



In consideration of the payment of the premium, the Insurer and the **Insureds** agree as follows:

I. INSURING CLAUSES

A. First Party Coverage

The Insurer shall pay, on behalf of an **Insured**, **First Party Expenses** on account of a **First Party Event** that first occurs during the **Policy Period**.

B. Third Party Coverage

The Insurer shall pay, on behalf of an **Insured**, **Third Party Expenses** on account of a **Claim** first made during the **Policy Period**.

II. EXCLUSIONS

No coverage shall be provided for **Third Party Expenses** on account of a **Claim** or **First Party Expenses** on account of a **First Party Event**:

- A. Antitrust – based upon, arising out of or resulting from anti-trust, price fixing, discrimination, restraint of trade, monopolization, unfair trade practices or predatory pricing, provided that this Exclusion A shall not apply to an otherwise covered **Claim** that is a **Regulatory Proceeding** against an **Insured** for a **Wrongful Act**;
- B. Bodily Injury/Property Damage – for bodily injury, mental anguish, emotional distress, humiliation, sickness, disease or death of any person or damage to or destruction of any tangible property, including loss of use thereof, whether or not such property is damaged or destroyed, provided that this Exclusion B shall not apply to any **Claim** for any **Wrongful Act** actually or allegedly resulting in mental anguish, emotional distress or humiliation;
- C. Conduct – based upon, arising out of or resulting from any deliberate fraud, deliberate criminal act or deliberate violation of any statute or regulation, or any illegal profit or remuneration, by an **Insured**, established by a final, non-appealable adjudication adverse to such **Insured** in any underlying action, and the Insurer shall not utilize a declaratory action or proceeding brought by or against the Insurer to establish such final, non-appealable adjudication, provided that this Exclusion C shall not apply to a **Rogue Employee**, as applicable;
- D. Contract – for any liability in connection with any contract or agreement to which an **Insured** is a party, provided that this Exclusion D shall not apply to: 1. the extent that such **Insured** would have been liable in the absence of such contract or agreement; 2. any liability or obligation under a confidentiality or non-disclosure agreement; 3. any liability or obligation to maintain the security or confidentiality of **Corporate Information** or **Personal Information**; or 4. any **Claim** for a breach of an agreement between an **Insured** and a financial institution, **Credit Card** company or processor, or independent service operator enabling such **Insured** to accept **Credit Cards** or other payment cards for payments or donations;
- E. Electronic Funds Transfer – based upon, arising out of or resulting from any actual or alleged transfer of any fund, money or security, provided that this Exclusion E shall not apply with respect to any **Fraudulent Payment Instruction**;
- F. Employment Practices – based upon, arising out of or resulting from any employment-related **Wrongful Act**;

- G. Data Collection – based upon, arising out of or resulting from the unauthorized or unlawful collection, acquisition or use of **Personal Information** or **Corporate Information** by an **Insured** or the failure to provide adequate notice that such information is being collected;
- H. False Advertising – based upon, arising out of or resulting from false or deceptive advertising;
- I. Government and Licensing – based upon, arising out of or resulting from any action brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, the Securities and Exchange Commission or any other federal, state or local government agency, or The American Society of Composers, Authors and Publishers, Broadcast Music, Inc., The Recording Industry Association of America, The Society of European Stage Authors and Composers or other licensing or rights organizations, in any such organization's regulatory, quasi-regulatory, or official capacity, function or duty, provided this Exclusion I shall not apply to any **Claim** that is a **Regulatory Proceeding** against an **Insured** for a **Wrongful Act**;
- J. Governmental Order – based upon, arising out of or resulting from any court order or demand which requires an **Insured** to provide any law enforcement, judicial, administrative or regulatory body or other governmental authority access to **Personal Information** or **Corporate Information**;
- K. Infrastructure Failure – based upon, arising out of or resulting from any electrical or mechanical failure or interruption not under an **Insured's** operational control, including any electrical disturbance, surge, spike, brownout or blackout, and any outage to gas, water, telephone, cable, satellite, telecommunications or other infrastructure;
- L. Insured v. Insured – brought by or on behalf of:
1. an **Insured**, in any capacity, against any other **Insured**; or
 2. any entity: (a) that is either controlled, managed or operated, directly or indirectly, in whole or in part, by an **Insured**; or (b) in which an **Insured** possesses an ownership interest of at least 10%, where such entity is a publicly traded company, or 30% where such entity is a privately held company,
- provided that this Exclusion L shall not apply with respect to an **Insured Person** to the extent such **Insured Person** is alleging a **Privacy Event** or failure to disclose a **Network Security Event**;
- M. Intellectual Property – based upon, arising out of or resulting from any infringement of copyright, patent, trademark, trade dress, trade name or service mark, or any misappropriation of ideas, trade secrets or other intellectual property rights, provided that this Exclusion M shall not apply with respect to any **Claim**:
1. involving misappropriation of a trade secret resulting from a **Network Security Event**; or
 2. for an **Electronic Publishing Event**;
- N. Media – based upon, arising out of or resulting from the creating, preparing, producing, gathering, collecting, researching, serializing, broadcasting, disseminating, releasing, publishing, distributing, exhibiting, performing, printing or licensing of **Material**, or any **Material** created by or on behalf of an **Insured** to advertise, publicize, promote or sell media, including any **Material** created by or on behalf of an **Insured** for any social media platform, provided that this Exclusion N shall not apply to a **Claim** for a **Privacy Event** or an **Electronic Publishing Event**;
- O. Over-Redemption – based upon, arising out of or resulting from any price discounts, awards, coupons, prizes or other valuable consideration given in excess of the contracted or expected amount;
- P. Pending or Prior Proceedings – based upon, arising out of or resulting from any:
1. actions, proceedings or **Claims** commenced against an **Insured** on or prior to the **Retroactive Date**; or
 2. acts, facts or circumstances which an **Insured** reasonably could have foreseen, on or prior to the **Policy Period**, would result in a **Claim** against such **Insured**,

provided that this Exclusion P shall not apply where this Policy is a renewal of a policy issued by the Insurer to the **Parent Company**.

- Q. Pollution and Biological Agents – based upon, arising out of or resulting from any:
1. discharge, emission, release, dispersal or escape of any **Pollutants** or any threat thereof;
 2. treatment, removal or disposal of any **Pollutants**;
 3. regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**; or
 4. **Biological Agents**,
- including any **Claim** for financial loss to a **Company**, its securityholders or its creditors based upon, arising from or in consequence of any matter described in paragraphs 1, 2, 3, or 4 above;
- R. Prior Notice – based upon, arising out of or resulting from any claim reported, or any circumstance reported and accepted, under the insurance policy (including any policies of which such policy is a renewal policy) replaced by this Policy, provided that this Exclusion R shall not apply where this Policy is a renewal of a policy issued by the Insurer to the **Parent Company**.
- S. Recorded or Distributed Materials – based upon, arising out of or resulting from any violation of the:
1. Telephone Consumer Protection Act of 1991; or
 2. CAN-SPAM Act of 2003,
- including any amendment thereto, any regulation promulgated thereunder, any similar federal, state or other statutory or common law, or any similar regulation;
- T. RICO – based upon, arising out of or resulting from any violation of the Organized Crime Control Act of 1970, any amendment thereto, any regulation promulgated thereunder, any similar federal, state or other statutory or common law, or any similar regulation;
- U. Seizure, Confiscation, Destruction – based upon, arising out of or resulting from any seizure, confiscation, destruction or nationalization of a **Computer System** by order of any governmental agency or public authority;
- V. Theft – for the theft of money or securities from an **Insured**, provided that this Exclusion V shall not apply with respect to any **Fraudulent Payment Instruction**;
- W. Wage and Hour – based upon, arising out of or resulting from any violation of the responsibilities, obligations or duties imposed by any law governing wage, hour or payroll, including the Fair Labor Standards Act; and
- X. War – based upon, arising out of or resulting from war, whether or not declared, civil war, insurrection, rebellion or revolution, military, naval or usurped power, governmental intervention, expropriation or nationalization or any act or condition related to any of the foregoing.

Solely with respect to a **Claim** on account of an **Electronic Publishing Event**, no coverage shall be provided for **Loss** on account of that portion of such **Claim**:

1. Intangible Property – based upon, arising out of or resulting from theft of computer or video game points, earnings awards or other intangible property;
2. Failure to Obtain Valid License – based upon, arising out of or resulting from the uploading or downloading of digitized music, movies, software or video games by persons who allegedly or actually failed to obtain valid licenses with respect to such music, movies, software or video games; and
3. Advertising Services - based upon, arising out of or resulting from advertising services performed by an **Insured** on its website on behalf of others.

Solely with respect to a **Fraudulent Payment Instruction**, no coverage shall be provided for that portion of any loss or damage:

1. Authorized Representative – based upon, arising out of or resulting from a **Fraudulent Payment Instruction** or other fraudulent, dishonest or criminal act committed by any authorized representative of an **Insured**, except an **Independent Contractor** of an **Insured**, acting alone or in collusion with others;
2. Broker/Independent Contractor – caused by any broker (including any commission), merchant, factor, consignee, contractor, **Independent Contractor** or other similar agent or representative;
3. Credit Card Loss – based upon, arising out of or resulting from any party's use of or acceptance of any **Credit Card**;
4. Games of Chance – based upon, arising out of or resulting from any gambling, contest, lottery, sweepstake, coupon, promotional game, or other game of chance, including any redemption in connection therewith;
5. Indirect or Consequential Loss – that is an indirect or consequential loss of any kind;
6. Investments – based upon, arising out of or resulting from any investment in securities of, or ownership in, any corporation, partnership, real property or similar investment;
7. Kidnap, Ransom or Extortion – based upon, arising out of or resulting from any kidnap, ransom or extortion payment;
8. Loans and Credit – based upon, arising out of or resulting from any extension of any credit, loan or similar promise to pay;
9. Mail/Carrier for Hire – to money, securities or property while in the mail or in the custody of any carrier for hire other than an armored motor vehicle company;
10. Other Insurance – covered under a commercial crime or financial institution bond issued to an **Insured**; and
11. Products or Services – based upon, arising out of or resulting from any failure, malfunction, illegitimacy or inadequacy of any product or service.

With respect to all Exclusions, no conduct or knowledge of any **Insured** shall be imputed to any other **Insured Person**. Solely with respect to Exclusion C, only the conduct or knowledge of any past, present or future chief executive officer or chief financial officer of a **Company** shall be imputed to such **Company** and its **Subsidiaries**.

III. RETENTION

The applicable Retentions are stated in Item 3 of the Declarations. If different parts of a single **Claim** or **First Party Event** are subject to different Retentions, then the total amount of **Loss** applied to the applicable Retentions shall not exceed the largest applicable Retention.

IV. LIMIT OF LIABILITY

- A. The Cyber Risk Combined Aggregate Limit of Liability stated in Item 3A. of the Declarations represents the maximum amount payable for all **Loss** under this Policy during the **Policy Period**.
- B. The applicable Limit of Liability stated in Item 3B.1. of the Declarations represents the maximum amount payable during the **Policy Period** for all **First Party Expenses** under Insuring Clause A. Such amount shall be part of, and not in addition to, the Limit of Liability stated in Item 3A. of the Declarations.
- C. The applicable limits of liability stated in Items 3B.2., 3B.3. and 3B.4. of the Declarations represent, respectively, the maximum amounts payable during the **Policy Period** for all: (i) **Business Interruption Expenses**; (ii) **Fraudulent Payment Instruction Expenses**; and (iii) **Notification, Identity and Credit Monitoring Costs**. Such amounts shall be part of, and not in addition to, the Limit of Liability stated in Item 3B.1. of the Declarations.
- D. The applicable Limit of Liability stated in Item 3C.1. of the Declarations represents the maximum amount payable during the **Policy Period** for all **Third Party Expenses** under Insuring Clause B. Such amount shall be part of, and not in addition to, the Limit of Liability stated in Item 3A. of the Declarations.
- E. The applicable limits of liability stated in Items 3C.2. and 3C.3. of the Declarations represent, respectively, the maximum amounts payable during the **Policy Period** for all: (i) **Regulatory Proceeding Expenses**; and (ii) **PCI-DSS Assessments**. Such amounts shall be part of, and not in addition to, the Limit of Liability stated in Item 3C.1. of the Declarations.
- F. **Defense Costs** are part of, and not in addition to, the applicable limits of liability stated in Item 3 of the Declarations.

- G. The applicable limits of liability shall be the limits of liability available during any applicable Extended Reporting Period. This Policy shall not be subject to any new or replenished limits of liability during the Extended Reporting Period, and any erosion or exhaustion of any limits of liability prior to the Extended Reporting Period shall erode or exhaust the limits of liability to the same extent during the Extended Reporting Period.
- H. In the event that multiple limits or sublimits of liability are applicable to any **Claim** or **First Party Event**, the highest applicable limit or sublimit of liability shall apply to such **Claim** or **First Party Event**, provided that if a sublimit of liability applies to the **Claim** or **First Party Event**, the maximum amount the Insurer shall apply in connection with such **Claim** or **First Party Event** shall not exceed such sublimit.

V. OTHER INSURANCE

With the exception of insurance which is written specifically as excess of the Limit of Liability of this Policy, this Policy shall be excess of and shall not contribute with any valid and collectible insurance providing coverage for **Loss** for which this Policy provides coverage. However, any payment by an **Insured** of a retention or deductible under any such other insurance shall reduce the Retention under this Policy by the amount of such payment which would otherwise have been **Loss** under this Policy.

VI. REPORTING

- A. Notice of any **Claim** is considered timely when reported to the Insurer as soon as practicable after the **Parent Company's** chief executive officer or chief financial officer first becomes aware of such **Claim**. The Insurer shall not assert that notice of a **Claim** was untimely unless the Insurer is materially prejudiced by the untimely notice. However, in no event shall any notice be provided later than:
 - 1. if the Policy expires (or is otherwise terminated) without being renewed with the Insurer, 60 days after the effective date of such expiration or termination; or
 - 2. the expiration date of the Extended Reporting Period, if applicable.
- B. Notice of any circumstance which could give rise to a **Claim** is optional. If an **Insured** elects to report any circumstance which could give rise to a **Claim**:
 - 1. such notice shall include information regarding the nature of any **Wrongful Acts** or alleged or potential damages and the names of any actual or potential defendants; and
 - 2. any **Claim** that may subsequently arise out of a reported circumstance shall be deemed to have been first made during the **Policy Period** in which such circumstance was first reported.
- C. Upon a **First Party Event**, the **Parent Company** shall give:
 - 1. written notice to the Insurer as soon as practicable, but in no event later than 90 days after the **Parent Company's** chief executive officer or chief financial officer first becomes aware of such **First Party Event**. Notice shall include:
 - (a) a full description of such **First Party Event** and the circumstances surrounding it, which shall include the time, place and cause of the **First Party Event**, including any additional necessary information;
 - (b) a detailed calculation of **Loss**; and
 - (c) all underlying documents and materials that reasonably relate to or form a part of the basis of the proof of such **Loss**; and
 - 2. notice to the Insurer through the QBE Breach Response Team in the same time and manner as specified in paragraph 1 above.

VII. DEFENSE AND SETTLEMENT

- A. With respect to any **Claim**, the Insurer shall have the right and duty to defend any **Claim**. The Insurer shall have such right and duty to defend even if any of the allegations in such **Claim** are groundless, false or fraudulent. Any such duty to defend shall cease upon exhaustion of the applicable Limit of Liability.
- B. With respect to any **Claim**:

1. the **Insured** shall:
 - (a) not agree to any settlement, stipulate to any judgment, incur any **Defense Costs**, admit any liability or assume any contractual obligation without the Insurer's prior written consent, provided that the **Insured** may settle any **Claim** without the Insurer's prior written consent where the amount of such settlement, including **Defense Costs**, does not exceed the applicable Retention;
 - (b) not do anything that could prejudice the Insurer's position or its potential or actual rights of recovery;
 - (c) agree to provide the Insurer with all information, assistance and cooperation which the Insurer may reasonably require; and
 - (d) make any payments in connection with any **First Party Expenses**, or admit or accept any obligation to make any such payments, without the Insurer's prior written consent, where the total of such amount does not exceed the applicable Retention,

provided that the failure of an **Insured** to comply with any of the requirements in paragraphs (a) - (c) above shall not impair the rights of any **Insured Person** under this Policy; and

2. the Insurer shall not settle or compromise any **Claim** without the consent of the **Insured**. If, however, the **Insured** refuses to consent to a settlement or compromise recommended by the Insurer and elects to contest such **Claim** or continue legal proceedings in connection with such **Claim**, then the Insurer's liability for the **Claim** shall not exceed: (i) the amount for which the Insurer could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement or compromise was proposed, plus (ii) 50% of covered **Loss** in excess of such amount proposed, it being a condition of this insurance that the remaining 50% of such covered **Loss** excess of such amount shall be uninsured and carried by the **Insureds** at their own risk.

VIII. ALLOCATION

If the **Insureds** who are afforded coverage for any **Claim** incur **Loss** that is covered by this Policy and loss that is not covered by this Policy because such **Claim** includes both covered and uncovered matters, 100% of **Defense Costs** incurred by such **Insureds** shall be covered **Loss**, and all loss other than **Defense Costs** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal exposures of the parties to such matters.

IX. TREATMENT OF RELATED MATTERS

- A. All **Related Claims** shall be deemed a single **Claim** first made during the policy period in which the earliest of such **Related Claims** was either first made or deemed to have been first made in accordance with Section VI. REPORTING above.
- B. All **Related First Party Events** shall be deemed a single **First Party Event** first made during the earliest policy period in which: 1. the earliest of such **First Party Events** occurred; or 2. notice of any such **First Party Event** is deemed to have been first made pursuant to Section VI. REPORTING, paragraph C.

X. SUBROGATION

- A. In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery, and the **Insureds** shall take all reasonable actions to secure and preserve the Insurer's subrogation rights.
- B. If the Insurer recovers, either through subrogation or recoupment, any portion of an amount paid under this Policy, the Insurer shall reinstate the applicable limit of liability with any amounts recovered up to such amount paid, less any costs incurred by the Insurer in its recovery efforts.

XI. EXTENDED REPORTING PERIOD

- A. If this Policy does not renew or terminates for any reason other than for non-payment of premium, the **Parent Company** shall have the right to purchase an Extended Reporting Period ("ERP") for the premium and time period stated in Item 7 of the Declarations. This right shall lapse, however, unless written notice of election to purchase such ERP, together with payment of the specified premium, is received by the Insurer within 60 days after the effective date of non-renewal or termination of the Policy. In the event the **Parent Company** elects not to purchase an ERP and an **Insured Person** or group of **Insured Persons** elects to purchase such ERP, such ERP shall only apply to **Claims** against such **Insured Person** or group of **Insured Persons**.
- B. The premium for the ERP shall be deemed fully earned at the inception of the ERP.
- C. Any purchased ERP shall become part of the **Policy Period**, extending such **Policy Period** to the expiration of the time period stated in Item 7 of the Declarations, but only with respect to **Third Party Expenses** on account of a **Claim** for a **Wrongful Act**, or **First Party Expenses** on account of a **First Party Event**, taking place prior to the effective date of non-renewal or termination.

XII. CHANGES IN EXPOSURE

A. New Companies and Old Companies

Any **Insured** of a **Subsidiary**:

- 1. acquired before or during the **Policy Period** is eligible for coverage under this Policy, but only for any **Claim** for a **Wrongful Act**, or **First Party Event**, which occurs after the date of such acquisition; or
- 2. ceasing to be a **Subsidiary** before or during the **Policy Period** is eligible for coverage under this Policy, but only for a **Claim** for a **Wrongful Act**, or **First Party Event**, which occurred while such entity was a **Subsidiary**.

B. Acquisition of the **Parent Company**

In the event of a **Change in Control** of the **Parent Company** during the **Policy Period**:

- 1. this Policy shall remain in force until the expiration of the **Policy Period**, but only for any **Claim** for a **Wrongful Act**, or **First Party Event**, which occurred prior to such **Change in Control**; or
- 2. the entire premium for this Policy shall be deemed fully earned as of the effective date of such **Change in Control**.

XIII. NOTICE

- A. All notices to the Insurer under this Policy of a **Claim**, circumstances which could give rise to a **Claim** or **First Party Event** shall be given in writing to the address listed in Item 4A. of the Declarations.
- B. All notices of a **First Party Event** shall be given to the Insurer through the QBE Breach Response Team to the telephone number listed in Item 5 of the Declarations.
- C. All other notices to the Insurer under this Policy shall be given in writing to the address listed in Item 4B. of the Declarations.
- D. Any notice under this Policy shall be effective on the date of mailing or receipt by the Insurer, whichever is earlier.

XIV. TERMINATION OF POLICY

This Policy shall terminate at the earliest of:

- A. 20 days after receipt by the **Parent Company** of written notice from the Insurer of termination for non-payment of premium;
- B. expiration of the **Policy Period**; or
- C. surrender of the Policy to the Insurer by the **Parent Company** or notice to the Insurer by the **Parent Company** stating when such cancellation will take effect, and in either case any returned premium shall be computed on a pro rata basis.

XV. REPRESENTATIONS, SEVERABILITY AND NON-RESCINDABLE COVERAGE

- A. In issuing this Policy, the Insurer has relied upon the information and representations in the **Application** as being true and accurate, and the **Application** is the basis for, and considered incorporated into, this Policy.
- B. The **Application** shall be construed as a separate request for coverage by each **Insured**, without any knowledge possessed by an **Insured** being imputed to any other **Insured Person**.
- C. The Insurer shall not be liable for **Loss** on account of any **Claim** or **First Party Event** based upon, arising out of or resulting from any risk or hazard that the Insurer assumes as a result of any misrepresentation in the **Application** that is made with actual intent to deceive the Insurer (and not solely due to negligence or mere oversight), but only if a past or present chief executive officer or chief financial officer of the **Parent Company** had actual knowledge of any such misrepresentation and reasonably believed that a **Claim** or **First Party Event** would arise from the risk or hazard that was the subject of such misrepresentation.
- D. The Insurer shall not be entitled under any circumstances to void or rescind this Policy with respect to any **Insured**.

XVI. EFFECT OF BANKRUPTCY

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

XVII. WORLDWIDE TERRITORY

This Policy shall apply anywhere in the world, and any reference to laws, however described, shall include all U.S. federal, state and local statutory laws, all amendments to and rules and regulations promulgated under any such laws, common law, and any equivalent body of law anywhere in the world, unless specifically stated to the contrary.

XVIII. ROLE OF THE PARENT COMPANY

The **Parent Company** shall act on behalf of each **Insured** with respect to paying premiums, receiving any return premiums, agreeing to endorsements to this Policy and giving or receiving any notice provided for in this Policy (except notices of a **Claim**, **First Party Event** or circumstance which could give rise to a **Claim**, or notice to apply for an ERP).

XIX. VALUATION AND FOREIGN CURRENCY

All premiums, limits, retentions, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States of America. If any element of **Loss** under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in United States of America dollars at the exchange rate published in The Wall Street Journal on the date the element of **Loss** is due.

XX. ALTERATION, ASSIGNMENT AND HEADINGS

- A. Any change in or modification of this Policy or assignment of interest under this Policy must be agreed to in writing by the Insurer.
- B. The descriptions, headings and sub-headings of this Policy are solely for convenience, and form no part of the terms, conditions or limitations of coverage.

XXI. TRADE SANCTIONS

This insurance coverage does not apply to the extent that trade or economic sanctions of any country prohibit the Insurer or any member of the Insurer's group from providing insurance coverage.

XXII. GLOSSARY

- A. **Acquiring Bank** means any bank which processes a merchant's **Credit Card** transactions and credits those transactions to a merchant's account.

- B. **Additional Expenses** means the reasonable and necessary expenses incurred by an **Insured** to minimize or avoid a **Material Interruption**, provided that such expenses are in excess of such **Insured's** normal operating costs and would not have been incurred in the absence of such **Material Interruption**. **Additional Expenses** shall not exceed the total amount by which total net profit is improved or new loss is minimized during the **Material Interruption** period through mitigation efforts.
- C. **Application** means the application and any accompanying documentation submitted to the Insurer for this Policy or any documentation submitted to the Insurer in connection with the underwriting of this Policy.
- D. **Biological Agent** means any bacteria, mildews, molds, fungi, spores or other micro-organisms or mycotoxins and any of their associated toxins or any virus or other pathogen (whether or not it is a micro-organism).
- E. **Card Association** means MasterCard, VISA, Discover, American Express and other networks of banks that process **Credit Cards**.
- F. **Change in Control** means:
1. the **Parent Company's** merger with, or acquisition by, another entity or the acquisition of all or substantially all of its assets by another entity, such that the **Parent Company** is not the surviving entity; or
 2. when a person or entity, or group of persons or entities acting in concert, acquires securities or voting rights which result in ownership or voting control by such person(s) or entity(ies) of more than 50% of the outstanding securities or voting rights representing the present right to vote for or appoint directors or **Managers** of the **Parent Company**.
- G. **Claim** means any:
1. written demand for monetary or non-monetary (including injunctive) relief, including demands for arbitration, mediation or waiving or tolling of a statute of limitations against an **Insured** for a **Wrongful Act**;
 2. civil proceeding, evidenced by the service of a complaint or similar pleading against an **Insured** for a **Wrongful Act**, including any appeal therefrom;
 3. **Regulatory Proceeding** against an **Insured** for a **Wrongful Act**; or
 4. **PCI-DSS Assessment**.
- The time when a **Claim** shall be deemed first made for the purposes of this Policy shall be the date on which the **Claim** is first made against, served upon or received by an **Insured**, or the applicable notice or order is filed or entered.
- H. **Company** means the **Parent Company** and any **Subsidiary**, any foundation, political action committee or charitable trust controlled or sponsored by the **Parent Company** or any **Subsidiary**, and the **Parent Company** or any **Subsidiary** in its capacity as a debtor in possession under United States bankruptcy law.
- I. **Computer System** means computer software, middleware, firmware, hardware, applications, tools, programs, codes, scripts, websites, associated call centers, cloud computing and the data stored thereon, as well as associated input and output devices, data storage devices, wireless and mobile devices, networking equipment, storage area networks, or other electronic data backup facilities leased, owned, licensed or operated by an **Insured**.
- J. **Contingent Business Interruption Expenses** means **Income Loss** and **Additional Expenses** incurred by an **Insured** during the **Period of Recovery** solely due to a **Network Security Event** impacting a **Service Provider Computer System** that directly causes a total or partial interruption or deterioration in the business operations of such **Insured**. **Contingent Business Interruption Expenses** shall not include:

1. costs or expenses incurred to update, restore, replace, modify or otherwise improve systems to a level beyond that which existed prior to such interruption or deterioration;
 2. costs or expenses to correct any deficiencies or identify or remediate software errors or vulnerabilities;
 3. loss arising out of liability to any third party;
 4. **Defense Costs**;
 5. contractual penalties; or
 6. other consequential loss or damage.
- K. **Corporate Information** means any proprietary or confidential business information in any format that cannot be lawfully obtained or known by the general public, including customer lists, trade secrets and financial information that are provided to an **Insured** by a third party.
- L. **Credit Card** means credit cards, debit cards, stored value cards and prefunded cards.
- M. **Credit Monitoring Services** means single-bureau credit monitoring, at the election of an **Insured**, at the time **Notification Services** are provided, to qualified persons if **Personal Information** has been actually or allegedly improperly accessed, lost or stolen.
- N. **Defense Costs** means that part of **Loss** consisting of:
1. reasonable costs, charges, fees (including, attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of any **Insured**) incurred in investigating, defending, opposing or appealing any **Claim**; or
 2. the premium bond for appeal, attachment or similar bonds (but the Insurer shall be under no obligation to furnish any bond).
- O. **Electronic Data** means any data, text, sounds, images or similar matter, including **Corporate Information** or **Personal Information**, that exists on a **Computer System**.
- P. **Electronic Publishing** means the reproduction, publication, dissemination, transmission or release of information, including electronic data, image files, audio files or text, on an **Insured's** internet website, provided that such information must have been developed by or for such **Insured** or acquired by such **Insured** for its use.
- Q. **Electronic Publishing Event** means any of the following resulting from **Electronic Publishing** activities by an **Insured**:
1. defamation (including libel and slander), product disparagement or trade libel or any other tort related to disparagement or harm to character or reputation;
 2. infringement of copyright or infringement or dilution of trademark, trade dress, trade name, service mark, service name, title or slogan;
 3. common law unfair competition or unfair trade practices alleged in conjunction with the acts described in 1. and 2. above only;
 4. invasion or infringement of or interference with any right of privacy, publicity or private occupancy, public disclosure of any private fact or commercial appropriation of any name, persona or likeness;
 5. infliction of emotional distress or mental anguish;
 6. wrongful entry, intrusion or eviction, trespass, eavesdropping, false arrest, imprisonment or detention, malicious use or abuse of process or malicious prosecution;
 7. plagiarism, piracy or misappropriation of ideas or trade secrets;
 8. economic harm to a third party directly resulting from the party's reliance or failure to rely upon the content of **Material** which is false or erroneous; and
 9. acquiring, blogging, broadcasting, collecting, disseminating, distributing, editing, exhibiting, gathering, obtaining, producing, publishing, releasing, researching, recording, or tweeting;
- which occurs on or after the **Retroactive Date** and prior to the end of the **Policy Period**.
- R. **Employee** means any natural person whose labor or service was, is or will be engaged and directed by a **Company**, including a part-time, seasonal, leased and temporary employee, intern or volunteer. **Employee** does not include an **Independent Contractor**.

- S. **ERISA** means the Employee Retirement Income Security Act of 1974, including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").
- T. **Executive** means any natural person who was, now is or shall become:
1. a duly elected or appointed director, officer, **Manager**, trustee, regent, governor, risk manager, comptroller or in-house general counsel of any **Company** organized in the United States of America, or a holder of any position or role that is functionally equivalent or comparable to any of the foregoing; or
 2. a holder of any position or role that is functionally equivalent or comparable to those described in paragraph 1 above in a **Company** that is organized in a jurisdiction other than the United States of America, including any position on an advisory board or committee.
- U. **Extortion Event** means a reasonably credible threat to a **Computer System** to:
1. introduce **Malicious Code** into such **Computer System**;
 2. interrupt or prevent an **Insured's** access to such **Computer System**;
 3. disseminate, divulge or improperly utilize any **Personal Information** or **Corporate Information** obtained from such **Computer System**; or
 4. damage, destroy or corrupt data,
- made by a person or group, demanding payment for the elimination, mitigation or removal of the threat.
- V. **First Party Event** means a **Fraudulent Payment Instruction**, **Network Security Event**, **Privacy Event** or an **Extortion Event**.
- W. **First Party Expenses** means **Incident Response Service Expenses**.
- X. **Fraudulent Payment Instruction** means the intentional misleading of an **Employee** through a misrepresentation of a material fact which is: (a) relied upon by such **Employee**; and (b) committed by a person purporting to be a **Client**, **Service Provider** or **Employee** who was authorized by a **Company** to instruct other **Employees** to transfer money or securities.
- Y. **Identity Monitoring Services** means consultation, investigation and assistance to an individual who received **Notification Services** to determine whether identity theft has occurred and restore the individual's identity to pre-theft status, if applicable.
- Z. **Incident Response Service Expenses** means:
1. **Business Interruption Expenses**, which means **Income Loss** and **Additional Expenses**.
Business Interruption Expenses shall not include:
 - (a) costs or expenses incurred to update, restore, replace, modify or otherwise improve a **Computer System** to a level beyond that which existed prior to the **Material Interruption**;
 - (b) costs or expenses to correct any deficiencies or identify or remediate software errors or vulnerabilities;
 - (c) loss arising out of liability to any third party;
 - (d) contractual penalties;
 - (e) other consequential loss or damage; or
 - (f) **Contingent Business Interruption Expenses**;
 2. **Data Recovery Expenses**, which means reasonable costs, charges, fees and expenses incurred by an **Insured** in connection with forensic activities intended to:
 - (a) determine whether a **Computer System** can be restored, repaired, replaced or recreated; and
 - (b) restore, repair, replace and recreate a damaged or destroyed **Computer System** to the level which existed immediately prior to the **Network Security Event**;

3. **Extortion Expenses**, which means the reasonable and necessary expenses incurred by an **Insured**, with the Insurer's prior written consent, to:
 - (a) investigate and assess the cause, source, scope and credibility of an **Extortion Event**, or hire a **Service Provider** to do so;
 - (b) prevent or mitigate the threat posed by an **Extortion Event**, or hire a **Service Provider** to do so; and
 - (c) offer and pay a reward in exchange for the identity of the perpetrators of an **Extortion Event**;
 4. **Fraudulent Payment Instruction Expenses**, which means the direct monetary loss sustained by an **Insured** resulting from a **Company** having paid, transferred or delivered any money or securities resulting from a **Fraudulent Payment Instruction**;
 5. **Incident Response Service Costs**, which means reasonable costs, charges, fees and expenses incurred by an **Incident Response Service Firm** in the performance of **Incident Response Services**, provided that such costs, charges, fees and expenses are incurred within the 12-month period after the **Parent Company's** chief executive officer or chief financial officer first becomes aware of a **First Party Event**;
 6. **Investigation Expenses**, which means reasonable and necessary expenses (other than regular or overtime wages, salaries, fees or benefits of any **Insured**) incurred by an **Insured**, with the Insurer's prior consent, to conduct an investigation of a **Computer System** to determine whether a **Network Security Event** or **Privacy Event** occurred, and the cause and scope of any such **Network Security Event** or **Privacy Event**; provided, **Investigation Expenses** include only such expenses that an **Insured** incurs within 12 months after any such **Network Security Event** or **Privacy Event** occurs; and
 7. **Notification, Credit and Identity Monitoring Costs**, which means reasonable costs, charges, fees and expenses incurred for **Notification Services**, **Identity Monitoring Services** and **Credit Monitoring Services**.
- AA. **Incident Response Services** means any reasonable service provided to minimize the harm to an **Insured** due to a **First Party Event**.
- BB. **Incident Response Service Firm** means any law firm, public relations firm or other qualified provider hired or appointed by the Insurer, or by an **Insured** with the Insurer's prior written consent.
- CC. **Income Loss** means the sum of the following, which shall be calculated on an hourly basis and based on an **Insured's** actual net profit or net loss and charges and expenses:
1. net income (net profit or loss before income taxes) that could reasonably be projected to have been earned; and
 2. continuing normal and reasonable operating expenses incurred, including payroll.
- In determining the amount of net profit or loss and charges and expenses covered hereunder, consideration shall be given to the prior experience of the **Insured's** business before the beginning of the **Network Security Event** and to the probable business an **Insured** could have performed had no **Network Security Event** occurred. Net profit or loss calculations shall not include net income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of a **Network Security Event** on other businesses.
- DD. **Independent Contractor** means any natural person working for a **Company** pursuant to a written contract or agreement between such natural person and such **Company** which specifies the terms of the **Company's** engagement of such natural person.
- EE. **Insured** means any **Company** or **Insured Person**.
- FF. **Insured Person** means any:
1. **Executive** or **Employee**; or
 2. **Independent Contractor**, but only if a **Company** agrees to indemnify the **Independent Contractor** in the same manner as **Employees** for liability arising out of a **Claim**.

GG. **Loss** means **Third Party Expenses** and **First Party Expenses**.

HH. **Malicious Code** means the unauthorized corrupting of software, including computer viruses, Trojan Horses, keystroke loggers, cookies, spyware, adware, worms, and logic bombs, that successfully corrupts or impairs a **Computer System**.

II. **Manager** means any natural person who was, now is, or shall become a manager, member of the Board of Managers, or equivalent executive of a **Company** that is a limited liability company.

JJ. **Material** means the content of any communication, whether public or private, regardless of its nature or form or the medium by which such content is communicated.

KK. **Material Interruption** means the actual and measurable interruption, suspension or failure of a **Computer System** directly resulting from a **Network Security Event**.

LL. **Network Security Event** means a breach of any:

1. **Computer System** that results in:
 - (a) the theft, corruption, or deletion of **Electronic Data** from such **Computer System**;
 - (b) the **Unauthorized Access** to or **Unauthorized Use** of such **Computer System**;
 - (c) the denial of an authorized user's access to such **Computer System**, unless such denial of access is caused by a mechanical or electrical failure outside the control of the **Insured**;
 - (d) the transmission of **Malicious Code** from such **Computer System**; or
 - (e) a denial of service attack emanating from such **Computer System**, or
2. **Service Provider Computer System**, but solely to the extent that such breach directly causes a total or partial interruption or deterioration in the business operations of an **Insured**.

MM. **Notification Services** means: 1. preparation and distribution of notice letters from an **Insured** advising individuals of a **Network Security Event** or **Privacy Event** and the availability of any related services or resources; and 2. call center support services to answer questions from individuals receiving **Notification Services**, provided that such services take place during the 12-month period after the **Parent Company's** chief executive officer or chief financial officer first becomes aware of a **Network Security Event** or **Privacy Event**.

NN. **Parent Company** means the entity named in Item 1 of the Declarations.

OO. **PCI-DSS Assessment** means any written demand received by an **Insured** from a **Card Association** or **Acquiring Bank** for a monetary assessment of a fine or penalty, or other costs, expenses and liabilities incurred by an **Insured**, due to an **Insured's** non-compliance with **PCI Data Security Standards** resulting from a **Network Security Event** or **Privacy Event**.

PP. **PCI Data Security Standards** means generally accepted and published Payment Card Industry standards for data security.

QQ. **Period of Recovery** means the period of time that begins at the end of the **Waiting Period** and continues until the earlier of:

1. the date and time the **Insured's** operations are restored to the condition that existed immediately prior to a **Network Security Event**; or
2. 120 days after the date of a **Network Security Event**.

RR. **Personal Information** means any information not available to the general public from which an individual may be identified, including an individual's name, telephone number, social security number, medical, healthcare, health insurance or other protected health information, unique biometric data, user name, access code or password that could permit access to a private account, driver's license or other government identification number, account number, employee identification number, home address, credit information, **Credit Card** number, any other information protected under the General Data Protection Regulation, HIPAA or HITECH, or similar data protection law or regulation, and any non-public personal information as defined by the Gramm-Leach-Bliley Act.

- SS. **Policy Period** means the period of time stated in Item 2 of the Declarations (subject to any termination in accordance with Section XIV. TERMINATION OF POLICY) and the ERP, if applicable.
- TT. **Pollutants** means any solid, liquid, gaseous or thermal irritants or contaminants, including smoke, soot, vapor, fumes, acids, chemicals, alkalis, asbestos, asbestos products or waste. Waste includes materials to be reconditioned, recycled or reclaimed.
- UU. **Privacy Event** means an **Insured's**, **Rogue Employee's** or **Service Provider's**: 1. disclosure or loss of **Personal Information** or **Corporate Information** in the care, custody or control of an **Insured** or **Service Provider**; 2. violation of any **Privacy Regulation**; or 3. failure to comply with a **Company's** privacy policies.
- VV. **Privacy Regulation** means any identity theft or privacy protection law requiring commercial entities that collect **Personal Information** to post privacy policies, adopt specific privacy or security controls, or notify individuals in the event that **Personal Information** may have been compromised.
- WW. **Related Claims** means all **Claims** based upon, arising out of or resulting from the same or related facts, circumstances or **Wrongful Acts**, or which have a common nexus of facts, circumstances or **Wrongful Acts**.
- XX. **Related First Party Events** means all **First Party Events** based upon, arising out of or resulting from the same or related facts or circumstances, or which have a common nexus of facts or circumstances.
- YY. **Regulatory Proceeding** means a request for information, written demand or civil proceeding brought by or on behalf of a governmental regulatory authority.
- ZZ. **Regulatory Proceeding Expenses** means a civil fine or penalty imposed on an **Insured** as a result of a **Regulatory Proceeding**, including any monetary amounts an **Insured** is required by law or has agreed by settlement to deposit into a consumer redress fund.
- AAA. **Retroactive Date** means the date, if any, stated in Item 6 of the Declarations.
- BBB. **Rogue Employee** means an **Employee** of a **Company** who deliberately acts outside the intended course and scope of employment.
- CCC. **Service Provider** means a business that an **Insured** does not own, operate or control, but that such **Insured** hires for a fee pursuant to a written contract to perform services related to such **Insured's** business. **Service Provider** does not include any broker-dealer, financial institution, asset manager, armored motor vehicle company or similar entity.
- DDD. **Service Provider Computer System** means computer software, middleware, firmware, hardware, applications, tools, programs, codes, scripts, websites, associated call centers, cloud computing and the data stored thereon, as well as associated input and output devices, data storage devices, wireless and mobile devices, networking equipment, storage area networks, or other electronic data backup facilities leased, owned, licensed or operated by a **Service Provider**.
- EEE. **Subsidiary** means:
1. any entity while more than 50% of the outstanding securities or other equity ownership, representing the present right to vote for election of, or to appoint, directors, **Managers**, or the foreign equivalent of any such directors or **Managers** of such entity, are owned or controlled by the **Parent Company** directly or indirectly through one or more other entities; or
 2. any entity while the **Parent Company** has the right, pursuant to either a written contract or the bylaws, charter, operating agreement or similar documents of a **Company**, to elect or appoint a majority of: (a) the Board of Directors of a corporation; or (b) **Managers**.
- FFF. **Third Party Expenses** means the amount that an **Insured** becomes legally obligated to pay on account of any **Claim** including:
1. compensatory damages;
 2. judgments and settlements;

3. pre and post-judgment interest;
4. **Defense Costs**; and
5. punitive, exemplary or multiplied damages, **Regulatory Proceeding Expenses** and fines or penalties imposed as the result of a **PCI-DSS Assessment**, if and to the extent that any such damages, fines or penalties or **Regulatory Proceeding Expenses** are insurable under the law of the jurisdiction most favorable to the insurability of such amounts.

In determining the most favorable jurisdiction as set forth in paragraph 5 above, due consideration shall be given to the jurisdiction with a substantial relationship to the relevant **Insureds**, to the **Company**, or to the **Claim** giving rise to such damages, and the Insurer shall not challenge any opinion of independent legal counsel (mutually agreed to by the Insurer and the relevant **Insureds**) that such damages are insurable under applicable law.

Third Party Expenses does not include any portion of such amount that constitutes any:

- (a) amount not insurable under the law pursuant to which this Policy is construed;
- (b) cost incurred to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- (c) liquidated damages, except to the extent that the amount of such damages is equal to the amount for which an **Insured** would be otherwise liable in connection with a **Wrongful Act**;
- (d) return of any fee, charge, commission, gain or other compensation paid to an **Insured**;
- (e) royalty or licensing fees or payments; or
- (f) tax, fine or penalty imposed by law, other those described in paragraph 5 above.

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

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

III. **Waiting Period** means the number of hours stated in Item 9 of the Declarations which must elapse prior to the commencement of the **Period of Recovery**.

JJJ. **Wrongful Act** means a **Privacy Event**, **Network Security Event** or **Electronic Publishing Event** which occurs on or after the **Retroactive Date** and prior to the end of the **Policy Period**.