit, remuneration or financial advantage to which any **Insured** was not legally entitled.

However, this exclusion shall not apply to **Claim Expenses** or the **Company's** duty to defend any such **Claim**, until there is a final, non-appealable adjudication against the **Insured** with respect to such conduct or violation. The **Insured** shall reimburse the **Company** at that time for any **Claims Expenses** paid by the **Company**.

No conduct pertaining to any natural person **Insured** shall be imputed to any other natural person **Insured**. Any conduct pertaining to any past, present, or future **Senior Executive** shall be imputed to the **Named Insured** or **Subsidiary**.

G. Discrimination Or Employment Practices

1. Any discrimination of any kind;
2. Any employment relationship;
3. The nature, terms or conditions of employment, including claims for workplace torts, wrongful termination, dismissal or discharge; or
4. Any discrimination, harassment, breach of employment contract or defamation.

However, solely with respect to Insuring Agreement **A.1.**, this exclusion shall not apply to that part of any **Claim** alleging employee-related invasion of privacy or employee-related wrongful infliction of **Personal Injury** in the event such **Claim** arises out of the actual or alleged disclosure or theft of **Personally Identifiable Information** resulting from a **Data Breach Wrongful Act**.

H. ERISA, Securities Law Violation Or RICO

An **Insured's** violation of:

1. The Employee Retirement Income Security Act of 1974, as amended;
2. The Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisors Act, or any other federal, state or local securities law; or
3. The Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organizations Act or RICO),

and any amendments thereto or any rules or regulations promulgated thereunder, amendments thereof, or any similar federal, state or common law. However, this exclusion shall not apply to Insuring Agreements **A.1.**, **A.2.** or **B.1.** for an actual or alleged **Data Breach Wrongful Act**.

I. False Advertising Or Misrepresentation

Solely with respect to Insuring Agreement **A.4.**, any inaccurate, inadequate, or incomplete:

1. Description of the price of goods, products or services;

2. Disclosure of fees;
3. Representations with respect to authenticity of any product; or
4. The failure of any goods, product or services to conform with advertised quality or performance.

J. Force Majeure

1. Fire, smoke, explosion;
2. Lightning, wind, flood, earthquake, volcanic eruption, or tidal wave;
3. Landslide, hail, act of God or nature; or
4. Any other physical event, however caused and whether contributed to, made worse by, or in any way resulting from any such events.

K. Governmental Authority

Any action of a public or governmental authority, including the seizure, confiscation or destruction of the **Computer System**, or electronic data residing on the **Computer System**. However, this exclusion will not apply to the Regulatory Defense And Penalties Insuring Agreement **A.2**.

L. Infrastructure Outage

Any:

1. Electrical or mechanical failure or interruption;
2. Electrical disturbance;
3. Surge, spike, brownout, or blackout; or
4. Outages to electricity, gas, water, telephone, internet access, satellite, telecommunications or other infrastructure.

However, this exclusion shall not apply if such disruption is caused by a denial of service attack specifically directed at the **Insured** under paragraph 4. of the definition of **Security Failure**.

M. Insured v. Insured

Any **Claim** made against an **Insured** and brought by, or on behalf of an **Insured** or successor or assignee of an **Insured**. However, this exclusion shall not apply to:

1. A **Claim** arising out of a **Data Breach Wrongful Act** and made by an individual who is not a **Senior Executive**; or
2. A claim made by an **Additional Insured**.

N. Intellectual Property

Any infringement of, violation of, misappropriation of, or assertion of any right to or interest in a patent or **Trade Secret** by any **Insured**. However, solely with respect to Insuring Agreement **A.1.**, this exclusion shall not apply to a **Trade Secret Claim** arising out of the actual or alleged disclosure or theft of **Personally Identifiable Information** or **Confidential Business Information** resulting from a **Security Failure**.

O. Licensing Entities

Solely with respect to Insuring Agreement **A.4.**, any action brought by or on behalf of:

1. The Federal Trade Commission;
2. The Federal Communications Commission;
3. Any other federal, state, or local government agency; or

4. ASCAP, SESAC, BMI or other licensing or rights entities in such entity's regulatory, quasi-regulatory, or official capacity, function or duty.

P. Nuclear

1. The planning, construction, maintenance, operation or use of any nuclear reactor, nuclear waste, storage or disposal site, or any other nuclear facility;
2. The transportation of nuclear material; or
3. Any nuclear reaction or radiation, or radioactive contamination, regardless of its cause.

Q. Pollution

1. The actual, alleged or threatened discharge, release, escape, seepage, migration, or disposal of **Pollutants**; or
2. Any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.

R. Prior Knowledge

Any act, error, omission, incident or event that first occurred prior to the earlier of:

1. The effective date of this policy; or
2. The effective date of the first policy issued by the **Company** of which this policy is a continuous renewal or a replacement,

provided that any **Senior Executive** knew or reasonably could have foreseen that such act, error, omission, incident or event did or could lead to a **Claim**.

S. Prior Notice And Pending Or Prior Proceedings

Any:

1. Fact, circumstance or situation which has been the subject of any written notice given and accepted under any other policy before the effective date of this policy; or
2. **Interrelated Act** which is subject to any written notice given under any other policy before the effective date of this policy.
3. Pending or prior litigation, **Claim**, **Interrelated Act**, **Privacy Regulatory Proceeding** or investigation filed or commenced on or before the Pending or Prior Proceedings Date shown in Item 6 of the Declarations.

T. Property Damage

Any **Property Damage**.

U. Unlawful Use Or Collection Of Personally Identifiable Information

The unlawful use or collection of **Personally Identifiable Information**, or the failure to provide adequate notice that such information is being collected or used, by an **Insured**, with knowledge of any **Senior Executive**. However this exclusion will not apply to **Claim Expenses** incurred in defending the **Insured** against allegations of unlawful collection of **Personally Identifiable Information**.

V. Unsolicited Communications

Any unsolicited dissemination of faxes, e-mails or other communications by or on behalf of an **Insured**, including actions brought under:

1. The Telephone Consumer Protection Act;
2. Any federal or state anti-spam statutes; or

3. Any other federal or state statute, law, rule, regulation or common law relating to a person's or entity's right of seclusion.

However, solely with respect to Insuring Agreement **A.1.**, this exclusion shall not apply to a **Claim** resulting from a **Security Failure**.

W. War Or Strike

Any:

1. War, invasion, hostilities or warlike operations (whether war is declared or not), acts of foreign enemies, terrorism, or hijacking;
2. Riot, civil war, rebellion, revolution, or military or usurped power;
3. Insurrection or civil commotion assuming the proportions of or amounting to an uprising; or
4. Strike or lock-out.

However, this exclusion shall not apply to actual or alleged **Cyber Terrorism**.

SECTION VI – CONDITIONS

A. Action Against The Company

Except as provided in Condition **D.**, Alternative Dispute Resolution, no action shall lie against the **Company**. No person or entity shall have any right under this policy to join the **Company** as a party to any action against any **Insured** to determine the liability of such **Insured**, nor shall the **Company** be impleaded by any **Insured** or its legal representatives.

B. Allocation

In the event that the **Insured** incurs **Loss** that is both covered and not covered by this policy, either because the **Claim** or **First Party Event** includes both:

1. Covered and uncovered matters; or
2. Insured and uninsured parties,

all **Loss** incurred by the **Insured** will be allocated by the **Company** between covered **Loss** and uncovered **Loss**. Such allocation will be based upon the relative legal and financial exposures of the parties to such matters.

C. Alteration, Assignment And Headings

1. Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this policy nor prevent the **Company** from asserting any right under the terms of this policy.
2. No change in, modification of, or assignment of interest under this policy shall be effective except when made by a written endorsement to this policy which is signed by an authorized representative of the **Company**.
3. The titles and headings to the various parts, sections, subsections and endorsements of the policy are included solely for ease of reference and do not in any way limit, expand, serve to interpret or otherwise affect the provisions of such parts, sections, subsections or endorsements.
4. Any reference to the singular shall include the plural and vice versa.

D. Alternative Dispute Resolution

1. The **Insureds** and the **Company** shall submit any dispute or controversy arising out of or relating to this policy or the breach, termination or invalidity thereof to the alternative dispute resolution ("ADR") process set forth in this Condition **D.**.
2. Either an **Insured** or the **Company** may elect the type of ADR process discussed in paragraph **3.** of this Condition **D.** However, such **Insured** shall have the right to reject the choice by the **Company** of the type of ADR process at any time prior to its commencement, in which case the choice by such **Insured** of ADR process

shall control.

3. There shall be two choices of ADR process:

- a. Non-binding mediation administered by any mediation facility to which the **Company** and an **Insured** mutually agree, in which such **Insured** and the **Company** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility; or
- b. Arbitration submitted to any arbitration facility to which an **Insured** and the **Company** mutually agree, in which the arbitration panel shall consist of three disinterested individuals.

In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding. However, no such judicial proceeding shall be commenced until at least sixty (60) days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

4. Either ADR process may be commenced in New York or in the state shown in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with any ADR process under this Section.

E. Authorization Clause

By acceptance of this policy, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to:

1. The giving of notice of a **First Party Event** or **Claim**;
2. The giving or receiving of notice of termination or non-renewal;
3. The payment of premiums;
4. The receiving of any premiums that may become due under this policy;
5. The agreement to and acceptance of endorsements;
6. Consenting to any settlement;
7. Exercising the right to the **Extended Reporting Period**; and
8. The giving or receiving of any other notice provided for in this policy,

All **Insureds** agree that the **Named Insured** shall so act on their behalf.

F. Bankruptcy

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Company** of its obligations nor deprive the **Company** of its rights or defenses under this policy.

G. Compliance With Trade Sanctions

This insurance does not apply to the extent that trade or economic sanctions or other similar laws or regulations prohibit the providing of such insurance.

H. Interpretation

The terms and conditions of this policy shall be interpreted and construed in an even-handed fashion as between the parties. If the language of this policy is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms and conditions, without:

1. Regard to authorship of the language;
 2. Any presumption or arbitrary interpretation or construction in favor of either the **Insureds** or the **Company**;
- and

3. Reference to the reasonable expectations of either the **Insureds** or the **Company**.

I. **Interrelated Incidents And Claims**

1. All **Claims** arising out of the same **Interrelated Act** shall be deemed to be one **Claim**. Such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**.
2. An **Interrelated Act** involving a **First Party Event** (other than a **Network Extortion Threat**) shall be deemed:
 1. To be one incident or event; and
 2. To be first discovered on the date the earliest of such incidents or events is first discovered by a **Senior Executive**, regardless of whether such date is before or during the **Policy Period**.
3. All **Interrelated Acts** involving a **Network Extortion Threat** shall be deemed:
 - a. To be one incident or **Network Extortion Threat**; and
 - b. To be made on the date the earliest of such **Network Extortion Threats** is first made, regardless of whether such date is before or during the **Policy Period**.
4. All **Loss** will be considered a single **Loss** occurring at the time the first **Interrelated Act** giving rise to such **Loss** was first made or first discovered, regardless of whether such date is before or during the **Policy Period**.

J. **Material Changes In Exposure**

1. **Acquisition Or Creation Of Another Entity**

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

- a. Acquires voting securities in another entity or creates another entity, which as a result of such acquisition or creation becomes a **Subsidiary**; or
- b. Acquires any entity by merger into or consolidation with the **Named Insured**;

then, the **Named Insured** will give written notice to the **Company**, no later than sixty (60) days after the effective date of such acquisition or creation. Automatic coverage of such organization is granted until the end of the **Policy Period**, provided that:

- c. The newly created or acquired **Subsidiary** has substantially similar business operations;
- d. The newly created or acquired **Subsidiary**'s gross revenue is equal to or less than 15% of the total gross revenue the **Named Insured** has listed on the **Application**; and
- e. Prior to the effective date of such acquisition or creation, no **Senior Executive** of the **Named Insured** or of the acquired or created organization, knew of any **First Party Event** or **Claim**.

If the newly created or acquired **Subsidiary** does not qualify for automatic coverage due to any of the conditions in paragraphs 1.c., 1.d. or 1.e. of this Condition, then coverage will only be provided until the end of the **Policy Period** or for sixty (60) days, whichever is earlier. Upon receipt of notice of such acquisition or creation, the **Company** may, at its sole option, agree to appropriately endorse the policy subject to an additional premium and/or a change in terms and conditions. If the **Named Insured** does not agree to the additional premium and/or a change in terms and conditions, if any, coverage otherwise afforded under this provision for such acquired or created organization will terminate sixty (60) days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is the earlier.

2. **Acquisition Of The Named Insured**

If, during the **Policy Period**, any of the following occurs:

- a. The acquisition of the **Named Insured** or substantially all of its assets by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
- b. The obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty percent (50%) of the directors, trustees, managers, members of the Board of Managers, management or executive committee members or equivalent positions of the **Named Insured**;

then coverage under this policy will continue in full force and effect until termination of this policy, but only with respect to **Third Party Events** or **First Party Events**, as applicable, taking place before such change. Coverage under this policy will cease as of the effective date of such change with respect to **Third Party Events** or **First Party Events**, as applicable, taking place after such change. This policy may not be cancelled after the effective time of the change, and the entire premium for this policy shall be deemed earned as of such time.

3. Termination Of A Subsidiary

If, before or during the **Policy Period**, an entity ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and any **Insured** (as defined in paragraphs 3., 4. and 5. of such definition) of the **Subsidiary** shall continue until termination of this policy. Such coverage continuation shall apply only with respect to **Third Party Events** or **First Party Events**, as applicable, taking place prior to the date such entity ceased to be a **Subsidiary**.

K. Notice

1. An **Insured** shall, as a condition precedent to such **Insured's** rights under this policy, give to the **Company** written notice of any **Claim** or **First Party Event** as soon as practicable after any **Senior Executive** discovers such **First Party Event** or becomes aware of such **Claim**, but in no event later than:
 - a. Sixty (60) days after the expiration of the **Policy Period**; or
 - b. The expiration of the **Extended Reporting Period**, if applicable,provided that if the **Company** sends written notice to the **Named Insured**, stating that this policy is being terminated for non-payment of premium, an **Insured** shall give to the **Company** written notice of such **Claim** prior to the effective date of such termination.
2. If, during the **Policy Period**, any **Senior Executive** first becomes aware of any circumstance which may reasonably give rise to a future **Claim**, the **Insured** must provide written notice to the **Company** as soon as practicable during the **Policy Period**. Such notice must include the:
 - a. Nature of the act that gave rise to the **Claim**;
 - b. Identity of the **Insureds** allegedly involved;
 - c. Circumstances by which the **Insureds** first became aware of the **Third Party Event**;
 - d. Identity of the actual or potential claimants;
 - e. Foreseeable consequences of the **Third Party Event**; and
 - f. Nature of the potential **Third Party Loss**.

Any **Claim** which arises out of such **Third Party Event** shall be deemed to have been first made at the time such written notice was received by the **Company**. The **Company** will not pay for **Third Party Loss** or **Claim Expenses** incurred prior to the time such **Third Party Event** results in a **Claim**.

3. All notices of any **First Party Event**, **Third Party Event** or **Claim** shall be given to the **Company** at the physical address or email address shown in Item 9.A. of the Declarations.

Notice given as set out in this Condition K. shall be deemed to be received and effective upon actual receipt thereof by the addressee, or one day following the date such notice is sent, whichever is earlier. When any such notices are sent to the physical address, such notices shall be sent by prepaid express courier or certified mail properly addressed to the appropriate party.

L. Other Insurance

The insurance under this policy will apply in excess of any other valid and collectible insurance available to any **Insured** unless such other insurance is written only as specific excess insurance over this policy.

M. Proof Of Loss For First Party Insuring Agreements

1. As a condition precedent to the obligations of the **Company** under the policy, the **Insured** will provide the **Company** with a sworn proof of loss containing full particulars within three (3) months after:
 - a. The first discovery by a **Senior Executive** of the **First Party Event** (other than a **Network Extortion Threat**); or
 - b. First occurrence of the **Network Extortion Threat**.

2. Such proof of loss:

- a. Will include in detail how the **Loss** was calculated, and what assumptions have been made; and
- b. Shall include documentary evidence, including any applicable reports, books of accounts, bills, invoices and other vouchers or proofs of payment made by an **Insured** in relation to such **Loss**.

Furthermore, the **Insureds** shall cooperate with, and provide any additional information reasonably requested by, the **Company** in its review of **Loss**, including the right to investigate and audit the proof of loss and inspect the records of an **Insured**.

3. With respect to Insuring Agreement **B.2.**, the **Business Interruption Loss** will be determined taking full account and due consideration of:
 - a. An **Insured's** proof of loss; and
 - b. The trends or circumstances:
 - (1) Which affect the profitability of the business; and
 - (2) Which would have affected the profitability of the business had the **Business Interruption Loss** not occurred.

However, the **Company's** adjustment will not include the **Insured's** increase in income that would likely have been earned as a result of an upturn in business conditions caused by the impact of a **Security Failure** on others.

N. Representations

The **Company** has relied upon the **Application** in issuing this policy. The **Insured** warrants that the content of the materials provided to the **Company** are true, accurate and complete and are material to the **Company's** acceptance of the risk to which the policy applies. Any material misrepresentation, concealment or misstatement by the **Insured** will render the policy null and void with respect to:

1. Any natural person **Insured** who knew of such material misrepresentation, concealment or misstatement; and
2. The **Named Insured**, if a **Senior Executive** knew of such material misrepresentation, concealment or misstatement;

and will relieve the **Company** of all obligations and liability arising from this policy with regard to such **Insured** parties.

O. Subrogation

In the event of any payment under this policy, the **Company** will be subrogated to all of the **Insured's** rights of recovery. The **Insured** will do everything necessary to secure and preserve such subrogation rights, including the execution of any documents necessary to enable the **Company** to bring suit in the **Insured's** name. The **Insured** will not do anything after an incident or event which may give rise to a **Claim** or **Loss** under this policy to prejudice such subrogation rights without first obtaining the **Company's** consent.

Any recoveries will be applied:

1. First to subrogation expenses;
2. Second to **Loss** paid by the **Company**; and
3. Lastly to the **Retention**.

Any additional amounts recovered will be paid to the **Named Insured**.

P. Termination Of This Policy

This policy may be canceled by the **Named Insured** by giving written notice to the **Company**, stating when such cancellation will be effective. If the policy is terminated by the **Named Insured**, the **Company** shall refund the unearned premium computed *pro rata*. The **Company** may cancel or elect not to renew this policy by mailing to the **Named Insured** at the address shown in Item 1 of the Declarations, written notice stating when the cancellation or non-renewal will be effective. Where permitted by applicable law, the **Company** may provide such written notice of cancellation or non-renewal by electronic transmission. Such cancellation or non-renewal will not be less than sixty (60) days after such notice is mailed (or ten (10) days thereafter when cancellation is due to non-payment of premium or fraud or material misrepresentation). The mailing of such notice will be sufficient proof of notice and this policy will terminate at the date and hour specified in such notice.

In the event the **Company** elects not to renew the policy, written notice will be provided to the **Named Insured**, at least sixty (60) days prior to the expiration of the **Policy Period**. The **Company** has no obligation to renew the policy.

Q. Territory And Valuation

1. Where legally permissible, coverage provided under this policy shall extend to **First Party Events** and **Claims** taking place, brought or maintained anywhere in the world.
2. All amounts stated in this policy are expressed and payable in United States dollars. If a judgment rendered or settlement entered into under this policy are stated in a currency other than United States dollars, then payment under this policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date:
 - a. The final judgment is rendered; or
 - b. The settlement payment is established.

SECTION VII – EXTENDED REPORTING PERIOD

A. Solely with respect to Insuring Agreements **A.1., 2., 3.** and **4.**, if:

1. The **Company** terminates or does not renew this policy (for reasons other than material misrepresentation in the **Application** or for failure to pay a premium when due); or
2. The **Insured** terminates or does not renew this policy and does not obtain replacement coverage as of the effective date of such termination or non-renewal,

the **Insured** shall have the right, upon payment of the additional premium shown in Item 7.A. of the Declarations and subject to the terms specified in Paragraphs **B - E** of this Section VII, to a continuation of the coverage granted by this policy for an **Extended Reporting Period** shown in Item 7.B. of the Declarations following the effective date of such termination or non-renewal.

- B.** Coverage for the **Extended Reporting Period** shall be only for:
1. A **Claim** first made against the **Insured** during the **Extended Reporting Period**; and
 2. Arising from a **Data Breach Wrongful Act** or **Media Injury** committed by an **Insured**:
 - a. After the **Retroactive Date**; and
 - b. Prior to the end of the **Policy Period**.

The **Insured** must provide written notice to the **Company** of its intent to purchase the **Extended Reporting Period** and provide payment of the additional premium shown in Item 7.A. of the Declarations, within thirty (30) days following the effective date of termination or non-renewal.

- C.** The **Extended Reporting Period** is non-cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.
- D.** The **Extended Reporting Period** shall not increase or reinstate any Limits of Liability. The Limits of Liability shown in Item 3 and Item 4 of the Declarations shall apply to both the **Policy Period** and the **Extended Reporting Period**, combined.
- E.** A change in policy terms, conditions, exclusions or premiums shall not be considered a non-renewal for purposes of triggering the rights to the **Extended Reporting Period**.

SECTION VIII - DEFINITIONS

- A. Additional Insured** means any person or entity that the **Insured** has agreed in writing to add as an Additional Insured under this policy, but only for a **Data Breach Wrongful Act** or **Media Injury** committed by the **Insured**, but only as defined in Paragraphs 1. – 5. of Definition U. **Insured**.
- B. Application** means:
1. All applications;
 2. Any attachments to such applications; and
 3. All other information and materials submitted to the **Company** by or on behalf of the **Insured** in connection with the **Company** underwriting:
 - a. This policy; or
 - b. Any policy of which this policy is a direct renewal or replacement.

All such applications, assessments, attachments, information and materials are deemed attached to and incorporated into this policy.

- C. Bodily Injury** means injury to the body, sickness, disease, including death resulting from any of these at any time. **Bodily Injury** also means **Personal Injury**, whether or not resulting from injury to the body, sickness, disease, or the death of any person.
- D. Business Interruption Loss** means:
1. The **Insured's** continuing normal and fixed operating and payroll expenses; and
 2. The **Insured's** net profit before income tax that would have been earned had no actual and measurable interruption or suspension of the **Computer System** occurred.

Business Interruption Loss does not include:

- a. **Loss** arising out of any liability to any third party;

- b. **Claims Expenses**;
- c. **Loss** incurred as a result of unfavorable business conditions; or
- d. Loss of market share or any other consequential loss.

E. Claim means:

- 1. A written demand first received by the **Insured** for money or services, including the service of a suit or institution of arbitration proceedings;
- 2. Written request directed at an **Insured** to toll or waive a statute of limitations applicable to a **Claim** described in paragraph 1. of this definition; or
- 3. A **Privacy Regulatory Proceeding**.

including, where applicable, any associated appeal.

F. Claim Expenses means the reasonable and necessary:

- 1. Legal fees, mediation costs, arbitration expenses, expert witness fees, and other fees and costs incurred:
 - a. By the **Company**; or
 - b. By an **Insured** with the **Company'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 **Company** shall have no obligation to apply for or furnish such bond.

Claim Expenses shall not include wages, salaries or other compensation of **Senior Executives**, or employees of the **Company** or any **Insured**.

G. Company means the insurance company shown on the Declarations page.

H. Computer Assets means:

- 1. Computer hardware, software, firmware, portable devices, and mobile devices;
 - 2. Associated input and output devices, data storage devices, and networking equipment; and
 - 3. Storage area network or other electronic data backup facilities,
- Including the data stored on any of these.

I. Computer System means the:

- 1. **Insured's Computer System**; and
- 2. **Outsource Provider Computer System**.

J. Confidential Business Information means any third party confidential or proprietary information:

- 1. Provided to an **Insured** and protected under a nondisclosure agreement or similar contract; or
- 2. Which an **Insured** is legally responsible to maintain in confidence.

K. Cyber Incident Response Expenses means reasonable and necessary expenses of a **Data Breach Service Provider**, including the following:

- 1. Retaining the services of a **Data Breach First Responder**;
- 2. Retaining the services of a third party computer forensics firm to determine the cause and scope of a **Data Breach Wrongful Act**;
- 3. Retaining the services of a public relations or crisis communications firm for the purpose of protecting or restoring the reputation of, or mitigating financial harm to, an **Insured**;

4. Retaining the services of a law firm to determine the applicability of and actions necessary to comply with **Privacy or Breach Laws**;
5. Notifying individuals whose **Personally Identifiable Information** has been compromised in a **Privacy Breach** as required by a **Privacy Or Breach Law** or on a voluntary basis;
6. Reporting and communicating as required with any regulatory, administrative or supervisory authority as required by a **Privacy or Breach Law**;
7. Retaining call center services to manage **Privacy Breach** inquiries; or
8. Costs to provide credit or identity monitoring services for up to one (1) year to individuals affected by a **Data Breach Wrongful Act**.

Compliance with **Privacy or Breach Law** shall follow the law of the applicable jurisdiction that most favors coverage for such expenses.

The **Insured** may choose a firm that is not a **Data Breach Service Provider** with the **Company's** prior written consent, not to be unreasonably withheld. However, in this event, the **Company** shall only pay the hourly rate and/or fees that would have been charged had the **Company's Data Breach Service Provider** been used.

Cyber Incident Response Expenses shall not include any salary or overhead expenses of the **Insured**.

L. **Cyber Terrorism** means the premeditated use, or threatened use, of disruptive activities against an **Insured's Computer System** by any person, group, or organization committed with the intention to harm or intimidate an **Insured** to further social, ideological, religious, or political objectives. However, **cyber terrorism** does not include any activity which is part of or in support of any military action, war, or war-like operation.

M. **Damages** means:

1. Compensatory damages for which the **Insured** is legally liable, any award of prejudgment or post-judgment interest, awards, or settlements negotiated with the approval of the **Company**;
2. Punitive or exemplary damages or the multiple portion of any multiplied damage award pursuant to applicable law which most favors coverage for such damages unless such damages are uninsurable by law; and
3. Amounts agreed to under settlement with a regulator for consumer redress imposed by a court as equitable relief following a **Privacy Breach**, with the exception of charitable donations.

Damages do not include:

- a. Future profits, restitution, disgorgement of profits, or unjust enrichment by an **Insured**;
- b. The cost to comply with any injunctive or other non-monetary or declaratory relief, including specific performance or any agreement to provide such relief;
- c. Return or offset of fees, charges, or commissions charged by or owed to the **Insured** for goods or services already provided or contracted to be provided;
- d. Payroll or other taxes, or loss of tax benefits, or amounts or relief uninsurable under applicable law;
- e. 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;
- f. Discounts, coupons, prizes, awards, or other incentives offered by the **Insured**;
- g. **Privacy Regulatory Fines, PCI Fines and Assessments** or other fines, sanctions, penalties or awards imposed against an **Insured**;
- h. Any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**;
or

- i. Any loss, theft or transfer of funds, monies or securities.
- N. Data Breach First Responder** means the legal adviser who is:
1. A **Data Breach Service Provider**; and
 2. Designated to provide consultative and pre-litigation legal services to an **Insured**.
- O. Data Breach Service Provider** means a person(s) pre-approved by the **Company** to provide specialist data breach related services as defined under **Cyber Incident Response Expenses**.
- P. Data Breach Wrongful Act** means:
1. The failure to prevent a **Security Failure**; or
 2. A **Privacy Breach**.
- Q. Extended Reporting Period** means the period of time shown in Item 7 of the Declarations, subject to Section VII, Extended Reporting Period.
- R. Extortion Expenses** means reasonable and necessary expenses incurred by an **Insured** and resulting directly from a **Network Extortion Threat**. **Extortion Expenses** include:
1. Money, cryptocurrencies, or other consideration surrendered as payment by an **Insured** to a natural person or group believed to be responsible for a **Network Extortion Threat**; and
 2. Reasonable and necessary expenses incurred to mitigate or reduce any of the forgoing expenses.
- S. Extra Expenses** means reasonable and necessary:
1. Expenses incurred by an **Insured** to the extent such expenses mitigate, reduce, or avoid **Business Interruption Loss**, provided they are over and above those expenses that an **Insured** would have incurred had there been no **Security Failure**; and
 2. Costs incurred by an **Insured** with the **Company's** prior consent to retain the services of a third party forensic accounting firm selected from the **Data Breach Service Provider Panel** to determine the amount of **Business Interruption Loss**.
- Extra Expenses** shall not include costs or expenses incurred to update, restore, replace, upgrade, maintain, or improve the **Computer System** to a level beyond that which existed prior to the **Security Failure**.
- T. First Party Event** means a:
1. **Security Failure**;
 2. **Network Extortion Threat**; or
 3. **Privacy Breach** with respect to Insuring Agreement **B.1. Cyber Incident And Crisis Management Response**.
- U. Insured** means:
1. The **Named Insured**;
 2. Any **Subsidiary** of the **Named Insured**;
 3. Any past or present employee, trustee, leased employee or temporary employee of the **Named Insured** or **Subsidiary**, but solely with respect to work done while acting within the scope of his or her employment and related to the business of the **Named Insured** or **Subsidiary's** business;
 4. Any past or present **Senior Executive**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured** or **Subsidiary**;
 5. Any past or present independent contractor performing services for the **Named Insured** or **Subsidiary** under a written contract, but solely with respect to such independent contractor's duties on behalf and for the benefit of the **Named Insured** or **Subsidiary**; or
 6. **Additional Insured**.

- V. **Insured's Computer System** means **Computer Assets** that are leased, owned or operated by an **Insured**.
- W. **Interrelated Acts** means all **Third Party Events** and **First Party Events** which:
1. Are the same, related or continuous;
 2. Arise from a common nexus of fact, circumstance, situation, event, or cause; or
 3. Are a series of related facts, circumstances, situations, events, or causes.
- X. **Loss** means:
1. **Damages**;
 2. **Claim Expenses**;
 3. **Privacy Regulatory Fines**;
 4. **PCI Fines and Assessments**;
 5. **Cyber Incident Response Expenses**;
 6. **Business Interruption Loss**;
 7. **Network Data Recovery Costs**;
 8. **Extortion Expenses**; and
 9. **Extra Expenses**.
- Y. **Media Content** means any data, text, sounds, images, graphics, music, photographs, or advertisements, including video, streaming content, webcasts, podcasts, blogs, online forums, and chat rooms. **Media Content** shall not include:
1. Computer software;
 2. Software technology; or
 3. The actual goods, products or services described, illustrated or displayed in such **Media Content**.
- Z. **Media Injury** means any of the following actually or allegedly committed by the **Insured** in the ordinary course of the **Company's** business of gathering, communicating, reproducing, publishing, disseminating, displaying, releasing, transmitting, or disclosing **Media Content**, including social media authorized by the **Insured**:
1. Defamation, libel, slander, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
 2. Violation of the rights of privacy of an individual, including false light and public disclosure of private facts;
 3. Invasion or interference with an individual's right of publicity, including commercial appropriation of name, persona, voice, or likeness;
 4. Plagiarism, piracy, or misappropriation of ideas under implied contract;
 5. Infringement of copyright, domain name, trademark, trade name, trade dress, logo, title, metatag, slogan, service mark, or service name; or
 6. Common law unfair competition or unfair trade practices based solely on paragraphs 1. and 5. of the definition of **Media Injury**.
- AA. **Merchant Services Agreement** means an agreement between the **Insured** and:
1. A financial institution;
 2. A payment card company;
 3. A payment card processor; or
 4. An independent service operator,

that enables the **Insured** to accept credit cards, debit cards, prepaid cards, or other payment cards for payments or donations.

BB. Named Insured means the entity shown in Item 1 of the Declarations.

CC. Network Data Recovery Costs means the reasonable and necessary costs or expenses incurred by an **Insured** with the prior written consent of the **Company**, not to be unreasonably withheld, to:

1. Retain the services of a third party computer security expert or forensic investigator selected from the **Data Breach Service Provider** panel to determine whether damaged or destroyed computer software or electronic data can be replaced, restored, recreated, recollected or recovered; or
2. Replace, restore, recreate, recollect or recover damaged or destroyed computer software or electronic data residing on the **Computer System**.

Network Data Recovery Costs shall not include:

- a. Any costs or expenses incurred to replace, restore, recreate, recollect or recover, or otherwise improve the **Computer System** to a level beyond that which existed prior to the **Security Failure**;
- b. The economic or market value of any computer software or electronic data, including **Trade Secrets**;
- c. Any expense incurred for the research and development of computer software or electronic data, including **Trade Secrets**; or
- d. Any consequential loss relating to a **Security Failure**.

DD. Network Extortion Threat means any credible threat or series of related threats demanding payment in exchange for the mitigation or removal of such threat to:

1. Release, divulge, disseminate, destroy or use **Personally Identifiable Information** or **Confidential Business Information** in the **Insured's** care, custody and control, using a **Computer System**;
2. Cause a **Security Failure**;
3. Alter, corrupt, damage, manipulate, misappropriate, delete or destroy data;
4. Restrict or inhibit access to a **Computer System**; or
5. Deface the **Insured's** website.

EE. Outsource Provider means:

1. A provider of "cloud computing" or other hosted computer resources to an **Insured**; or
2. A provider of information technology services required by an **Insured** to operate the **Computer System**,

as provided in a written contract between such third party and the **Insured**.

FF. Outsource Provider Computer System means **Computer Assets** operated for the benefit of an **Insured** by an **Outsourced Provider**.

GG. Payment Card Brand means any payment provider whose payment method is accepted for processing, including Visa Inc. International, MasterCard Worldwide, Discover Financial Services, American Express Company, and JCB International.

HH. Payment Card Industry Data Security Standards means the rules, regulations, standards or guidelines adopted or required by the **Payment Card Brand** or the Payment Card Industry Data Security Standards Council relating to data security and the safeguarding, disclosure and handling of **Confidential Business Information** or **Personally Identifiable Information**.

II. PCI Fines and Assessments means the direct monetary fines and assessments owed by the **Insured** as a result of a **Data Breach Wrongful Act**. Such amounts are determined pursuant to the terms under a **Merchant Services Agreement**, due to an **Insured's** actual or alleged non-compliance with **Payment Card Industry Data Security**

Standards, EMV specifications, or mobile payment security requirements. **PCI Fines and Assessments** will not include any charge backs, interchange fees, discount fees, or other services-related fees, rates, or charges.

JJ. Period of Restoration means the continuous period of time that:

1. Begins at the end of the **Waiting Period**; and
2. Ends on the date when the **Computer System** is or could have been repaired or restored with reasonable speed to the same functionality and level of service that existed prior to the actual and measurable interruption or suspension of the **Computer System**. In no event shall the **Period of Restoration** exceed ninety (90) days.

KK. Personally Identifiable Information means the following information collected by the **Insured** that alone or in conjunction can be used to uniquely identify an individual:

1. A natural person's name, e-mail address or social security number;
2. Medical or healthcare data or other protected health information;
3. Driver's license number or state identification number;
4. Credit card number or debit card number;
5. Address or unpublished telephone number;
6. Account number or account histories;
7. Personally identifiable photos, personally identifiable videos, Internet browsing history, biometric records, or passwords; or
8. Other non-public personal information as defined in any **Privacy or Breach Law**.

LL. Personal Injury means emotional distress, mental injury, mental tension or mental anguish, pain and suffering, humiliation or shock.

MM. Policy Period means the period of time shown in Item 2 of the Declarations, beginning on the effective date and expiring on the date of termination, expiration or cancellation of this policy, whichever is earliest.

NN. Pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, asbestos products, or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

OO. Privacy Breach means:

1. The theft, loss or unauthorized disclosure of **Confidential Business Information** or **Personally Identifiable Information** that is in the care, custody and control of the **Insured** or an **Outsource Provider**;
2. Any unintentional violation by an **Insured** of any **Privacy or Breach Law**, including the unintentional wrongful collection of **Confidential Business Information** or **Personally Identifiable Information**;
3. The actual or alleged failure to reasonably implement privacy or security practices required by any **Privacy or Breach Law**;
4. The actual or alleged failure to comply with the **Insured's** privacy policy and/or privacy notice procedures, provided that no **Senior Executives** knew or had reason to know of any such conduct; and
5. Any actual or alleged failure to provide any required privacy notices in connection with paragraphs **2-4** of this definition.

PP. Privacy or Breach Law means any local, state, federal, or foreign privacy protection laws, legislation, statutes, or regulations, including but not limited to those which require commercial entities that collect **Confidential Business Information** or **Personally Identifiable Information** to:

1. Post privacy policies;
2. Adopt specific privacy or security controls; or

3. Notify individuals in the event that **Confidential Business Information** or **Personally Identifiable Information** has potentially been compromised.

QQ. Privacy Regulatory Fines means any civil monetary fine or penalty imposed on an **Insured** by a federal, state, local or foreign governmental entity. **Privacy Regulatory fines** shall not include any criminal fines, disgorgement of profits, multiple damages or penalties that are not insurable by law.

RR. Privacy Regulatory Proceeding means a suit, civil investigation or civil proceeding brought by or on behalf of a government agency, government licensing entity, or regulatory authority, based on an alleged or potential violation of **Privacy or Breach Law**.

SS. Property Damage means:

1. Physical injury to;
2. Loss or destruction of; or
3. Impairment or loss of use of

any tangible property, including any computer hardware rendered unusable by a **Security Failure**. For the purposes of this exclusion, "tangible property" shall not include electronic data.

TT. Retention means the applicable retention for each Insuring Agreement shown in Item 4 of the Declarations.

UU. Retroactive Date means the date shown in Item 5 of the Declarations.

VV. Security Failure means:

1. The intentional hacking, damaging or misuse of the **Computer System** by a third party which results in the loss, alteration, or corruption of software, applications, or electronic data that is part of the **Computer System**;
2. Access to or use of the **Computer System** in a manner that is not authorized by the **Insured**;
3. The transmission of malicious code from the **Insured's Computer system** to a third party computer system that is not owned, operated, or controlled by the **Insured**; or
4. A denial of service attack specifically directed at the **Insured** affecting the computer system.

WW. Senior Executives means any partner, principal, director, executive board member, in-house counsel, risk manager, chief information officer, chief privacy officer, chief financial officer, chief executive officer or organizational equivalent.

XX. Subsidiary means any entity:

1. In which more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for the election of or to appoint directors, trustees, managers, members of the Board of Managers or equivalent positions of such entity are owned, or controlled, by the **Named Insured**, directly or through one or more **Subsidiaries**; or
2. In which the **Named Insured** has management control and has recognized the revenue in the **Application**.

YY. Third Party Event means a:

1. **Data Breach Wrongful Act**; or
2. **Media Injury**.

ZZ. Third Party Loss means:

1. **Damages**;
2. **Privacy Regulation Fines**; or
3. **PCI Fines and Assessments**.

AAA. Trade Secret means information, including a:

1. Formula, pattern or compilation;
2. Program or device; or
3. Method, technique or process,

that derives actual or potential economic value from not being generally known to or readily ascertainable by other persons who can obtain value from its disclosure or use, so long as reasonable efforts have been made to maintain its secrecy.

BBB. Waiting Period means the period:

1. Beginning with the actual and measurable interruption or suspension of the **Computer System**; and
2. Ending after the number of hours shown in Item 4 of the Declarations.