



LLOYD'S

THIS INSURANCE is effected with certain Underwriters at Lloyd's, London (not incorporated).

THIS CERTIFICATE is issued in accordance with the limited authorization granted to the Correspondent by certain Underwriters at Lloyd's, London whose names and the proportions underwritten by them can be ascertained from the office of said Correspondent (such Underwriters being hereinafter called "Underwriters") and in consideration of the premium specified herein, Underwriters do hereby bind themselves each for his own part, and not for one another, their heirs, executors and administrators.

THE ASSURED is requested to read this certificate, and if not correct, return it immediately to the Correspondent for appropriate alteration.

Correspondent:

In the event of a claim under this certificate, please notify the following Authorized Representative:

CERTIFICATE PROVISIONS

1. **Signature Required.** This Certificate shall not be valid unless signed by the Correspondent on the attached Declaration Page.
2. **Correspondent Not Insurer.** The Correspondent is not an Insurer of the insurance described herein and neither is nor shall be liable for any loss or claim whatsoever. The Insurers of such insurance are those Underwriters at Lloyd's, London, whose names can be ascertained as hereinbefore set forth. As used in this Certificate "Underwriters" shall be deemed to include incorporated as well as unincorporated persons or entities that are Underwriters at Lloyd's, London.
3. **Cancellation.** If the insurance described herein provides for cancellation and if said insurance is cancelled after the inception date, earned premium must be paid for the time the insurance has been in force.
4. **Assignment.** The insurance described herein shall not be assigned either in whole or in part without the written consent of the Correspondent endorsed hereon.
5. **Attached Conditions Incorporated.** The insurance described in this Certificate is subject to all provisions, conditions and warranties set forth herein, attached, or endorsed, all of which are to be considered incorporated herein as further descriptive of the insurance the placement of which is evidenced by this Certificate.
6. The Certificate is intended for use as evidence of the placement of the insurance described herein, in accordance with Section 1764 of the California Insurance Code.
7. **New Short Rate Cancellation Table (U.S.A.)**

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

SHORT RATE CANCELLATION TABLE

A. For insurances written for one year:-

Days Insurance in Force	Per cent. of One Year Premium	Days Insurance in Force	Per cent. of One Year Premium
1	5	154 - 156	53
2	6	157 - 160	54
3 - 4	7	161 - 164	55
5 - 6	8	165 - 167	56
7 - 8	9	168 - 171	57
9 - 10	10	172 - 175	58
11 - 12	11	176 - 178	59
13 - 14	12	179 - 182 (6 months)	60
15 - 16	13	183 - 187	61
17 - 18	14	188 - 191	62
19 - 20	15	192 - 196	63
21 - 22	16	197 - 200	64
23 - 25	17	201 - 205	65
26 - 29	18	206 - 209	66
30 - 32 (1 month)	19	210 - 214 (7 months)	67
33 - 36	20	215 - 218	68
37 - 40	21	219 - 223	69
41 - 43	22	224 - 228	70
44 - 47	23	229 - 232	71

48 - 51	24	233 - 237	72
52 - 54	25	238 - 241	73
55 - 58	26	242 - 246 (8 months)	74
59 - 62 (2 months)	27	247 - 250	75
63 - 65	28	251 - 255	76
66 - 69	29	256 - 260	77
70 - 73	30	261 - 264	78
74 - 76	31	265 - 269	79
77 - 80	32	270 - 273 (9 months)	80
81 - 83	33	274 - 278	81
84 - 87	34	279 - 282	82
88 - 91 (3 months)	35	283 - 287	83
92 - 94	36	288 - 291	84
95 - 98	37	292 - 296	85
99 - 102	38	297 - 301	86
103 - 105	39	302 - 305 (10 months)	87
106 - 109	40	306 - 310	88
110 - 113	41	311 - 314	89
114 - 116	42	315 - 319	90
117 - 120	43	320 - 323	91
121 - 124 (4 months)	44	324 - 328	92
125 - 127	45	329 - 332	93
128 - 131	46	333 - 337 (11 months)	94
132 - 135	47	338 - 342	95
136 - 138	48	343 - 346	96
139 - 142	49	347 - 351	97
143 - 146	50	352 - 355	98
147 - 149	51	356 - 360	99
150 - 153 (5 months)	52	361 - 365 (12 months)	100

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

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

09/02/58
NMA45 (Amended)



PRIVACY AND NETWORK RISKS

IMPORTANT NOTICE: THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AND REPORTED TO UNDERWRITERS DURING THE POLICY PERIOD AND ON OR AFTER THE RETROACTIVE DATE BUT BEFORE THE END OF THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD, IF APPLICABLE. ALL CLAIMS ARE SUBJECT TO THE APPLICABLE LIMITS OF LIABILITY AND THE APPLICABLE RETENTION(S). PLEASE NOTE THAT THE LIMITS OF LIABILITY FOR INSURING AGREEMENTS 1 AND 3 INCLUDE CLAIM EXPENSES.

TERMS THAT APPEAR IN BOLD FACE TYPE ARE DEFINED TERMS IN THIS POLICY. PLEASE READ THIS POLICY CAREFULLY. WHEN USED BELOW, THE WORDS "YOU," "YOUR," OR "YOURS" SHALL MEAN THE INSURED AS PROVIDED IN SECTION VI BELOW AND "WE," "US," AND "OUR" SHALL MEAN THE UNDERWRITERS OR INSURERS PROVIDING THIS INSURANCE.

I. INSURING AGREEMENTS

You have purchased some or all of the following Insuring Agreements. Please refer to the Declarations, which show the Insuring Agreement(s) **you** have purchased. If an Insuring Agreement(s) has not been purchased, that portion of this policy is not applicable.

INSURING AGREEMENT 1: (SECURITY AND PRIVACY LIABILITY)

We shall pay on **your** behalf all **damages** and **claims expenses** in excess of **your retention** as stated within item 4 of the Declarations, which **you** become legally obliged to pay as a result of any **claim** first made against **you** and notified by **you** to **us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, arising from a **security breach** or **privacy breach** on **your computer network (s)** which results in any actual or alleged wrongful acts, which for the purposes of this agreement shall mean

1. The failure to prevent or hinder unauthorized access to or unauthorized use of a **computer network**; failure to prevent physical theft, or loss of information, or **hardware** controlled by **you**, **your** people, or processes; security failures; or false communications designed to trick the user into surrendering personal information (commonly known as "phishing" or "pharming") that results in:
 - a. The alteration, copying, corruption, destruction, deletion, or damage to electronic **data** on a **computer network**;
 - b. Unauthorized disclosure of commercial, personal, or private information or **data**
 - c. Theft of **data** (including theft of **data** which is commonly referred to as identity theft);
 - d. **Your** failure to disclose a breach of security affecting personally identifiable, non-public information, or failure to dispose of such information within the required time period in violation of notification laws or regulations in effect now or in the future;
 - e. The failure to prevent transmission of **malicious code** or **computer virus** from a **computer network** to third party computers or systems; or
 - f. **Your** breach of duty to maintain the security or confidentiality of personally identifiable information stored on **your computer network** under any contract, including but not limited to a payment card processing agreement with a merchant bank or payment processor.
2. **Privacy breach, security breach, or breach of privacy regulations**; or
3. The failure to prevent or hinder participation in a **denial of service** from a **computer network** operated by **you** or on **your** behalf against internet sites or **computer networks** of a third party; or
4. Loss of **employee** personally identifiable information, as defined in **privacy regulations**

provided that the above actual or alleged wrongful acts occurred on or after the **retroactive date**, as specified within item 5 of the Declarations.

INSURING AGREEMENT 2: (DATA RECOVERY AND LOSS OF BUSINESS INCOME COVERAGE)

We shall indemnify **you** for **first party costs and expenses** in excess of **your retention** as stated within item 4 of the Declarations, and for **loss of business income** after expiration of the applicable **waiting period** as stated within item 4 of the Declarations, as a result of a **first party insured event** incurred by **you** and notified by **you to us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, provided that the **first party insured event** occurred on or after the **retroactive date**.

INSURING AGREEMENT 3: (PRIVACY REGULATORY DEFENSE AND PENALTIES)

We shall pay on **your** behalf those amounts, in excess of **your retention** as stated within item 4 of the Declarations, which **you** are legally obligated to pay, including **claims expenses**, as a result of a civil regulatory action, including a **regulatory compensatory award**, civil penalty, or fines to the extent insurable by law, imposed by a federal, state, or governmental regulatory body against **you** and notified by **you to us in writing**, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, as a result of a **privacy breach, security breach**, or breach of **privacy regulations** by **you** or others on **your** behalf for whom **you** are legally responsible, provided that the **privacy breach, security breach**, or breach of **privacy regulations** occurred on or after the **retroactive date** as specified within item 5 of the Declarations.

INSURING AGREEMENT 4: (CRISIS MANAGEMENT COSTS, CUSTOMER NOTIFICATION EXPENSES, AND CUSTOMER SUPPORT AND CREDIT MONITORING EXPENSES)

We shall indemnify **you** for **crisis management costs, customer notification expenses**, and **customer support and credit monitoring expenses**, in excess of **your retention** as stated within item 4 of the Declarations, when such costs and expenses are incurred, following a **security breach, privacy breach** or breach of **privacy regulations**, and notified by **you to us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, provided that the **security breach, privacy breach** or breach of **privacy regulations** occurred on or after the **retroactive date**, as specified within item 5 of the Declarations.

INSURING AGREEMENT 5: (DATA EXTORTION)

We shall indemnify **you** for those amounts, in excess of **your retention** as stated within item 4 of the Declarations, when **cyber extortion monies** paid by **you** following a **cyber extortion threat**, in excess of **your retention**, to the extent insurable by law and notified by **you to us** in writing, in accordance with Section XI of this policy, during the **policy period** or any **extended reporting period**, if applicable, provided that the **cyber extortion threat** occurred on or after the **retroactive date**, as specified within item 5 of the Declarations.

II. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. With respect to Insuring Agreements 1 and 3, if purchased, **we** shall have the right and duty to defend any **claim** by a third party against **you** seeking payment under the terms of this policy, even if any of the allegations of the **claim** are groundless, false, or fraudulent, and subject to the Limit of Liability, exclusions, and other terms and conditions of this policy. **You** shall seek **our** consent, which shall not be unreasonably withheld, prior to appointment of defense counsel.
- B. The Limit of Liability available to pay **damages and as stated within Item 3 of the Declarations** shall be reduced, and may be completely exhausted, by payment of **claims expenses** or any other amounts covered under the policy. **Damages, claims expenses**, and any other amounts covered under this policy shall be applied against the **retention**.
- C. **We** shall have the right to make any investigation **we** deem necessary including, without limitation, any investigation with respect to the **application** and statements made in the **application** and with respect to coverage.
- D. With respect to Insuring Agreements 1 and 3, if purchased, if **you** refuse to consent to any settlement or compromise recommended by **us** that is acceptable to the claimant and elect to contest the **claim**, **our** total liability for any **damages, claims expenses**, and other amounts covered under this policy shall not exceed:
 - 1. The amount for which the **claim** could have been settled, less the remaining deductible, plus the **claims expenses** incurred up to the time of such refusal, and
 - 2. Fifty percent (50%) of any **damages, claims expenses**, incur after the date such settlement or compromise was recommended to **you**. The remaining fifty percent (50%) of such **damages, claims expenses**, or other amounts covered under this policy are to be borne by **you** at **your** own risk and uninsured under this policy.
- E. It is further provided that **we** shall not be obligated to pay any **damages, claims expenses**, or any other amounts covered under this policy, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **damages, claims expenses**, or other amounts covered under this policy and that upon

such payment, **we** shall have the right to withdraw from the further defense thereof by tendering control of said defense to **you**.

III. LIMIT OF LIABILITY

- A. The Limits of Liability set forth in item 3(A) of the Declarations shall be the limit of **our** liability for each **claim** and in the aggregate arising under each Insuring Agreement, including **claims expenses**, where applicable.
- B. The Limits of Liability set forth in item 3(B) of the Declarations shall be **our** total Limit of Liability under this policy regardless of the number of Insuring Agreements that apply, including **claims expenses** where applicable.
- C. Notwithstanding the aggregate Limit of Liability under each Insuring Agreement as set forth in item 3(A) of the Declarations, all payments made under this policy, regardless of the number of Insuring Agreements that apply, will reduce the total Limit of Liability set forth in item 3(B) of the Declarations. In no event will **we** pay more than the total Limit of Liability as set forth in item 3(B) of the Declarations.
- D. All **claims** arising out of the same, related, or continuing acts, facts, or circumstances, without regard to the number of insureds, **claims**, or claimants shall be considered a single **claim** and only one Limit of Liability, as set forth in item 3(A) of the Declarations, will apply. All such **claims** shall be deemed to have been made at the time of the first such **claim**.
- E. In the event that a **claim** is notified by **you**, in accordance with section 11 of this policy, and attaches to more than one Insuring Agreement, only one Limit of Liability as set forth in item 3(A) of the Declarations shall apply. In such event, at most, only the highest of the applicable Limits of Liability shall apply to such **claim**. **We** have the sole discretion to allocate **claims** paid, if any, against the appropriate applicable Limit of Liability. With regard to such **claim**, in no event shall the amount paid by **us** under any Insuring Agreement be greater than the Limit of Liability set forth in item 3(A) of the Declarations.
- F. The Limits of Liability for the **extended reporting period**, if applicable, shall be part of and not in addition to the Limit of Liability for the **policy period**.

IV. RETENTION

- A. The **retention** amount set forth in item 4 of the Declarations shall apply to each and every **claim**. The **retention** shall be satisfied by **your** payment of amounts covered under the policy. If a **claim** attaches to more than one Insuring Agreement, only the highest **retention** applies.
- B. **Your** payment of the applicable **retention** is a condition precedent to the payment by **us** of any amounts covered under this policy and **we** shall only be liable for the amount in excess of such **retention**, not to exceed **our** total Limit of Liability as stated in item 3 of the Declarations. **You** shall make direct payments within the **retention** to the appropriate parties designated by **us**.
- C. All **claims** arising out of the same, related, or continuing acts, facts, or circumstances, without regard to the number of insureds, **claims**, or claimants shall be considered a single **claim** and only one retention shall apply. All such **claims** shall be deemed to have been made at the time of the first such **claim**.
- D. With respect to the **loss of business income** under Insuring Agreement 2, the **waiting period** listed on item 4 of the Declarations shall apply to covered amounts.

V. TERRITORIAL LIMITS

This policy applies to any wrongful acts, insured events, breaches or threats detailed under the relevant insuring agreements, committed alleged to have been committed or occurring anywhere in the world or as stated in item 11 of the Declarations

VI. INSURED

The insured means:

- A. The legal entity(s) shown in item 1 of the Declarations;
- B. Any **subsidiary** of the legal entity(s) shown in item 1 of the Declarations, but only with respect to wrongful acts, insured events, breaches or threats as detailed under the relevant Insuring Agreement, which occur while it is a **subsidiary** and otherwise covered by this policy;

- C. Any past, present, or future officer, director, trustee, or **employee** of any party described in VI (A) or (B) above, but only while acting solely within the scope of their duties as such;
- D. In the event that any party described in VI (A) or (B) above is a partnership, limited liability partnership, or limited liability company, then any general or managing partner, principal, stockholder, or owner thereof, but only while acting solely within the scope of their duties as such;
- E. Any agent or independent contractor, including distributors, licensees, and sub-licensees, but only while acting on behalf of, at the direction of, or under the control of any party described in VI (A) or (B) above; and

Any entity required by contract to be named an insured under this policy and to whom **we** consent in writing, but only for the acts of any entity, as detailed under the relevant Insuring Agreement.

VII. DEFINITIONS

- A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted to **us** by **you** or on **your** behalf in connection with the underwriting of this policy. All such applications, attachments, information, and materials are deemed attached to and incorporated into this policy.
- B. **Bodily injury** means physical injury, sickness, disease, or death sustained by any person and, where resulting from such physical injuries only, mental anguish, mental injury, shock, humiliation, or emotional distress.
- C. **Claim** means:
 - 1. A written demand for monetary damages or non-monetary relief, a request for a tolling agreement, the service of a civil suit, or institution of arbitration proceedings received by **you** seeking monetary damages or including the threat or initiation of a suit and/or proceeding seeking a temporary restraining order or a preliminary or permanent injunction;
 - 2. A formal civil administrative proceeding or regulatory action to the extent covered by Insuring Agreement 3;
 - 3. A **first party insured event**;
 - 4. The incurring of **crisis management costs, customer notification expenses** or **customer support and credit monitoring expenses**;
 - 5. A **cyber extortion threat**; and
 - 6. Notice by a third party to **you** of acts, facts, or circumstances that could reasonably be expected to result in any of the foregoing (1) to (5) above.
- D. **Claims expenses** means:
 - 1. Reasonable and necessary legal costs and expenses incurred with **our** consent and charged by an attorney(s) designated by **us** to defend a **claim**;
 - 2. All other reasonable and necessary fees, costs, and expenses resulting from the investigation, adjustment, defense, and appeal of a **claim**, if incurred by **us**, or by **you** with **our** written consent;
 - 3. **Claims expenses** does not include any salary, overhead, or other charges incurred by **you** for any time spent in cooperating in the defense and investigation of any **claim** or circumstance which might lead to a **claim** notified under this policy; or
 - 4. With respect to Insuring Agreement 3, **your** reasonable and necessary legal costs and expenses incurred with **our** consent in the defense of any civil administrative proceeding or regulatory action as a result of a **privacy breach, security breach**, or breach of **privacy regulations** by **you** or on **your** behalf for whom **you** are legally responsible.
- E. **Computer network(s)** means interconnected electronic, wireless, web, or similar systems (including all **hardware** and software) used to process **data** or information in an analog, digital, electronic or wireless format including, but not limited to, computer programs, electronic data, operating systems, , servers, media libraries, associated input and output devices, mobile devices, networking equipment, websites, extranets, off line storage facilities (to the extent that they hold electronic data), and electronic backup equipment.

- F. **Computer virus** means a program that possesses the ability to create replicas of itself (commonly known as “auto-reproduction” program) within other programs or operating system areas, or which is capable of spreading copies of itself wholly or partly to other computer systems/networks.
- G. **Crisis management costs** means any fees reasonably and necessarily incurred by **you** and approved by **us** for the employment of a public relations consultant if **you** reasonably consider that such appointment is needed in order to avert or mitigate any material damage to any of **your** brands following an actual or alleged **security breach** or breach of **privacy regulations**
- H. **Customer notification expenses** means those reasonable and necessary legal expenses, public relations expenses, postage expenses, and related advertising expenses **you** incur and approved by **us** to comply with governmental privacy legislation mandating customer notification in the event of a **security breach**, **privacy breach**, or breach of **privacy regulations** that results in the compromise or potential compromise of personal information maintained by **you** or otherwise residing on a **computer network** operated by **you** or on **your** behalf.
- I. **Customer support and credit monitoring expenses** means those reasonable and necessary expenses **you** incur and approved by **us** for the provision of customer support activity, including the provision of credit file monitoring services and identity theft education and assistance in the event of a **privacy breach** that results in the compromise or potential compromise of personal information maintained by **you** or otherwise residing on a **computer network** operated by **you** or on **your** behalf.
- J. **Cyber extortion threat** means a credible threat or series of related threats, including a demand for funds, directed at **you** to avoid corruption, damage, destruction, or introduction of a **computer virus**, **malicious code**, or a **denial of service** to any aspect of the insured's **computer networks**, or any threat or series of related threats to release, or disclose confidential and personal information which resides within your **computer network**
- K. **Cyber extortion monies** means:
1. Monies payable by **you**, with **our** prior written consent, to a person(s) or entity(ies) reasonably believed to present a **cyber extortion threat** for the purpose of terminating such a threat; or
 2. Other reasonable and necessary costs and expenses paid by **you** that have been subject to **our** prior written consent directly resulting from a **cyber extortion threat**.
- L. **Damages** means a monetary judgment, consumer redress fund, award, or settlement including punitive damages to the extent insurable under the law pursuant to which this policy is construed. **Damages** does not include:
1. **Your** future profits or royalties, restitution, or disgorgement of **your** profits;
 2. The cost to comply with orders granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief;
 3. Loss of **your** fees or profits, return or offset of **your** fees or charges, or **your** commissions or royalties provided or contracted to be provided;
 4. Taxes, fines, penalties, or sanctions; however, this does not include civil fines or penalties to the extent insurable by law;
 5. Any damages that are a multiple of compensatory damages;
 6. Any amount which **you** are not financially or legally obligated to pay;
 7. Disgorgement of any remuneration or financial advantage to which **you** were not legally entitled;
 8. Monetary judgments, awards, or settlements which are uninsurable under the law pursuant to which this policy is construed;
 9. Past, present and/or future license fees of any kind; or
 10. Liquidated damages.
- M. **Data** means any machine readable information, including ready for use programs or electronic data, irrespective of the way it is used and rendered including, but not limited to, text or digital media.
- N. **Delivered programs** means programs, applications, and software where the development stage has been finalized, and are ready for operational use, having passed all test-runs and been proven successful in a live environment.

- O. **Denial of service** means unauthorized or unexpected interference or malicious attack on **your computer network** that restricts or prevents access to **your computer network** by persons or entities authorized to gain access to it.
- P. **Employee(s)** means any individual in **your** service, including any part-time, seasonal, and temporary **employees** who are under a contract of service with **you** or any individual who is working on **your** behalf, or at **your** direction, and under **your** direct control. **Employee** does not include any partner or director of **you**.
- Q. **Extended reporting period** means the period of time after the end of the **policy period** for reporting **claims** as provided in Section X of this policy.
- R. **First party costs and expenses** means costs authorized by **us**, which may include:

1. **Your** actual costs to restore, re-collect, or replace **your data**, including expenses for materials, working time, and overhead cost allocation at the affected location(s) associated with restoring or replacing **your data**;
2. **Your** reasonable and necessary costs and expenses of specialists, investigators, forensic auditors, or loss adjusters retained by **you** for the purpose of conducting a review or audit to substantiate that a **first party insured event** is occurring or has occurred or to determine the scope, cause, or extent of any theft or unauthorized disclosure of **your** information or **data**, **privacy breach**, or breach of **privacy regulations**;
3. **Your** reasonable and necessary costs and expenses for the use of rented, leased, or hired external equipment, services, labor, premises, or additional operating costs, including staff overtime and expenditure, provided that these costs and expenses were reasonably incurred as a result of a **first party insured event**; or
4. Any other reasonable and necessary costs and expenses that **you** incur directly as a result from a **first party insured event**.

First party costs and expenses do not include loss of profits or **loss of business income**. **First party costs and expenses** are part of, and not in addition to, the Limit of Liability. Stated within Item 3 of the Declarations.

First party insured event shall also mean **your** reasonable and necessary costs and expenses of specialists, investigators, forensic auditors, or loss adjusters retained by **you** for the purpose of conducting a review or audit to substantiate or to determine the scope, cause, or extent of any theft or unauthorized disclosure of **your** information or **data**, **privacy breach**, or breach of **privacy regulations** when **your** portable media and **data** storage devices are away from **your** premises.

- S. **First party insured event** means monetary loss sustained by **you** that occurs at **your** premises, or at **your** external backup, data centre or storage facilities

Arising from:

1. **Security breach**;
2. **Computer virus**;
3. **Malicious code**;
4. Accidental damage or destruction of **data** because of **human error**;
5. Electrostatic build-up or electromagnetic disturbances;
6. Accidental damage or destruction of **hardware**, so that the **data** stored is not machine readable;
7. Malfunction or failure of **your computer network**;
8. **Programming error of delivered programs**;
9. Natural disaster, but only for corruption, destruction, or damage to **your data**; or
10. Failure of a direct or back-up power supply or under/over voltage but only if such power supply is owned, operated, and controlled by **you** or by a business process service provider or IT service provider

First party insured event only pertains to **your** loss and does not include coverage for any **claim** made by a third party.

- T. **Hardware** means any and all physical components of a **computer network**.
- U. **Human error** means an operating error, an error in setting parameters, or an unintentional mistake by **your employee** or a third party providing services to **you**, which results in a **first party insured event** sustained by **you**.

V. **Loss of business income** means:

1. The net income (net profit or loss before income taxes) which **you** would have earned had no **first party event** occurred; or
2. Reasonable, continuing, and normal operating expenses that were incurred and affected by a **first party insured event**.

W. **Malicious code** means software designed to infiltrate or damage a **computer network** without the owner's informed consent by a variety of forms including, but not limited to, Trojan horses, spyware, dishonest adware, and crimeware.

X. **Named insured** means the individual, partnership, entity, or corporation designated as such in the Declarations.

Y. **Policy period** means the period of time from the effective date to the expiration date as specified in item 2 of the Declarations, or to any earlier cancellation date.

Z. **Privacy breach** means a breach of confidentiality, infringement, or violation of any right to privacy including, but not limited to, a breach of **your** privacy policy, breach of a person's right of publicity, false light, intrusion upon a person's seclusion, public disclosure of a person's private information.

AA. **Privacy regulations** means the following, as well as similar statutes and regulations, as they currently exist and as amended, associated with the confidentiality, access, control, and use of personally identifiable, non-public information including, but not limited to:

1. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), known as HIPAA, including amendments contained in the HITECH Act and related state medical privacy laws;
2. Gramm-Leach-Bliley Act of 1999 (G-L-B), also known as the Financial Services Modernization Act of 1999;
3. State and Federal statutes and regulations regarding the security and privacy of consumer information;
4. Governmental privacy protection regulations or laws associated with the control and use of personal information;
5. Privacy provisions of consumer protection laws, including the Federal Fair Credit Reporting Act (FCRA) and similar state laws;
6. Children's Online Privacy Protection Act or similar laws; and
7. The EU Data Protection Act or other similar privacy laws worldwide.
8. Identity Theft Red Flags Rules under the Fair and Accurate Credit Card Transactions Act of 2003

BB. **Programming error** means an error which occurs during the development or encoding of a computer program, software, or application, which would, when in operation, result in a malfunction or incorrect operation of a **computer network**.

CC. **Property damage** means physical injury to, impairment, destruction, or corruption of any tangible property, including the loss thereof. **Data** is not considered tangible property.

DD. **Regulatory compensatory award** means a regulatory agency's monetary award to a third party, including a sum or money which you are legally required to deposit into a fund as equitable relief for the payment of consumer claims due to an adverse judgement or settlement of a regulatory proceeding. **Regulatory compensatory award** does not include a criminal penalty or fine issued by a regulatory agency of any kind, including federal, state, or local governmental agencies.

EE. **Retention** means the amount specified in item 4 of the Declarations.

FF. **Retroactive date** means the date specified in item 5 of the Declarations.

GG. **Security breach** means an intentional, malicious or wilful act that results in the misuse of **your computer network** to modify, delete, corrupt, or destroy **data** or a **denial of service**, or the actual or alleged act, error, omission, or breach of duty to protect the security and confidentiality of non-public proprietary corporate information, personally identifiable non-public information of a medical or financial nature, or other personal or confidential paper records or electronic information. This includes, but is not limited to, electronic or non-electronic security failures, failure to protect against anticipated threats or hazards, failure to protect against unauthorized access, use, disclosure or physical theft of

information, or **hardware**, false communications, or social engineering techniques designed to trick the user into surrendering personal information (commonly known as “phishing” or “pharming”).

HH. **Subsidiary(ies)** means:

1. Any entity of which more than 50% of the issued and outstanding shares are owned by **you**, on or before the **policy period**; or
2. **Any entity** which becomes a **subsidiary** during the **policy period** provided that such entity does not represent more than a twenty percent (20%) increase in **your** total assets, employee count or gross revenue as of the date of the acquisition. Where such entity represents an increase in **your** total assets, employee count or gross revenue of more than twenty percent (20%), such entity shall be deemed a **subsidiary** under this policy, but only upon the condition that within thirty (30) days of it becoming a **subsidiary**, **you** shall have provided **us** with full particulars of the new **subsidiary** and agreed to any additional premium and/or amendment of the provisions of this policy required by **us** relating to such new **subsidiary**, subject to advanced receipt, review and acceptance by **us** of full and complete underwriting information.

II. **Waiting period** means the number of hours that must elapse as provided in item 4 of the Declarations before the recovery of **loss of business income** can be considered.

JJ. “**We**,” “**us**” or “**our**” means the Underwriters or insurers providing this insurance.

KK. “**You**,” “**your**” and “**yours**” means the insured as provided in Section 6 of this policy.

VIII. EXCLUSIONS

We shall not be liable for any **claim** directly or indirectly arising out of or in any way attributable to:

- A. Any **claim** or circumstance arising from any wrongful acts or the same, related, or continuing acts, facts, or circumstances under Insuring Agreement 1, **first party insured event** under Insuring Agreement 2, **privacy breach**, **security breach**, or breach of **privacy regulations** under Insuring Agreement 3, **security breach**, **privacy breach**, or breach of **privacy regulations** under Insuring Agreement 4, and/or **cyber extortion threat** under Insuring Agreement 5, which were first committed or occurred prior to the **retroactive date**;
- B. Any **claim** or circumstance arising from any wrongful acts under Insuring Agreement 1, **first party insured event** under Insuring Agreement 2, **privacy breach**, **security breach**, or breach of **privacy regulations** under Insuring Agreement 3, **security breach**, **privacy breach**, or breach of **privacy regulations** under Insuring Agreement 4, and/or **cyber extortion threat** under Insuring Agreement 5, which took place prior to the inception of this policy, if **you** knew or could have reasonably foreseen such acts, facts, or circumstances could be the basis of a **claim** or circumstance;
- C. Any **claim** or circumstance notified to a previous insurer prior to the inception of this policy;
- D. Any **claim** made by an insured against another insured; unless such claim is brought by an **employee** under insuring agreements 1, 3 and 4;
- E. Any **claim** arising out of **your** willful, deliberate, malicious, fraudulent, dishonest, or criminal act. Notwithstanding the foregoing, the insurance afforded by this policy shall apply to **claims expenses** incurred in defending any such **claim**, but shall not apply to any **damages** that **you** might become legally obligated to pay. **We** will have the right to recover those **claims expenses** incurred from those parties found to have committed criminal, willful, deliberate, dishonest, fraudulent, or malicious acts by a court, jury, or arbitrator. However, with respect to only a **first party insured event** under Insuring Agreement 2, this exclusion does not bar coverage for **employee** sabotage;
- F. Any **claim** arising out of **your** activities as a trustee, partner, officer, director, or employee of any employee trust, charitable organization, corporation, company, or business other than that of the **named insured**;
- G. **Your** insolvency or bankruptcy or the insolvency or bankruptcy of any other entity including, but not limited to, the failure, inability, or unwillingness to make payments because of the insolvency, liquidation, or bankruptcy of any individual or entity;
- H. **Bodily injury**, except that this exclusion shall not apply to wrongful infliction of emotional distress or mental anguish arising out of actual or alleged **privacy breach**, **security breach**, or breach of **privacy regulations**;
- I. **Property damage**;

- J. The confiscation, commandeering, requisition, destruction of or damage to, **hardware** by order of a government de jure or de facto, or by any public authority for whatever reason;
- K. Satellite failures; electrical or mechanical failures and/or interruption including, but not limited to, electrical disturbance, spike, brownout, or blackout; and outages to electricity, gas, water, telephone, cable, telecommunications, or other infrastructure, unless such infrastructure is under **your** operational control and unless such **claim** forms part of a **first party insured event**;
- L. The wear and tear, drop in performance, progressive or gradual deterioration, or aging of electronic equipment and other property or **hardware** used by **you**; or the failure of **you** or those acting on **your** behalf to maintain any computer, **computer network** or network, computer software, or any other equipment;
- M. Failure or gradual deterioration of overhead transmission, distribution lines or subterranean insulation or cabling;
- N. Fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God, or any other physical event however caused, unless such **claim** is part of a **first party insured event**;
- O. The actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products, or services; including **your** cost guarantees, cost representations, contract price, or cost estimates being exceeded;
- P. The violation of any economic or trade sanctions by the United States government including, but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC");
- Q. Any breach of any express, implied, actual, or constructive contract, warranty, guarantee, or promise, but this exclusion does not apply to:
1. Any liability or obligation **you** would have in the absence of such contract or agreement;
 2. A breach of **your** privacy policy;
- R. The liability of others assumed by **you** under any contract or agreement, either oral or written, except and to the extent **you** would have been liable in the absence of such contract or agreement;
- S.
1. Any presence of pollutants or contamination of any kind;
 2. Any actual, alleged, or threatened discharge, dispersal, release, or escape of pollutants or contamination of any kind including, but not limited to, solid, liquid, gaseous, or thermal irritants or contaminants including asbestos, smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste (waste includes materials to be recycled, reconditioned, or reclaimed), wherever such occurs, whether or not such results from **your** activities or the activities of others, is sudden or gradual, and is accidental, intended, foreseeable, expected, fortuitous, or inevitable;
 3. Any governmental or regulatory directive or request that **you** or anyone acting under **your** direction or control test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize said "pollutants;" or
 4. Any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants or in any way respond to or assess the effects of pollutants or contamination of any kind.
- T. The actual or alleged loss of value of any securities;
- U. The actual or alleged purchase, sale, offer of, or solicitation of an offer to purchase or sell securities, or violation of any securities law including, but not limited to, the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002, or any regulation promulgated under the foregoing statutes, or any federal, state, local, or foreign laws similar to the foregoing statutes, including "Blue Sky" laws, whether such law is statutory, regulatory, or common law;
- V. The actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as "Racketeer Influenced And Corrupt Organizations Act" or "RICO"), as amended, or any regulation promulgated under the foregoing statutes, or any similar federal, state, local or foreign laws, whether such law is statutory, regulatory or common law;
- W. The actual or alleged government enforcement of any state or federal regulation including, but not limited to, regulations promulgated by the United States Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission; however this exclusion does not apply:
1. To the extent that a **claim** falls under Insuring Agreement 3

- X. Any employer-**employee** relations policies, practices, acts, or omissions, any actual or alleged refusal to employ any person, or any misconduct with respect to **employees**. This includes, but is not limited to, claims arising under workers compensation or similar laws unless such claims are made by an **employee** arising out of a security breach, privacy breach or breach of privacy regulations
- Y. Any actual or alleged discrimination of any kind including, but not limited to, age, color, race, gender, creed, national origin, marital status, sexual preferences, disability, or pregnancy;
- Z. The violation of any pension, healthcare, welfare, profit sharing, mutual, or investment plans, funds, or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974 and its amendments and/or the Pension Protection Act of 2006 and its amendments, or any regulation, ruling, or order issued pursuant thereto;
- AA. Strikes or similar labor actions, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular uprising, military uprising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions. This exclusion also excludes coverage for any loss or damages arising out of confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority. This exclusion also excludes loss, cost, **damages**, or **claims expenses** of whatsoever nature directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing, or in any way relating to the above;
- BB. All losses or expenses arising from a terrorist act. For the purposes of this agreement, a terrorist act means an act or series of acts including the use of force or violence of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s), committed for political, religious, or ideological purposes, including the intention to influence any government and/or to put the public in fear for such purposes;
- CC. Gambling, pornography, prizes, awards, coupons, or the sale or provision of prohibited, restricted, or regulated items including, but not limited to, alcoholic beverages, tobacco, or drugs;
- DD. Any fine or penalty arising out of any agreement by **you** to comply with or follow the Payment Card Industry Standard or any Payment Card Company Rules; or implement, maintain, or comply with any security measures or standards related to any payment card data including, but not limited to, any fine or penalty imposed by a payment card company on a merchant bank or payment processor that **you** have paid or agreed to reimburse or indemnify. However, this exclusion shall not apply to civil penalties and fines to the extent insurable by law arising out of an otherwise covered **claim** under Insuring Agreement 3;
- EE. Any actual or alleged unfair competition, antitrust violations, deceptive trade practices, or restraint of trade or antitrust statute, legislation, or regulation;
- FF. The actual or alleged infringement of any patent or the misappropriation, theft, copying, display or publication of any trade secret by, or with the active cooperation, participation, or assistance of any insured, any of **your** former **employees**, subsidiaries, directors, executive officers, partners, principals, trustees, or any of **your** successors or assignees;
- GG. The use of programs that are not **delivered programs**, however this exclusion applies only in respect of Insuring Agreement 2;
- HH. **Your** knowing use of illegal or unlicensed programs that are in violation of the provisions or laws referring to software protection; or
- II. The existence, emission, or discharge of any electromagnetic field, electromagnetic radiation, or electromagnetism that actually or allegedly affects the health, safety, or condition of any person or the environment or that affects the value, marketability, condition, or use of any property.
- JJ. Radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

IX. INNOCENT INSURED PROVISION

- A. Whenever coverage under this policy would be excluded, suspended, or lost because of non-compliance with Section XI, relating to the giving of notice of **claim** to **us**, with respect to which any other insured shall be in default solely because of the failure to give such notice or concealment of such failure by one or more insureds responsible for the loss or damage otherwise insured hereunder, then such insurance as would otherwise be afforded under this policy shall cover and be paid with respect to those insureds who did not personally commit or personally participate in

committing or personally acquiescing in such failure to give notice, provided that the insured entitled to the benefit of this provision shall comply with Section XI promptly after obtaining knowledge of the failure of any other insured to comply therewith. Notwithstanding the foregoing, the reporting of any such **claim** must be made during the **policy period** or **extended reporting period**, if applicable.

- B. Any insurance as afforded by this provision shall not cover a **claim** if a current executive officer or director failed to give notice as required by Section XI for a **claim** or circumstance that could reasonably be the basis of a **claim**, which was known to a current executive officer or director.
- C. Whenever coverage under this policy would be excluded, suspended, or lost because of Exclusion E relating to willful, deliberate, malicious, fraudulent, dishonest, or criminal acts by any insured, then such insurance as would otherwise be afforded under this policy shall cover and be paid with respect to those insureds who did not personally commit, personally participate in committing, personally acquiesce, or remain passive after having personal knowledge thereof.

X. EXTENDED REPORTING PROVISIONS

- A. Automatic Extended Reporting Period: If either **you** or **us** shall cancel or non-renew this policy, **you** shall have the right following the effective date of such cancellation or non-renewal, to a period of sixty (60) days in which to give written notice to **us** of **claims**, provided that any actual or alleged wrongful acts under Insuring Agreement 1, **first party insured event** under Insuring Agreement 2, **privacy breach, security breach**, or breach of **privacy regulations** under Insuring Agreement 3, **security breach, privacy breach** or breach of **privacy regulations** under Insuring Agreement 4, or **cyber extortion threat** under Insuring Agreement 5 occurred prior to the end of the **policy period** and are otherwise covered by this policy.
- B. Extended Reporting Period Endorsement: In the event of cancellation or non-renewal of this policy, **you** shall have the right, upon payment in full and not proportionally or otherwise in partof:
 - (1) 100% of the premium set forth in item 6 of the Declarations if **we** cancel or non-renew; or
 - (2) 200% of the premium set forth in item 6 of the Declarations if **you** cancel or non-renew

to have issued an endorsement providing a 12-month **extended reporting period** for **claims**, provided that any actual or alleged wrongful acts under Insuring Agreement 1, **first party insured event** under Insuring Agreement 2, **privacy breach, security breach**, or breach of **privacy regulations** under Insuring Agreement 3, **security breach, privacy breach** or breach of **privacy regulations** under Insuring Agreement 4, or **cyber extortion threat** under Insuring Agreement 5, occurred prior to the end of the **policy period** and are otherwise covered by this policy and are reported to **us** during the **extended reporting period**, subject to the conditions set forth with regard to the **extended reporting period** herein. In order for the **named insured** to purchase the **extended reporting period** endorsement, the payment of the additional premium for the **extended reporting period** must be paid to **us** within thirty (30) days of the non-renewal or cancellation.

- C. The **extended reporting period** in A. and B. above only relates to those Insuring Agreement(s) purchased as shown in the Declarations.
- D. The Limit of Liability for the **extended reporting period** shall be part of, and not in addition to, the Limit of Liability for the **policy period**.
- E. The quotation by **us** of a different premium or **retention** or Limit of Liability or changes in policy language for the purpose of renewal shall not constitute a refusal to renew by **us**.
- F. The right to the **extended reporting period** shall not be available to the **named insured** where cancellation or non-renewal by **us** is because of non-payment of premium or **your** failure to pay amounts within the applicable **retention**.
- G. All notices and premium payments with respect to the **extended reporting period** option shall be directed to **us** through the entity named in item 8 of the Declarations.
- H. At the commencement of the **extended reporting period** in Item B. above, the entire premium shall be deemed earned and in the event the **named insured** terminates the **extended reporting period** for any reason prior to its natural expiration, **we** will not be liable to return any premium paid for the **extended reporting period**.
- I. Change of Control Extended Reporting Period: In the event of **your** acquisition by, or merger into another entity, or **your** liquidation or dissolution, or the sale or disposition of substantially all of **your** assets, all of which collectively and alternatively constitute a "change of control", provided that **you** have otherwise complied with the terms and conditions of this policy, **you** may notify **us** within thirty (30) days of the change of control, of **your** election for an **extended reporting period** of twelve (12) months from the date of such change of control. Such change of control **extended reporting period** shall cover **claims** made under Insuring Agreement 1, or **first party insured event** under Insuring Agreement 2, **privacy breach, security breach**, or breach of **privacy regulations** under Insuring Agreement 3,

security breach, privacy breach or breach of **privacy regulations** under Insuring Agreement 4, or **cyber extortion threat** under Insuring Agreement 5, and reported to **us** during this change of control **extended reporting period**, but only in respect of any **claim** which took place prior to the end of the **policy period** and is otherwise covered by this policy.

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

- A. If any **claim** under Insuring Agreement(s) 1 or 3 is made against **you, your** risk manager, General Counsel, senior officer, or director shall forward to **us** as soon as practicable through persons named in item 7 of the Declarations every demand, notice, summons, or other process received by **you** or **your** representative.
- B. If **you** have any **claim** under Insuring Agreement(s) 2, 4, or 5, **your** risk manager, General Counsel, senior officer, or director shall forward to **us** as soon as practicable through persons named in item 7 of the Declarations such **claim**.
- C. If during the **policy period**, **you** become aware of any acts, facts, or circumstances that could reasonably be a basis for a **claim**, **your** risk manager, General Counsel, executive officer, or director must give written notice of the following information to **us**, through persons named in item 7 of the Declarations, as soon as practicable during the **policy period**:
1. Specific details of the acts, facts, or circumstances that could reasonably be the basis for a **claim**;
 2. Possible **damages**, penalties, or other amounts potentially covered under this policy that may result or has resulted from the facts or circumstances;
 3. Details regarding how **you** first became aware of the acts, facts, or circumstances; and
 4. The **computer network** security and event logs, which provide evidence of the alleged incident.
- Any subsequent **claim** arising out of such acts, facts, or circumstances which is the subject of the written notice will be deemed to be a **claim** at the time written notice complying with the above requirements was first given to **us**.
- D. A **claim** shall be considered to be reported to **us** when notice is first given to **us** through persons named in item 7 of the Declarations.

XII. CALCULATION OF THE NET INCOME ASPECT OF LOSS OF BUSINESS INCOME UNDER INSURING AGREEMENT 2

The calculation of the net income aspect of **loss of business income** under Insuring Agreement 2 shall be based on an analysis of the revenues and costs generated during each month of the twelve (12) months prior to the loss occurring and will also take into account the reasonable projection of future profitability or otherwise had no loss occurred and will include all material changes in market conditions that would affect the future profits generated.

Requests made by **you** for indemnity by **us** shall be accompanied by a computation of the loss. This shall set out in detail how the loss has been calculated and what assumptions have been made. **You** shall produce any documentary evidence, including any applicable reports, books of accounts, bills, invoices, and other vouchers and copies of the such which **we** may require, and **you** shall afford **us** or **our** agent every assistance in their investigations.

Any **claims** payment under this Section will, where applicable, be reduced by the extent to which **you**:

- A. Use damaged or undamaged **data**; or
- B. Make use of available stock, merchandise, or other **data**; or
- C. Use substitute facilities, equipment, or personnel.

We will not indemnify **you** under this section in respect of **loss of business income** incurred during the time of the **waiting period** listed on item 4 of the Declarations.

XIII. ASSISTANCE AND COOPERATION

- A. **You** shall cooperate with **us** in all investigations. **You** shall execute or cause to be executed all papers and render all assistance as requested by **us**. Part of this assistance may require **you** to provide copies of a third party's system security and event logs.

- B. Upon **our** request, **you** shall assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to **you** with respect to which insurance is afforded under this policy; and **you** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses at **your** own cost.
- C. **You** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award, or dispose of any **claim** without **our** written consent. However, the prompt public admission of a **security breach** potentially impacting non-public personally identifiable information of **employees** or third parties as required by governmental privacy legislation or credit card association operating requirements will not be considered as an admission of liability requiring **our** prior consent; however **we** are to be informed as soon as practicable of such public admission if such public admission is a circumstance that could lead to a **claim**.
- D. **We** shall have the right to make any investigation **we** deem necessary with respect to coverage including, but not limited to, any investigation with respect to the **application**, statements made in the **application** and any supplemental material submitted therewith.
- E. **You** shall submit for examination under oath by **our** representative, if requested, in connection with all matters relating to this policy.

XIV. INSPECTION AND AUDIT

We shall be permitted, but not obligated, to inspect any of **your** property, operations, or records at any time.

XV. SUBROGATION

If any payment is made under this policy and there is available to **us** any of **your** rights of recovery against any third party, then **we** shall maintain all such rights of recovery. **You** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. **You** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **damages, claims expenses**, or any other amounts paid by **us**, and lastly to the **retention**. Any additional amounts recovered shall be paid to **you**.

XVI. OTHER INSURANCE

This policy shall apply in excess of any other valid and collectible insurance policy available to **you**, including any **retention** or deductible portion thereof, unless such other insurance is written only as specific excess insurance over the Limit of Liability of this policy.

XVII. ENTIRE AGREEMENT

By acceptance of this policy, **you** agree that this policy embodies all agreements between **you** and **us** relating to this insurance. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or stop **us** from asserting any right under the terms of this insurance; nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this policy and signed by **us**.

XVIII. ASSIGNMENT

The interest hereunder is not assignable by you or your subsidiaries. If an insured shall die or be adjudged incompetent, such insurance shall cover your legal representative as you would be covered under this policy.

XIX. CANCELLATION BY YOU

If this policy is cancelled by you, we will refund the unearned premium computed at the customary short rate. No premium will be refunded where any claims or circumstances have been notified under this policy.

XX. CANCELLATION BY US

We will only cancel this policy if you fail to pay the premium within forty-five (45) days of the inception of this policy period, or if a principal, partner, executive officer, or director intentionally makes a material misrepresentation to us in regard to any claim notified to us under this policy; in which case, we will provide a notice of cancellation in accordance with applicable law.

XXI. WORDS AND TITLES OF PARAGRAPHS

The titles of paragraphs, section, provisions, or endorsements of or to this policy are intended solely for convenience and reference and are not deemed in any way to limit or expand the provisions to which they relate and are not part of this policy. Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

XXII. DISPUTE RESOLUTION

- A. No action shall lie against **us** unless, as a condition precedent thereto, there shall have been full compliance with all terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment or award against **you** after actual trial or arbitration or by written agreement of **you**, the claimant, and **us**.
- B. No person or organization or any legal representative thereof who has secured such judgment, award, or written agreement shall thereafter be entitled to make a **claim** under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join **us** as a party to an action or other proceeding against **you** to determine **your** liability, nor shall **we** be impleaded by **you** or **your** legal representative. Bankruptcy or insolvency of **you** or of **your** estate shall not relieve **us** of **our** obligations hereunder.
- C. Mediation. If any dispute arises between any insured and **us** involving this policy and/or a **claim** hereunder, it is hereby mutually agreed by **you** and **us** that such dispute shall be referred to a qualified mediator in a good faith effort to negotiate a resolution of the dispute, prior to the initiation of any arbitration or other proceedings. The party electing to mediate shall provide written notice to the other party setting forth its request to mediate and a brief statement regarding the issue to be mediated. The persons named in item 9 of the Declarations are authorized and directed to accept the Notice of Mediation on behalf of **us**. The **named insured** is authorized and directed to accept the Notice of Mediation on behalf of any insured.
- D. Arbitration. As a condition precedent to any right of action hereunder, in the event that a good faith effort to mediate pursuant to Section XXII (C) above cannot resolve a dispute between any insured and **us** involving this policy or a **claim** or circumstance hereunder, it is hereby mutually agreed that such dispute shall be determined by final and binding arbitration before a single arbitrator. If the parties cannot mutually select the arbitrator, the parties will refer the selection of the arbitrator to the American Arbitration Association.

XXIII. SERVICE OF SUIT CLAUSE (U.S.A.)

- A. Subject to the application of Section XXII, it is agreed that in the event of **our** failure to pay any amount claimed to be due under this policy, **we** herein, at **your** request, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this clause constitutes or should be understood to constitute a waiver of **our** rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or seek a transfer of a case to another court as permitted by the laws of the United States or any state in the United States. It is further agreed that service of process in such suit may be made upon **our** representative, designated in item 9 of the Declarations, and that in any suit instituted against any one of them upon this contract; **we** will abide by the final decision of such court, or of any appellate court in the event of an appeal.
- B. **Our** representative designated in item 9 of the Declarations is authorized and directed to accept service of process on **our** behalf in any such suit and/or upon **your** request to give a written undertaking to **you** that they will enter a general appearance upon **our** behalf in the event such a suit shall be instituted.
- C. Pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, **we** hereby designate the Superintendent, Commissioner, or Director of Insurance or other officer specified for that purpose in the statute, or his successor in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on **your** behalf or any beneficiary hereunder arising out of this policy, and **we** hereby designate **our** representative listed in item 9 of the Declarations as the person to whom the said officer is authorized to mail such process or a true copy thereof.

XXIV. CHOICE OF LAW

The interpretation of this policy and any disputes involving this policy shall be resolved applying the law designated in item 10 of the Declarations.

XV. WARRANTY BY YOU

By acceptance of this policy, all insureds agree that the statements contained in the **application**, any application for insurance if this policy is a renewal, and any supplemental materials submitted therewith are their agreements and representations, which shall be deemed material to the risk assumed by **us**, and that this policy is issued in reliance upon the truth thereof.

The misrepresentation or non-disclosure of any matter by **you** or **your** agent in the **application**, any application for insurance if this policy is a renewal, or any supplemental materials submitted to **us**, will render this policy null and void and relieve **us** from all liability under this policy.

The **application** and any application for insurance if this policy is a renewal, and any supplemental materials submitted to **us** are deemed incorporated into and made a part of this policy.

XVI. FORFEITURE

Any:

1. action or failure to act by **you** with the intent to defraud **us**; or
2. material misrepresentation or non-disclosure of any material fact or **claims** by **you** in the **application** or in any supplemental materials submitted to **us**;

shall render this policy null and void, and all coverage hereunder shall be forfeited.

SPECIMEN