

This Endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

CYBER LIABILITY ENDORSEMENT

THIS ENDORSEMENT PROVIDES CLAIMS-MADE AND REPORTED COVERAGE. THE LIMIT OF LIABILITY AVAILABLE TO PAY FOR SETTLEMENTS, JUDGMENTS OR OTHER LOSS WILL BE REDUCED AND MAY BE COMPLETELY EXHAUSTED BY DEFENSE COSTS.

In consideration of the premium charged and notwithstanding anything contained in the Policy to the contrary, it is understood and agreed that the Policy to which this Endorsement attaches is amended to include Cyber Liability Insurance, subject to the terms, conditions, exclusions and Limits of Liability set forth below. The Third Party Liability Insuring Agreements of this Endorsement provide claims-made and reported coverage. The First Party Insuring Agreements of this Endorsement provide first party coverage on an event-discovered and reported basis.

The Cyber Liability Limits of Liability are specified in the Cyber Liability Supplemental Declarations shown below. Such Limits of Liability are in addition to, and will not reduce, any limits provided elsewhere in the Policy. **Defense costs** paid under this Endorsement will reduce, and may completely exhaust, the Cyber Liability Limits of Liability.

Various provisions in this Endorsement restrict coverage. Read the entire Endorsement carefully to determine **your** rights and duties and what is and is not covered. The terms, conditions, exclusions and Limits of Liability set forth in this Endorsement shall apply only to Cyber Liability Insurance and shall supersede any similar provisions contained elsewhere in the Policy.

Words and phrases that appear in bold face type have special meaning as described in Section **IV**. of this Endorsement. To the extent any words or phrases used in this Endorsement are also defined elsewhere in the Policy, such definitions do not give meaning to the words or phrases used in this Endorsement.

Cyber Liability Supplemental Declarations

Item 1. **Limit of Liability per Insuring Agreement:**

Multimedia Liability:	\$	per claim and in the aggregate
Security and Privacy Liability:	\$	per claim and in the aggregate
Privacy Regulatory Defense and Penalties:	\$	per claim and in the aggregate
PCI DSS Liability:	\$	per claim and in the aggregate
TCPA Defense:	\$	per claim and in the aggregate
Breach Event Costs:	\$	per claim and in the aggregate
BrandGuard®:	\$	per claim and in the aggregate
System Failure:	\$	per claim and in the aggregate
Cyber Extortion:	\$	per claim and in the aggregate
Reward Expenses:	\$	per claim and in the aggregate
Court Attendance Costs:	\$	per claim and in the aggregate

Item 2. **Maximum Aggregate Limit of Liability:**

Item 3. **Endorsement Period:** _____ to _____

Item 4. **Retroactive Date:** _____

CYBER LIABILITY TERMS AND CONDITIONS

I. CYBER LIABILITY INSURING AGREEMENTS

The Company agrees with the **Named Insured** as follows:

(A) **THIRD PARTY LIABILITY INSURING AGREEMENTS**

(1) **Multimedia Liability**

The Company will pay on behalf of an **Insured** the sums within the applicable Limit of Liability that such **Insured** becomes legally obligated to pay as **damages**, including liability **assumed under contract**, and related **defense costs** resulting from a **claim** for an actual or alleged **multimedia wrongful act**, but only if: i) the **claim** is first made against the **Insured** during the **endorsement period**, ii) the **claim** is reported to the Company in writing pursuant to Section **V.** of this Endorsement, and iii) the **multimedia wrongful act** is committed on or after the **retroactive date**.

(2) **Security and Privacy Liability**

The Company will pay on behalf of an **Insured** the sums within the applicable Limit of Liability that such **Insured** becomes legally obligated to pay as **damages**, including liability **assumed under contract**, and related **defense costs** resulting from a **claim** for an actual or alleged **security and privacy wrongful act**, but only if: i) the **claim** is first made against the **Insured** during the **endorsement period**, ii) the **claim** is reported to the Company in writing pursuant to Section **V.** of this Endorsement, and iii) the **security and privacy wrongful act** is committed on or after the **retroactive date**.

(3) **Privacy Regulatory Defense and Penalties**

The Company will pay on behalf of an **Insured** the sums within the applicable Limit of Liability that such **Insured** becomes legally obligated to pay as a **regulatory compensatory award** or **regulatory fines and penalties** and related **defense costs** resulting from a **privacy regulatory proceeding** instituted against the **Insured** because of a **security breach** or **privacy breach**, but only if: i) the **privacy regulatory proceeding** is instituted against the **Insured** during the **endorsement period**, ii) the **privacy regulatory proceeding** is reported to the Company in writing pursuant to Section **V.** of this Endorsement, and iii) the **security breach** or **privacy breach** occurs on or after the **retroactive date**.

(4) **PCI DSS Liability**

The Company will pay on behalf of an **Insured** the sums within the applicable Limit of Liability that such **Insured** becomes legally obligated to pay as **PCI DSS fines and assessments** and related **defense costs** because of a **PCI DSS demand** resulting from a **security breach** or **privacy breach**, but only if: i) the **PCI DSS demand** is first made against the **Insured** during the **endorsement period**, ii) the **claim** is reported to the Company in writing pursuant to Section **V.** of this Endorsement, and iii) the **security breach** or **privacy breach** occurs on or after the **retroactive date**.

(5) **TCPA Defense**

Subject to the applicable Limit of Liability, the Company will pay **defense costs** incurred by an **Insured** to defend against a **TCPA claim** for an actual or alleged **TCPA violation**, but only if: i) the **TCPA claim** is first made against the **Insured** during the **endorsement period**, ii) the **TCPA claim** is reported to the Company in writing pursuant to Section **V.** of this Endorsement, and iii) the **TCPA violation** is committed on or after the **retroactive date**. The Company will have no obligation to pay any amounts other than **defense costs** under this Insuring Agreement.

(B) **FIRST PARTY INSURING AGREEMENTS**

(1) **Breach Event Costs**

Subject to the applicable Limit of Liability, the Company will pay **privacy breach response costs**, **notification expenses** and **breach support and credit monitoring expenses** that **you** incur because of an **adverse media report**, **security breach** or **privacy breach**, but only if: i) the **adverse media report**, **security breach** or **privacy breach** is first discovered by an **executive** during the **endorsement period**, and ii) the **adverse media report**, **security breach** or **privacy breach** is reported to the Company in writing pursuant to Section **V.** of this Endorsement.

(2) **BrandGuard®**

Subject to the **waiting period** and applicable Limit of Liability, the Company will pay provable and ascertainable **brand loss** that **you** sustain during the **period of indemnity** as a direct result of an **adverse media report** or **notification** of a **security breach** or **privacy breach**, but only if: i) the **security breach** or **privacy breach** is first discovered by an **executive** during the **endorsement period**, ii) the **security breach** or **privacy breach** is reported to the Company in writing pursuant to Section **V.** of this Endorsement, and iii) **you** provide clear evidence that the **brand loss** is directly attributable to the **adverse media report** or **notification**.

(3) **System Failure**

(a) ***Data Recovery***

Subject to the applicable Limit of Liability, the Company will pay **digital assets loss** and **special expenses** that **you** incur because of damage, alteration, corruption, distortion, theft, misuse or destruction of **digital assets** resulting from a **system failure**, but only if: i) the **system failure** is first discovered by an **executive** during the **endorsement period**, ii) the **system failure** is reported to the Company in writing pursuant to Section **V.** of this Endorsement, and iii) **you** provide clear evidence that the **digital assets loss** and **special expenses** directly resulted from the **system failure**. The Company will pay **digital assets loss** and **special expenses** for up to 12 months following an **executive's** discovery of the **system failure**.

(b) ***Non-Physical Business Interruption***

Subject to the **waiting period** and applicable Limit of Liability, the Company will pay **income loss, interruption expenses and special expenses** that **you** incur during the **period of restoration** because of a **system failure**, but only if: i) the **system failure** is first discovered by an **executive** during the **endorsement period**, ii) the **system failure** is reported to the Company in writing pursuant to Section **V.** of this Endorsement, and iii) **you** provide clear evidence that the **income loss, interruption expenses and special expenses** directly resulted from the **system failure**.

(4) **Cyber Extortion**

- (a) Subject to the applicable Limit of Liability, the Company will pay **cyber extortion expenses and cyber extortion monies** that **you** incur as a direct result of a **cyber extortion threat**, but only if: i) the **cyber extortion threat** is first discovered by an **executive** during the **endorsement period**, and ii) the **cyber extortion threat** is reported to the Company in writing pursuant to Section **V.** of this Endorsement.
- (b) The Company will not be obligated to pay **cyber extortion expenses or cyber extortion monies** for which the Company has not given prior written consent. **You** must make every reasonable effort to notify local law enforcement authorities and the Federal Bureau of Investigation or similar equivalent foreign agency before surrendering any **cyber extortion monies** in response to a **cyber extortion threat**.

(5) **Reward Expenses**

Subject to the applicable Limit of Liability, the Company will pay **reward expenses** that **you** incur with the Company's prior written consent, but only if an **executive** submits a written request for indemnification of **reward expenses** to the Company pursuant to Section **V.** of this Endorsement.

(6) **Court Attendance Costs**

- (a) Subject to the applicable Limit of Liability, the Company will reimburse an **Insured** for **court attendance costs** incurred by the **Insured** to attend mediation sessions, arbitration proceedings, hearings, depositions and trials, if required by the Company in connection with the defense of a **Claim** under any Third Party Liability Insuring Agreement of this Endorsement, but only if a written request for indemnification of **court attendance costs** is made by or on behalf the **Insured** pursuant to Section **V.** of this Endorsement.
- (b) Notwithstanding the above, the Company's daily maximum Limit of Liability for **court attendance costs** is \$500.00, regardless of the number of **claims, Insureds**, or legal proceedings attended by an **Insured**.

II. CYBER LIABILITY DEFENSE AND SETTLEMENT PROVISIONS

- (A) We have the right and duty to defend an **Insured** against any **claim** covered under any Third Party Liability Insuring Agreement of this Endorsement, even if the

allegations are groundless, false or fraudulent, including the right to appoint an attorney to defend any such **claim**.

- (B) The Limit of Liability available to pay **damages** will be reduced, and may be completely exhausted, by payment of **defense costs** or any other amounts to which this insurance applies.
- (C) No **Insured** shall pay any **damages, defense costs, regulatory compensatory award, regulatory fines and penalties** or **PCI DSS fines and assessments**, or settle or offer to settle any **claim**, assume any contractual obligation, admit liability, voluntarily make any payment, or confess or otherwise consent to any judgment without the Company's prior written consent, which consent will not be unreasonably withheld. The Company will not be liable for any **damages, defense costs, regulatory compensatory award, regulatory fines and penalties, PCI DSS fines and assessments**, settlement, judgment, assumed obligation, admitted liability or payment to which the Company has not consented.
- (D) The Company has the right to make any investigation it deems necessary, including, without limitation, any investigation with respect to coverage.
- (E) The Company will not settle any **claim** or pay any **damages, regulatory compensatory award, regulatory fines and penalties** or **PCI DSS fines and assessments** without an **Insured's** consent.
- (F) If an **Insured** refuses to consent to any settlement or compromise recommended by the Company or its representatives that is acceptable to the claimant, and such **Insured** elects to contest the **claim** or continue any legal proceedings in connection with the **claim**, the Company's liability for such **claim** shall not exceed:
 - (1) the amount for which the **claim** could have been settled, plus **defense costs** incurred up to the date the **Insured** withheld consent to such settlement or compromise, plus
 - (2) 70% of any **defense costs** and **damages, regulatory compensatory award, regulatory fines and penalties** or **PCI DSS fines and assessments**, whichever applies, incurred after the date the **Insured** withheld consent to such settlement or compromise, subject always to all other terms and conditions of this Endorsement, including, but not limited to, the applicable Limit of Liability; and
 - (3) the remaining 30% of the **defense costs** and **damages, regulatory compensatory award, regulatory fines and penalties** or **PCI DSS fines and assessments** referenced in paragraph (2) above shall be the sole responsibility of such **Insured**.
- (G) The Company's duty to defend any **claim**, or pay any **damages, defense costs** or other amounts, will cease upon exhaustion of the applicable Limit of Liability. Once the Limit of Liability is exhausted, the Company will have the right to withdraw from the defense or payment of any **claim** by tendering control to **you** pursuant to Section X. of this Endorsement.

III. LIMIT OF LIABILITY

- (A) The Limits of Liability set forth in Item 1 of the Cyber Liability Supplemental Declarations are the most the Company will pay under each Insuring Agreement of this Endorsement for each **claim**, and in the aggregate for all **claims**, first made during the **endorsement period** and the **cyber liability extended reporting period**

(if applicable), including **defense costs** (where applicable), regardless of the number of **claims**, claimants or **Insureds**. If the Limit of Liability for any Insuring Agreement is exhausted, the Company's obligations under that Insuring Agreement shall cease.

- (B) The Maximum Aggregate Limit of Liability set forth in Item 2 of the Cyber Liability Supplemental Declarations is the most the Company will pay under this Endorsement for all **claims** first made during the **endorsement period** and the **cyber liability extended reporting period** (if applicable), including **defense costs** (where applicable), regardless of the number of **claims**, claimants, **Insureds** or Insuring Agreements. All amounts the Company pays under this Endorsement will reduce, and may completely exhaust, the Maximum Aggregate Limit of Liability.
- (C) All **claims** which arise out of the same, related or continuing incidents, acts, facts or circumstances will be considered a single **claim**, regardless of the number of **claims** made, **Insureds** affected or claimants involved. All **claims** which arise out of the same, related or continuing incidents, acts, facts or circumstances will be deemed first made on the date the earliest of such **claims** is first made and will be deemed first reported to the Company on the date the earliest of such **claim** is reported to the Company.
- (D) If multiple Insuring Agreements of this Endorsement apply to any **claim**, the Company's maximum Limit of Liability under this Endorsement for such **claim** shall be the Maximum Aggregate Limit of Liability set forth in Item 2 of the Cyber Liability Supplemental Declarations. However, the Company will never pay more under any one Insuring Agreement than the applicable Limit of Liability shown in Item 1 of the Cyber Liability Supplemental Declarations. The Company shall allocate amounts paid, if any, against the appropriate Limit of Liability.
- (E) The existence of a **cyber liability extended reporting period** will not increase or reinstate the Limits of Liability set forth in the Cyber Liability Supplemental Declarations.

IV. **CYBER LIABILITY DEFINITIONS**

Certain words or phrases used in this Endorsement, whether in singular or plural form, are shown in bold and are defined as follows. If a term is defined below and in the Policy, the definition below applies only to the coverage provided by this Endorsement.

- (1) **Acquiring bank** means a bank or financial institution that accepts credit or debit card payments, including stored value cards and pre-paid cards, for goods or services on behalf of a merchant, including processing and crediting those payments to a merchant's account.
- (2) **Act of cyber terrorism** means the premeditated use of disruptive activities, or an explicit threat to use disruptive activities, against a computer, **computer system**, or network by a person or group to further social, political, religious or ideological objectives.
- (3) **Adverse media report** means a report or communication of an actual or potential **security breach** or **privacy breach** which has been publicized through any media channel, including, but not limited to, television, **print media**, radio or electronic networks, the internet, or electronic mail, and threatens material damage to **your reputation** or **your brand**.
- (4) **Assumed under contract** means liability for **damages** resulting from a **multimedia wrongful act**, **security breach** or **privacy breach**, where such liability has been assumed by an **Insured** in the form of a written hold harmless or indemnity

agreement, but only if such agreement was executed before the **multimedia wrongful act, security breach or privacy breach** occurred.

- (5) **Bodily injury** means physical injury, sickness, disease or death sustained by any person and, where resulting from such physical injury only, mental anguish, mental injury, shock, humiliation or emotional distress.
- (6) **BPO service provider** means any **third party** that provides business process outsourcing services for **your** benefit under a written contract with **you**, including, but not limited to, call center services, fulfillment services, and logistical support.
- (7) **Brand loss** means **your** net profit, as could have reasonably been projected immediately prior to **notification**, or in the event of an **adverse media report**, immediately prior to the publication of an **adverse media report**, but which has been lost during the **period of indemnity** as a direct result of such **adverse media report** or **notification**. **Brand loss** will be determined in accordance with the provisions of Section IX. of this Endorsement.
- (8) **Breach support and credit monitoring expenses** means those reasonable and necessary expenses that **you** incur on **your** own behalf, or on behalf of a party for whom **you** are **vicariously liable**, to provide support activity to parties affected by a **privacy breach**. **Breach support and credit monitoring expenses** includes the cost to set up a call center and to provide a maximum of 24 months of credit monitoring services, identity theft assistance services, or credit or identity repair and restoration services. **Breach support and credit monitoring expenses** must be incurred with the Company's prior written consent.
- (9) **Card association** means Visa International, MasterCard, Discover, JCB, American Express and any similar credit or debit card association that is a participating organization of the Payment Card Industry Security Standards Council.
- (10) **Claim** means:
 - (a) with respect to Insuring Agreements **I.(A)(1)** and **I.(A)(2)** only:
 - i. a written demand made against an **Insured** for **damages** or non-monetary relief;
 - ii. a written request received by an **Insured** to toll or waive a statute of limitations relating to a potential **claim** against an **Insured**; or
 - iii. the service of a civil lawsuit or the institution of arbitration or other alternative dispute resolution proceedings against an **Insured** seeking **damages**, a temporary restraining order, or a preliminary or permanent injunction.
 - (b) with respect to Insuring Agreement **I.(A)(3)** only, a **privacy regulatory proceeding**.
 - (c) with respect to Insuring Agreement **I.(A)(4)**, a **PCI DSS demand**.
 - (d) with respect to Insuring Agreement **I.(A)(5)** only, a **TCPA claim**.
 - (e) with respect to Insuring Agreement **I.(B)(1)** only, written notice from an **executive** to the Company of an **adverse media report, security breach or privacy breach**.
 - (f) with respect to Insuring Agreement **I.(B)(2)** only, written notice from an **executive** to the Company of a **security breach or privacy breach**.

- (g) with respect to Insuring Agreement **I.(B)(3)** only, written notice from an **executive** to the Company of a **system failure**.
- (h) with respect to Insuring Agreement **I.(B)(4)** only, written notice from an **executive** to the Company of a **cyber extortion threat**.
- (i) with respect to Insuring Agreement **I.(B)(5)** only, written request by an **executive** to the Company for indemnification of **reward expenses**.
- (j) with respect to Insuring Agreement **I.(B)(6)** only, written request by an **executive** to the Company for indemnification of **court attendance costs**.

A **claim** under Insuring Agreement **I.(A)(1)** or Insuring Agreement **I.(A)(2)** of this Endorsement shall not include a **privacy regulatory proceeding**, **PCI DSS demand** or **TCPA claim**.

A **claim** under any Third Party Liability Insuring Agreement of this Endorsement will be deemed to be first made when it is received by an **Insured**.

A **claim** under any First Party Insuring Agreement of this Endorsement will be deemed to be first made when the Company first receives written notice of such **claim**.

- (11) **Cloud provider** means any **third party** that provides computing resources to **you** that are delivered as a service over a network or the internet (commonly known as “cloud computing”), including Software as a Service, Platform as a Service and Infrastructure as a Service.
- (12) **Computer system** means an interconnected electronic, wireless, web, or similar system, including all computer hardware and software, used to process and store **data** or information in an analogue, digital, electronic or wireless format, including, but not limited to, computer programs, **data**, operating systems, firmware, servers, media libraries, associated input and output devices, mobile devices, devices that are connected to and controlled by the internet (also known as “smart devices”), networking equipment, websites, extranets, off-line storage facilities (to the extent that they hold **data**), and electronic backup equipment.
- (13) **Court attendance costs** means the actual loss of earnings and reasonable costs and expenses incurred by an **insured** after a total of 3 days of required attendance at mediation sessions, arbitration proceedings, hearings, depositions and trials relating to the defense of a **claim** under any Third Party Liability Insuring Agreement of this Endorsement.
- (14) **Cyber extortion expenses** means all reasonable and necessary costs and expenses, other than **cyber extortion monies**, that **you** incur with the Company’s prior written consent as a direct result of a **cyber extortion threat**, including the cost to retain or hire a **third party** specializing in IT security to determine the validity and severity of a **cyber extortion threat**.
- (15) **Cyber extortion monies** means any **money**, digital currency of any kind, including bitcoin, or **other property** paid by **you**, with the Company’s prior written consent, to any person or group reasonably believed to be responsible for a **cyber extortion threat** in order to prevent or terminate such **cyber extortion threat**.
- (16) **Cyber extortion threat** means a credible threat or series of related credible threats, including a demand for **cyber extortion monies**, which is directed at **you** to:
 - (a) steal, alter, release, divulge, disseminate, destroy, publicly disclose or misuse **private information** taken from an **Insured** as a result of unauthorized access to, or unauthorized use of, an **insured computer system**;

- (b) infect an **insured computer system** with malicious code or ransomware;
- (c) corrupt, damage or destroy an **insured computer system**;
- (d) restrict or hinder access to an **insured computer system**, including the threat of a **denial of service attack**;
- (e) perpetrate or carry out a **phishing attack**;
- (f) steal, alter, release, reveal, divulge, disseminate, destroy, publicly disclose or misuse **your** confidential or proprietary information, or the **personally identifiable information** of an **Insured**; or
- (g) damage **your reputation** or **your** brand by posting false or misleading comments about **you** or **your** organization on social media websites or platforms.

A series of continuing **cyber extortion threats**, related or repeated **cyber extortion threats**, or multiple **cyber extortion threats** resulting from the same attack, event or incident will be considered a single **cyber extortion threat** and will be deemed to have occurred at the time the first **cyber extortion threat** in the series first occurred.

- (17) **Cyber liability extended reporting period** means the period after the end of the **endorsement period** for reporting **claims**, as provided in Section **VI.** of this Endorsement and specifically excludes the **endorsement period**.
- (18) **Damages** means a monetary judgment, award or settlement, including awarded attorneys' fees and costs, and liquidated, punitive, exemplary or multiplied **damages** to the extent insurable under the law pursuant to which this Endorsement is construed.

Damages does not include:

- (a) any **Insured's** future profits or royalties, restitution, or disgorgement of any **Insured's** profits;
- (b) the costs to comply with orders granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief;
- (c) loss of any **Insured's** fees or profits, the return or offset of any **Insured's** fees or charges, or any **Insured's** commissions or royalties provided or contracted to be provided;
- (d) taxes, fines or penalties, or sanctions;
- (e) contractual liquidated **damages**, to the extent such **damages** exceed the amount for which the **Insured** would have been liable in the absence of the liquidated **damages** agreement;
- (f) any amount which an **Insured** is not financially or legally obligated to pay;
- (g) disgorgement of any remuneration or financial advantage to which an **Insured** was not legally entitled;
- (h) settlements negotiated without the Company's consent;
- (i) monetary judgments, awards, settlements or any other amounts which are uninsurable under the law pursuant to which this Endorsement is construed, or any legal fees and costs awarded pursuant to such judgments, awards or settlements; or
- (j) **PCI DSS fines and assessments.**

- (19) **Data** means any machine-readable information, including, but not limited to, ready-for-use programs, applications, account information, customer information, health and medical information, or other electronic information, irrespective of the way it is used and rendered.
- (20) **Defense costs** means:
- (a) reasonable and necessary fees incurred with the Company's consent and charged by an attorney(s) designated by the Company to defend a **claim**; and
 - (b) all other reasonable and necessary fees, costs, and expenses resulting from the defense and appeal of a **claim**, if incurred by the Company or by an **Insured** with the Company's prior written consent.
- Defense costs** does not include any wages or salaries of an **Insured**, or fees, overhead or other charges incurred by, or paid to, any **Insured** for any time spent in cooperating in the investigation or defense of a **claim** or a potential **claim**.
- (21) **Denial of service attack** means an event caused by unauthorized or unexpected interference or a malicious attack, which is intended by the perpetrator to overwhelm the capacity of a **computer system** by sending an excessive volume of **data** to such **computer system** to prevent access to such **computer system**.
- (22) **Digital assets** means **data** and computer programs that exist in an **insured computer system**. **Digital assets** do not include computer hardware.
- (23) **Digital assets loss** means reasonable and necessary expenses and costs that **you** incur to replace, recreate or restore **digital assets** to the same state and with the same contents immediately before the **digital assets** were damaged, destroyed, altered, misused or stolen, including expenses for materials and machine time. **Digital assets loss** also includes amounts representing **employee** work time to replace, recreate or restore **digital assets**, which will be determined on a predefined billable hour or per-hour basis as based upon **your** schedule of **employee** billable hours.
- (24) **Employee** means any individual whose labor or service is engaged by and directed by **you**, including volunteers, interns, and part-time, seasonal, temporary or leased workers. **Employee** does not include any **executive** or independent contractor.
- (25) **Endorsement period** means the period specified as such in Item 3 of the Cyber Liability Supplemental Declarations. Coverage may be canceled or otherwise terminated before the **endorsement period** expiration date.
- (26) **Executive** means any of **your** directors or officers, including **your** chief executive officer, chief financial officer, chief operations officer, chief technology officer, chief information officer, chief privacy officer, general counsel or other in-house lawyer, and risk manager, or any person in a functionally equivalent position.
- (27) **First party insured event** means:
- (a) with respect to Insuring Agreement **I.(B)(1)** only, an **adverse media report, security breach** or **privacy breach**;
 - (b) with respect to Insuring Agreement **I.(B)(2)** only, a **security breach** or **privacy breach**;
 - (c) with respect to Insuring Agreement **I.(B)(3)** only, a **system failure**;
 - (d) with respect to Insuring Agreement **I.(B)(4)** only, a **cyber extortion threat**;

- (e) with respect to Insuring Agreement **I.(B)(5)** only, a **security breach, privacy breach, system failure** or **cyber extortion threat**; and
- (f) with respect to Insuring Agreement **I.(B)(6)** only, **court attendance costs** incurred by an **Insured**.

First party insured event does not include any **claim** made against an **Insured**.

(28) Hacking attack means any of the following directed at or enacted upon an **insured computer system**:

- (a) unauthorized access to, or unauthorized use of, an **insured computer system**, including any such unauthorized access or unauthorized use resulting from the theft of a password from an **insured computer system** or from an **Insured**;
- (b) a **denial of service attack** against an **insured computer system**;
- (c) infection of an **insured computer system** by malicious code, or the transmission of malicious code from an **insured computer system**; or
- (d) an **act of cyber terrorism**.

(29) Income loss means the net profit loss **you** sustain during the **period of restoration** as a direct result of a **system failure**. **Income loss** will be determined in accordance with the provisions of Section **IX**. of this Endorsement.

(30) Informant means any person who provides information regarding an illegal act committed by another person which causes a **first party insured event**, solely in return for **money** that **you** pay or promise to pay. **Informant** does not include:

- (a) any person who commits an illegal act which causes a **first party insured event**, whether acting alone or in collusion with others;
- (b) any **Insured**;
- (c) any **Insured's** auditors, whether internal or external;
- (d) any person or firm hired or retained to investigate a first party insured event; or
- (e) any person responsible for the supervision or management of a party described in paragraphs (a) through (d) above.

(31) Insured means:

- (a) the **Named Insured**;
- (b) any **Subsidiary** of the **Named Insured**, but only with respect to **wrongful acts** or **first party insured events** that occur while a **Subsidiary** is under the **Named Insured's managerial control**;
- (c) any past, present, or future **executive**, trustee, court-appointed receiver or **employee** of the **Named Insured** or **Subsidiary**, but only while acting solely within the scope of his or her duties as such;
- (d) if the **Named Insured** or **Subsidiary** 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 his or her duties as such;

- (e) any agent or independent contractor of the **Named Insured** or **Subsidiary**, but only while acting on behalf of, at the direction of, and under the supervision of the **Named Insured** or **Subsidiary**; and
 - (f) any person or legal entity the **Named Insured** is required by written contract to provide such coverage as is afforded by this Endorsement, but only for the acts of a party described in paragraphs (a) through (e) above, and only if the written contract is executed prior to the date any **wrongful act** or **first party insured event** occurs.
- (32) **Insured computer system** means:
- (a) a **computer system** that is owned and operated by **you**, or that is leased to **you** and operated by **you**;
 - (b) any **insured telecommunications system**; and
 - (c) with respect to Insuring Agreements **I.(A)(2)**, **I.(A)(3)**, **I.(A)(4)**, **I.(B)(1)** and **I.(B)(4)** only, **insured computer system** also includes a **computer system** operated by a **BPO service provider** or an **outsourced IT service provider**, which is used to provide services to **you**, or for processing, maintaining, hosting or storing **data** for **you**, pursuant to a written contract with **you** to provide such services.
- (33) **Insured telecommunications system** means any telephone or fax network or system that is owned, rented, leased, licensed or borrowed by **you** and under **your** direct operational control.
- (34) **Interruption expenses** means those reasonable and necessary expenses, excluding **special expenses**, incurred by **you** to avoid or minimize the suspension of **your** business because of a total or partial interruption, degradation in service, or failure of an **insured computer system** caused by a **system failure**, which **you** would not have incurred in the absence of the **system failure**. **Interruption expenses** include, but are not limited to, the use of rented/leased external equipment, substitution of other work or production procedures, the use of **third party** services, or additional staff expenditures or labor costs. The amount of **interruption expenses** recoverable shall not exceed the amount by which the covered **income loss** is reduced by such incurred expenses.
- (35) **Managerial control** means:
- (a) owning interests representing more than 50% of the voting, appointment or designation power for the selection of:
 - i. a majority of the board of directors or trustees, if the entity is a corporation;
 - ii. the management committee members, if the entity is a joint venture; or
 - iii. the members of the management board, if the entity is a limited liability company.
 - (b) having the right, pursuant to a written contract, or the by-laws, charter, operating agreement or similar organizational documents, to elect, appoint or designate:
 - i. a majority of the board of directors or trustees, if the entity is a corporation;

- ii. the management committee members, if the entity is a joint venture; or
 - iii. the members of the management board, if the entity is a limited liability company.
 - (c) possessing at least 50% ownership interest of a joint venture entity and solely controlling the management and operations of such joint venture entity, pursuant to a written joint venture agreement;
 - (d) being the exclusive sponsor, if the entity is a charitable trust or foundation; or
 - (e) being the only general partner of an entity.
- (36) **Media material** means communicative material of any kind or nature for which **you** are responsible, including, but not limited to, words, pictures, sounds, images, graphics, code and **data**, regardless of the method or medium of communication of such material or the purpose for which the communication is intended. **Media material** does not include any tangible goods or products that are manufactured, produced, processed, prepared, assembled, packaged, labeled, sold, handled or distributed by **you** or others trading under **your** name.
- (37) **Merchant services agreement** means an agreement between **you** and an **acquiring bank, card association**, brand, network, credit or debit card processor, independent sales organization, gateway, or membership service, which enables **you** to accept payment by credit card, debit card or prepaid card.
- (38) **Money** means a medium of exchange in current use and authorized or adopted by a domestic or foreign government, including, but not limited to, currency, coins, bank notes, bullion, travelers' checks, registered checks and money orders held for sale to the public.
- (39) **Multimedia wrongful act** means any of the following, whether actual or alleged, but only if directly resulting from the dissemination of **media material** by an **Insured**:
- (a) any form of defamation or other tort related to the disparagement or harm to the reputation or character of any person or organization, including libel, slander, product disparagement or trade libel, and infliction of emotional distress, mental anguish, outrage or outrageous conduct, if directly resulting from any of the foregoing;
 - (b) invasion, infringement or interference with an individual's right of privacy or publicity, including the torts of false light, intrusion upon seclusion, commercial misappropriation of name, person, or likeness, and public disclosure of private facts;
 - (c) plagiarism, piracy or misappropriation of ideas under an implied contract;
 - (d) Infringement of copyright, trademark, trade name, trade dress, title, slogan, service mark or service name;
 - (e) domain name infringement or improper deep-linking or framing;
 - (f) negligence in **media material**, including a **claim** alleging harm to any person or entity that acted or failed to act in reliance upon such **media material**;
 - (g) false arrest, detention or imprisonment;
 - (h) trespass, wrongful entry or eviction, eavesdropping, or other invasion of the right of private occupancy; or

- (i) unfair competition, but only when arising out of a peril described in (a) through (h) above.
- (40) **Named Insured** means the person or organization listed as such on the Declarations Page of the Policy to which this Endorsement attaches.
- (41) **Notification** means written notice to affected individuals in the event of a **security breach** or **privacy breach**, whether such written notice is made by **you** voluntarily or to comply with **privacy regulations**.
- (42) **Notification expenses** means reasonable and necessary expenses that **you** incur on **your** own behalf, or on behalf of a party for whom **you** are **vicariously liable**, to provide **notification** of a **security breach** or **privacy breach**, including printing costs, mailing and postage expenses, and the costs to engage a **third party** to mail **notification** letters and prepare substitute or website notices. **Notification expenses** must be incurred with the Company's prior written consent.
- (43) **Other property** means any tangible property, other than **money** or **securities**, which has intrinsic value.
- (44) **Outsourced IT service provider** means a **third party** that provides information technology services to **you**, under a written contract with **you** to provide such services, including, but not limited to, hosting, security management, co-location, and **data** storage. **Outsourced IT service provider** includes any **cloud provider**.
- (45) **PCI Data Security Standard** (known as "PCI DSS") means the Payment Card Industry Security Standards Council Data Security Standard in effect now, or as hereafter amended, which all merchants and processors must follow when storing, processing and transmitting cardholder **data**.
- (46) **PCI DSS demand** means a written demand for **PCI DSS fines and assessments** received by an **Insured** directly or indirectly from or through an **acquiring bank**, **card association** or payment card processor due to an **Insured's** non-compliance with the **PCI Data Security Standard**, or a request for information received by an **Insured** from an **acquiring bank**, **card association** or payment card processor regarding a suspected **security breach** or **privacy breach**.
- (47) **PCI DSS fines and assessments** means monetary fines, penalties or assessments, including fraud recoveries, card reissuance costs, operational expenses or compliance case costs, which an **Insured** is legally obligated to pay under the terms of a **merchant services agreement**, but only where such monetary fines, penalties or assessments result from a **security breach** or **privacy breach**.
- (48) **Period of indemnity** means the period beginning on the earlier of the date of **notification** or the first **adverse media report** (whichever applies), and ending on the earlier of:
 - (a) the date when gross revenues are restored to the level they had been prior to **notification** or the first **adverse media report** (whichever applies); or
 - (b) 180 consecutive days after the date of **notification** or the first **adverse media report** (whichever applies).
- (49) **Period of restoration** means the period beginning on the date when the **system failure** began, and ending on the earlier of:
 - (a) the date when the **insured computer system** is restored or could have been repaired or restored with reasonable speed to the same condition, functionality and level of service that existed prior to the **system failure**, plus a maximum

of 30 additional consecutive days after the restoration of the **insured computer system** to allow for restoration of **your** business; or

(b) 120 consecutive days after the date the **system failure** began.

(50) **Personally identifiable information** means information that can be used to determine, distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, including, but not limited to, financial account numbers, security codes, personal identification numbers (PINs), credit and debit card numbers, medical or healthcare information, social security numbers, driver's license numbers, addresses, passwords, and any other non-public information as defined in **privacy regulations**.

(51) **Phishing attack** means the use by a **third party** of fraudulent telephone calls, emails, texts, instant messages or other electronic communications or malicious websites to impersonate **you** or **your** brand, products or services to solicit **private information**.

(52) **Print media** means newspapers, newsletters, magazines, books and literary works in any form, brochures or other types of publications, and advertising materials including packaging, photographs, and digital images.

(53) **Privacy breach** means any of the following:

(a) the unauthorized collection, disclosure, use, access, destruction or modification of **private information**;

(b) the inability to access, or failure to provide, **private information**;

(c) theft or loss of **private information**, including the theft or loss of **private information** stored on an unsecured **data** storage device or mobile or handheld device, including any smartphone, tablet, and laptop which is owned by **you** and operated by an **Insured**, or owned and operated by an **employee** or **executive** who has agreed in writing to **your** corporate mobile device acceptable use and security policy (also known as a "Bring Your Own Device" policy);

(d) the surrender of **private information** as a result of false communications or social engineering techniques, including but not limited to phishing, spear-phishing, and pharming;

(e) the failure to implement, maintain, or comply with privacy policies and procedures stating **your** obligations regarding **private information**, including but not limited to **your privacy policy**;

(f) the failure to develop or administer an identity theft prevention program;

(g) the failure to implement specific security practices with respect to **private information** required by any **privacy regulations**;

(h) an infringement or violation of any rights to privacy;

(i) breach of a person's right of publicity, false light, intrusion upon a person's seclusion;

(j) the failure to comply with **privacy regulations** pertaining to the **Insured's** responsibilities with respect to **private information**, but only relating to an act listed in paragraphs (a) through (h) above; or

(k) the failure to comply with any federal, state, foreign or other law (including common law), statute or regulation prohibiting unfair or deceptive trade

practices or consumer fraud pertaining to the **Insured's** responsibilities with respect to **private information**, but only relating to an act listed in paragraphs (a) through (h) above.

A series of continuing **privacy breaches**, related or repeated **privacy breaches**, or multiple **privacy breaches** resulting from the same event or incident will be considered a single **privacy breach** and will be deemed to have occurred at the time the first **privacy breach** in the series first occurred.

(54) Privacy breach response costs means:

- (a) reasonable and necessary **public relations expenses** that **you** incur with the Company's prior written consent prior to or following the publication of an **adverse media report** to avert or mitigate any material damage to **your reputation** or brands, which results or reasonably could result from the **adverse media report**; and
- (b) reasonable and necessary legal fees that **you** incur on **your** own behalf or on behalf of a party for whom **you** are **vicariously liable** to:
 - i. determine the scope, cause, and extent of an actual or suspected **privacy breach** or **security breach**;
 - ii. determine the applicability of, and **your** obligations to comply with, **privacy regulations** due to an actual or suspected **privacy breach**; and
 - iii. draft a **notification** letter to be sent to parties affected by a **privacy breach**.
- (c) reasonable and necessary fees and costs that **you** incur on **your** own behalf, or on behalf of a party for whom **you** are **vicariously liable**, to retain a qualified IT forensics firm or computer security expert to investigate and identify the source and scope of a **security breach** or **privacy breach**; and
- (d) overtime salaries of non-exempt **employees** assigned to handle inquiries from parties affected by a **privacy breach**.

(55) Privacy regulations means foreign, federal, state or local statutes, rules, regulations and other laws, as they currently exist and as amended, associated with the confidentiality, access, control, and use of **private information**, including, but not limited to:

- (a) the Health Insurance Portability and Accountability Act of 1996 (Public Law 104- 191), known as HIPAA, and related or similar state medical privacy laws;
- (b) the Gramm-Leach-Bliley Act of 1999 (G-L-B), also known as the Financial Services Modernization Act of 1999, including sections concerning security protection and standards for customer records maintained by financial services companies, and the rules and regulations promulgated thereunder;
- (c) state and federal statutes and regulations regarding the security and privacy of consumer information;
- (d) governmental privacy protection regulations or laws associated with the control and use of personal information, including but not limited to requirements to post or publish **your privacy policy**, adopt specific privacy controls, or inform customers of actual or suspected **privacy breaches**;

- (e) the privacy provisions of consumer protection laws, including the Federal Fair Credit Reporting Act (FCRA) and similar state laws;
 - (f) the Children's Online Privacy Protection Act or similar laws, as they exist now or in the future;
 - (g) the EU General Data Protection Act or other similar privacy and security statutes, rules, regulations or other laws worldwide, as they exist now or in the future; and
 - (h) the Health Information Technology for Economic and Clinical Health Act (HITECH ACT), enacted under Title XIII of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111-5), and its implementing regulations, including related or similar state medical privacy laws.
- (56) **Privacy regulatory proceeding** means a civil administrative proceeding, regulatory action, request for information, or investigation instituted against an **Insured** by a foreign, federal, state or local governmental body because of a **security breach** or **privacy breach**.
- (57) **Private information** means:
- (a) proprietary or confidential information owned by a **third party** that is in the care, custody or control of an **Insured** or is used by an **Insured** with the consent of such **third party**;
 - (b) **personally identifiable information**; and
 - (c) any information that is linked or linkable to a specific individual and that is subject to any **privacy regulations**.
- (58) **Programming error** means an error which occurs during the development or encoding of a computer program, software or application and which would, when in operation, result in a malfunction or incorrect operation of a **computer system**.
- (59) **Property damage** means physical injury to, or impairment, destruction or corruption of, any tangible property, including the loss of use thereof. **Data** is not considered tangible property.
- (60) **Public relations expenses** means expenses that **you** incur to retain or hire a **third party** public relations consultant or public relations firm to protect or restore **your reputation**, which is damaged or reasonably could be damaged by an **adverse media report**.
- (61) **Regulatory compensatory award** means a sum of **money** which an **Insured** is legally obligated to pay as a regulatory agency's award or fund for parties affected by a **privacy breach**, due to an adverse judgment or settlement arising out of a **privacy regulatory proceeding**. **Regulatory compensatory award** includes consumer redress funds but does not include any criminal fines or penalties of any nature whatsoever.
- (62) **Regulatory fines and penalties** means civil fines or penalties imposed by a foreign, federal, state or local governmental regulatory body against an **insured** in a **privacy regulatory proceeding**. **Regulatory fines and penalties** do not include: a) any amounts deemed uninsurable under the law pursuant to which this insurance is construed, b) any criminal fines or penalties of any nature whatsoever; or c) **PCI DSS fines and assessments**.

- (63) **Retroactive date** means the date specified as such in Item 4. of the Cyber Liability Supplemental Declarations, on or after which **wrongful acts** must have taken place to be considered for coverage under this Endorsement.
- (64) **Reward expenses** means the reasonable amount that **you** pay with the Company's prior written consent to an **informant** for information not otherwise available which leads to the arrest and conviction of any person who commits an illegal act that causes a **first party insured event**.
- (65) **Securities** means negotiable or non-negotiable instruments or contracts representing **money** or **other property** but does not include **money**.
- (66) **Security and privacy wrongful act** means any of the following, whether actual or alleged, but only if committed by an **Insured**:
- (a) the failure to prevent or hinder a **security breach**, which in turn results in:
 - i. the alteration, copying, corruption, destruction, deletion, or damage to **data** stored on an **insured computer system**;
 - ii. theft, loss or unauthorized disclosure of electronic or non-electronic **private information** that is in **your** care, custody or control;
 - iii. theft, loss or unauthorized disclosure of electronic or non-electronic **private information** that is in the care, custody or control of a **BPO service provider** or an **outsourced IT service provider** that is holding, processing or transferring such **private information** on **your** behalf; provided, however, that the theft, loss or unauthorized disclosure occurs while **your** written contract with such **BPO service provider** or **outsourced IT service provider** is still in effect;
 - iv. unauthorized access to, or unauthorized use of, a **computer system** other than an **insured computer system**;
 - v. the inability of an authorized **third party** to gain access to **your** services;
 - (b) the failure to timely disclose a **security breach** affecting **private information**;
 - (c) the failure to dispose of **private information** within the required period, in violation of **privacy regulations**;
 - (d) the failure to prevent the transmission of a malicious code or computer virus from an **insured computer system** to the **computer system** of a **third party**;
 - (e) a **privacy breach**;
 - (f) the failure to prevent a **privacy breach**;
 - (g) the failure to prevent or hinder participation by an **insured computer system** in a **denial of service attack** directed against internet sites or the **computer system** of a **third party**;
 - (h) the failure to prevent the theft or loss of **personally identifiable information** of **employees**; or
 - (i) infliction of emotional distress or mental anguish, but only if directly resulting from a peril described in (a) through (h) above.
- (67) **Security breach** means any of the following, whether a specifically targeted attack or a generally distributed attack:

- (a) a **hacking attack**;
- (b) the physical theft or loss of an unsecured **data** storage device containing **private information**; or
- (c) the theft or loss of an unsecured mobile or handheld device containing **private information**, including any smartphone, tablet, and laptop owned by **you** and operated by an **insured**, or owned and operated by an **employee** or **executive** who has agreed in writing to **your** corporate mobile device acceptable use and security policy (also known as a "Bring Your Own Device" policy).

A series of continuing **security breaches**, related or repeated **security breaches**, or multiple **security breaches** resulting from a continuing failure of computer security will be considered a single **security breach** and will be deemed to have occurred at the time the first **security breach** in the series first occurred.

(68) Special expenses means reasonable and necessary costs and expenses that **you** incur to:

- (a) prevent, preserve, minimize, or mitigate any further damage to **digital assets**, including the reasonable and necessary fees and expenses of specialists, outside consultants or forensic experts;
- (b) preserve critical evidence of any criminal or malicious wrongdoing;
- (c) purchase replacement licenses for computer programs because the copy protection system or access control software was damaged or destroyed by a **system failure**; or
- (d) notify affected individuals of a total or partial interruption, degradation in service, or failure of an **insured computer system** resulting from a **system failure**.

(69) Subsidiary means any entity in which the **Named Insured**, either directly or indirectly, through one or more of its **Subsidiaries**:

- (a) had **managerial control** as of the effective date of the Policy; or
- (b) acquires **managerial control** after the effective date of the Policy, subject to the limitations of Section **VIII**. of this Endorsement.

(70) System failure means an unplanned outage, interruption, failure, suspension, or degradation of service of an **insured computer system**, including, but not limited to, any such outage, interruption, failure, suspension, or degradation of service caused directly by a **hacking attack**.

(71) Takeover means:

- (a) any person, entity or affiliated group of persons or entities obtains more than 50% of the **Named Insured's** equity or assets;
- (b) any person, entity or affiliated group of persons or entities obtains the right to elect or appoint more than 50% of the **Named Insured's** directors, officers, trustees or member managers, as applicable;
- (c) the acquisition of the **Named Insured** by another entity, whereby the entity obtains **managerial control** of the **Named Insured**;
- (d) the **Named Insured** is dissolved, sold or acquired by, merged into, or consolidated with, another entity, such that the **Named Insured** is not the

surviving entity; or

(e) the **Named Insured** ceases to do business for any reason.

(72) TCPA claim means:

- (a) a written demand made against an **Insured** for **money** or non-monetary relief alleging a **TCPA violation**;
- (b) the service of a civil lawsuit or the institution of arbitration or other alternative dispute resolution proceedings against an **Insured** alleging a **TCPA violation** and seeking **money**, a temporary restraining order, or a preliminary or permanent injunction; or
- (c) a written request received by an **Insured** to toll or waive a statute of limitations relating to a potential **TCPA claim** against an **Insured**.

(73) TCPA violation means any of the following, whether actual or alleged, but only if committed by an **Insured**:

- (a) any unsolicited telephone calls, emails, faxes, or other communications to **your** actual or prospective customers or other third parties;
- (b) a violation of the Telephone Consumer Protection Act (47 U.S.C. §227), as amended, or any regulations promulgated thereunder;
- (c) a violation of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. §§ 6101-6108), as amended, or any regulations promulgated thereunder;
- (d) a violation of the CAN-SPAM Act (15 U.S.C. §§ 7701-7713), as amended, or any regulations promulgated thereunder; or
- (e) a violation of any similar federal, state, local or foreign law, whether statutory, regulatory or common law, including any anti-spam law or other law that addresses, prohibits or limits the use of telephonic or electronic communications for solicitation purposes.

(74) Third party means any entity, company, organization or person who does not qualify as an **Insured**.

(75) Unauthorized trading means trading, which at the time of the trade, exceeds permitted financial limits or is outside of permitted product lines.

(76) Vicariously liable means **your** legal responsibility for the liability of others, including legal responsibility **you** assume in a contract. The existence of vicarious liability will not create or confer any rights or duties under this Endorsement to any **third party**, other than as provided in this definition.

(77) Waiting period means:

- (a) with respect to Insuring Agreement **I.(B)(2)** only, the 2-week period which must elapse after **notification**, or in the event of an **adverse media report**, after publication of the first **adverse media report**, before **brand loss** may be payable. The **waiting period** applies to each **period of indemnity**.
- (b) with respect to Insuring Agreement **I.(B)(3)(b)** only, the 8-hour period which must elapse before **income loss**, **interruption expenses** and **special expenses** may be payable. The **waiting period** applies to each **period of restoration**.

- (78) **Wrongful act** means:
- (a) with respect to Insuring Agreement **I.(A)(1)** only, a **multimedia wrongful act**;
 - (b) With respect to Insuring Agreement **I.(A)(2)** only, a **security and privacy wrongful act**;
 - (c) With respect to Insuring Agreements **I.(A)(3)** and **I.(A)(4)** only, a **security breach** or **privacy breach**; and
 - (d) With respect to Insuring Agreement **I.(A)(5)** only, a **TCPA violation**.
- (79) **You** and **Your** means the **Named Insured** and any **Subsidiary**.
- (80) **Your account** means a business account maintained by **you** at a financial institution from which **you**, or any **insured** authorized by **you**, may request the transfer, payment or delivery of **money** or **securities**.
- (81) **Your privacy policy** means **your** published policies provided to **employees** or **third parties** in written or electronic form that govern the collection, dissemination, confidentiality, integrity, accuracy or availability of information relating to **private information**.
- (82) **Your reputation** means the estimation of trust that customers or clients have in doing business with **you** or in purchasing **your** products or services.

V. CYBER LIABILITY NOTICE PROVISIONS

- (A) As a condition precedent to coverage for any **claim** under any Insuring Agreement of this Endorsement except Insuring Agreement **I.(B)(2)**, an **executive** must provide written notice to the Company of such **claim** as soon as practicable during the **endorsement period**, but no later than 60 days after expiration of the **endorsement period** (or during the **cyber liability extended reporting period**, if applicable).
- (B) As a condition precedent to coverage for any **claim** under Insuring Agreement **I.(B)(2)**, an **executive** must provide written notice to the Company of such **claim** during the **period of indemnity**.
- (C) If, during the **endorsement period**, an **executive** becomes aware of any incidents, acts, facts or circumstances that could reasonably be a basis for a **claim**, and if the **executive** gives written notice to the Company during the **endorsement period** that describes:
- (1) specific details of the incidents, acts, facts or circumstances that could reasonably be the basis for a **claim**;
 - (2) possible **damages**, penalties, or other amounts potentially covered under this Endorsement that may result or has resulted from the facts or circumstances;
 - (3) details regarding how the **executive** first became aware of the incidents, acts, facts or circumstances; and
 - (4) the **computer system** security and event logs, if applicable,
- then any **claim** arising out of such reported incidents, acts, facts or circumstances will be deemed a **claim** first made on the date that Company first received written notice complying with the above requirements.

VI. CYBER LIABILITY EXTENDED REPORTING PROVISIONS

- (A) If the Policy is cancelled or non-renewed by the Company for any reason other than fraud, material misrepresentation, material omission or non-payment of premium, or if the **Named Insured** cancels or chooses not to renew the Policy, the **Named Insured** will have the option to purchase a **cyber liability extended reporting period**. The additional premium for the **cyber liability extended reporting period** will be a percentage of the full Cyber Liability annual premium in effect on the date the Policy was issued or last renewed, as set forth below:

Term	Percent of Cyber Annual Premium
One year (12 months)	100%
Two years (24 months)	150%
Three years (36 months)	200%

- (B) If purchased by the **Named Insured**, the **cyber liability extended reporting period** will only apply to:
- (1) with respect to the Third Party Liability Insuring Agreements of this Endorsement, any **claim** first made against an **Insured** during the **cyber liability extended reporting period**, provided always that the actual or alleged **wrongful acts** giving rise to such **claim** occur on or after the **retroactive date** and prior to the end of the **endorsement period**; and
 - (2) with respect to the First Party Insuring Agreements of this Endorsement, any **claim** reported to the Company during the **cyber liability extended reporting period**, provided always that the **first party insured event** giving rise to such **claim** first occurs during the **endorsement period**, but before the effective date of cancellation or non-renewal of the Policy, and the **first party insured event** is first discovered by an **executive** during the **cyber liability extended reporting period**.
- (C) Any such **cyber liability extended reporting period**:
- (1) shall be evidenced by issuance of an Endorsement to this Policy;
 - (2) is subject to all terms, conditions, limitations and exclusions of this Endorsement;
 - (3) shall require payment within thirty (30) days from the **Named Insured's** written request to bind such **cyber liability extended reporting period**; and
 - (4) shall be effective on the effective date of cancellation of the Policy, if applicable, or the expiration date of the Policy.
- (D) The Limits of Liability for the **cyber liability extended reporting period** shall be part of, and not in addition to, the Limits of Liability set forth in the Cyber Liability Supplemental Declarations. The purchase of the **cyber liability extended reporting period** shall not increase or reinstate the Limits of Liability.
- (E) The right to purchase the **cyber liability extended reporting period** shall terminate unless the **Named Insured** provides written notice of the **Named Insured's** election to purchase the **cyber liability extended reporting period** to the Company within

thirty (30) days of the effective date of cancellation, if applicable, or the expiration date of the Policy.

- (F) At the commencement of a **cyber liability extended reporting period**, the entire premium will be deemed fully earned, and in the event the **Named Insured** terminates a **cyber liability extended reporting period extended** for any reason prior to its natural expiration, the Company will not be liable to return any premium paid for the **cyber liability extended reporting period**.

VII. **CYBER LIABILITY EXCLUSIONS**

The Company will not be liable under this Endorsement for:

- (A) any **claim** based upon, arising from, or in any way involving any actual or alleged **wrongful act** or **first party insured event** of which any **Insured** had knowledge prior to the earlier of:
- (1) the **endorsement period**; or
 - (2) the original inception date of Cyber Liability Insurance issued by the Company of which this Endorsement is a direct and continuous renewal;
- (B) any **claim** made by or on behalf of an **Insured** against another **Insured**; however, this exclusion does not apply to a **claim** under Insuring Agreement **I.(A)(2)** which is brought by any past, present or future **employee** against **you**;
- (C) any **claim** based upon, arising from, or in any way involving any of the following committed by an **Insured**, whether acting alone or in collusion with other persons:
- (1) a willful, intentional, deliberate, malicious, fraudulent, or dishonest act or omission;
 - (2) a criminal act;
 - (3) an intentional violation of law; or
 - (4) the gaining of any profit or advantage to which an **Insured** is not legally entitled.

However, the Company may pay **defense costs** incurred in connection with the defense of any conduct described in this Exclusion until such time as there is a final, non-appealable adjudication in a judicial, administrative or alternative dispute proceeding, or by an **Insured's** own admission in a proceeding or otherwise. The Company will have the right to recover **defense costs** incurred in defending any such **claim** from any **Insured** found to have committed the conduct described in this Exclusion.

Notwithstanding the foregoing, this Exclusion does not apply to any **Insured** who did not commit, participate in or have prior knowledge of any conduct to which this Exclusion would otherwise apply.

- (D) any **claim** based upon, arising from, or in any way involving the insolvency or bankruptcy of any person or entity, or the failure, inability or unwillingness of any person or entity to make payments, perform obligations or conduct business because of insolvency, liquidation, or bankruptcy; however, **your** insolvency or bankruptcy will not relieve the Company of its obligations under this Endorsement where **your** insolvency or bankruptcy does not give rise to a **claim** or loss;

- (E) any **claim** for **bodily injury** or **property damage**;
- (F) any **claim** based upon, arising from, or in any way involving any regional, countrywide, or global outage, failure, disruption, or reduction in supply of any utility service or infrastructure, including electricity, gas, water, telephone, cable, internet, satellite or telecommunications, or any failure, outage, disruption, degradation or termination of any critical part of such service or infrastructure;
- (G) any **claim** based upon, arising from, or in any way involving the actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products or services;
- (H) any **claim** based upon, arising from, or in any way involving 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); however, this exclusion does not apply to a **security breach** originating from any country where the United States of America has imposed economic or trade sanctions;
- (I) any **claim** based upon, arising from, or in any way involving any breach of any express, implied, actual or constructive contract, warranty, guarantee or promise; however, this exclusion does not apply to:
 - (1) any liability or obligation an **Insured** would have had in the absence of such contract, warranty, guarantee or promise and which would have been insured by this Endorsement;
 - (2) an actual or alleged breach of **your privacy policy**;
 - (3) an actual or alleged breach of an express, implied, actual or constructive contract, warranty, guarantee or promise to protect **private information**;
 - (4) any **claim** under Insuring Agreement **I.(A)(2)** for an unintentional breach by an **Insured** of the provisions of a confidentiality or non-disclosure agreement relating to the confidentiality of **private information**; or
 - (5) any **claim** under Insuring Agreement **I.(A)(4)** for an unintentional breach of the provisions of a **merchant services agreement** relating to compliance with the **PCI DSS Standard**.
- (J) any **claim** based upon, arising from, or in any way involving any liability assumed by any **Insured** under a contract or agreement; however, this exclusion does not apply to:
 - (1) with respect to Insuring Agreement **I.(A)(1)** and Insuring Agreement **I.(A)(2)** only, liability **assumed under contract**;
 - (2) any liability an **Insured** would have had in the absence of such contract or agreement and which would have been insured by this Endorsement; or
 - (3) with respect to Insuring Agreement **I.(A)(4)** only, liability for **PCI DSS fines and assessments** assumed under a **merchant services agreement**;
- (K) any **claim** based upon, arising from, or in any way involving:
 - (1) any actual, alleged or threatened presence of pollutants or contamination of any kind, including, but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste ("waste" includes materials to be recycled, reconditioned, or reclaimed), whether resulting from an **Insured's** activities or

the activities of others, or such presence or contamination happened suddenly or gradually, accidentally or intentionally, or expectedly or unexpectedly; or

- (2) Any directive or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants or contamination of any kind, or in any way respond to, or assess the effects of, pollutants or contamination;
- (L) any **claim** based upon, arising from, or in any way involving **income loss** caused by, or resulting from, **unauthorized trading**;
- (M) any **claim** based upon, arising from, or in any way involving:
 - (1) the actual or alleged loss of value of any **securities**;
 - (2) the actual or alleged purchase or sale of **securities**;
 - (3) the offer of, or solicitation of an offer, to purchase or sell **securities**; or
 - (4) the violation of any securities law including, but not limited to, the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, or the Sarbanes-Oxley Act of 2002, or any regulation promulgated under the foregoing statutes, or any similar federal, state, local, or foreign law, including "Blue Sky" laws, whether such law is statutory, regulatory, or common law;
- (N) any **claim** based upon, arising from, or in any way involving the actual or alleged government enforcement of any foreign, federal, state or local 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 to a **privacy regulatory proceeding**;
- (O) any **claim** based upon, arising from, or in any way involving:
 - (1) any employer-**employee** relations, policies, practices, acts, or omissions;
 - (2) any actual or alleged refusal to employ any person; or
 - (3) any misconduct by **you** with respect to **employees**.

However, this exclusion does not apply to a **claim** under Insuring Agreement **I.(A)(2)**, Insuring Agreement **I.(A)(3)** or Insuring Agreement **I.(B)(1)** which is based upon or arising from a breach of the **personally identifiable information** of any **employee**.
- (P) any **claim** based upon, arising from, or in any way involving any actual or alleged harassment or discrimination of any kind including, but not limited to, age, color, race, gender, creed, national origin, marital status, sexual preferences, disability, or pregnancy;
- (Q) any **claim** based upon, arising from, or in any way involving:
 - (1) the violation of any pension, healthcare, welfare, profit sharing, mutual, or investment plans, funds, or trusts; or
 - (2) any violation of any provision of the Employee Retirement Income Security Act of 1974 and its amendments, or the Pension Protection Act of 2006 and its amendments, or any regulation, ruling, or order issued pursuant to the foregoing statutes.

However, Exclusion **(Q)(2)** does not apply to a **claim** under Insuring Agreement **I.(A)(2)**, Insuring Agreement **I.(A)(3)** or Insuring Agreement **I.(B)(1)** which is based

upon or arising from a breach of the **personally identifiable information** of any **employee**.

- (R) any **claim** for loss, damage, cost, or expense of whatsoever nature directly or indirectly caused by, resulting from, or in connection with war, invasion, acts of foreign enemies, hostilities or warlike operations (whether declared or not), civil war or mutiny, civil commotion assuming the proportions of, or amounting to, a riot, popular uprising, military uprising, insurrection, rebellion, revolution, or usurped power, or for loss, damage, cost, or expense of whatsoever nature directly or indirectly caused by, resulting from, or in connection with any action taken by a government authority to hinder, control, prevent, suppress, or defend against any of the aforementioned actions; or the confiscation, nationalization, requisition, or destruction of, or damage to, property by, or under the order of, any government authority; however, this exclusion does not apply to an **act of cyber terrorism**;
- (S) any **claim** based upon, arising from, or in any way involving:
 - (1) any **Insured's** failure to comply with or follow the **PCI Data Security Standard** or any payment card company rules; or
 - (2) any **Insured's** failure to implement or 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 an **Insured** has paid or agreed to reimburse or indemnify.

However, this exclusion does not apply to a **PCI DSS demand**.

- (T) any **claim** based upon, arising from, or in any way involving:
 - (1) any actual or alleged unfair competition, price fixing, deceptive trade practices or restraint of trade; or
 - (2) the violation of any antitrust statute, legislation or regulation.

However, Exclusion (T)(1) does not apply to:

- (1) allegations of unfair competition that form a part of **claim** under Insuring Agreement I.(A)(1), Insuring Agreement I.(A)(2) or Insuring Agreement I.(A)(3); or
 - (2) allegations of deceptive trade practices that form a part of a **claim** under Insuring Agreement I.(A)(2) or Insuring Agreement I.(A)(3).
- (U) any **claim** based upon, arising from, or in any way involving any actual or alleged infringement of any patent;
- (V) any **claim** based upon, arising from, or in any way involving the misappropriation, theft, copying, display or publication of any trade secret; however, this exclusion does not apply to a **claim** under Insuring Agreement I.(A)(2) alleging failure to prevent the misappropriation of a trade secret which results from a **security and privacy wrongful act**;
- (W) any **claim** based upon, arising from, or in any way involving the confiscation, commandeering, requisition, destruction of, or damage to, computer hardware by order of a government de jure or de facto, or by any public authority for whatever reason; however, this exclusion does not apply to a **system failure**;
- (X) any **claim** based upon, arising from, or in any way involving any actual or alleged violation of the Telephone Consumer Protection Act (47 U.S.C. §227), the

Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. §§ 6101-6108), or the CAN-SPAM Act (15 U.S.C. §§ 7701-7713), each as amended, or any regulations promulgated under the foregoing statutes, or any similar federal, state, local or foreign laws, whether such laws are statutory, regulatory or common law, including any anti-spam law or other law concerning the use of telephonic or electronic communications for solicitation purposes, or any allegations of invasion or violation of any rights to privacy derived therefrom; however, this exclusion does not apply to a **TCPA claim**;

(Y) with respect to all First Party Insuring Agreements of this Endorsement:

- (1) any liability to any **third party** for whatever reason, including, contractual penalties, **damages**, or legal costs and expenses of any type;
- (2) sanctions, fines or penalties imposed by law; or
- (3) any **claim** based upon, arising from, or in any way involving fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, force majeure, or any other physical event, however caused.

(Z) with respect to Insuring Agreement **I.(B)(2)** (BrandGuard®) of this Endorsement only:

- (1) any loss, cost, liability or expense that **you** incur to re-establish **your reputation**, including **public relations expenses**;
- (2) any loss, cost, liability or expense incurred in any **claim** that is insured by any other insurance, except excess insurance; or
- (3) any loss, cost, liability or expense incurred because of an **adverse media report** that also affects or refers in similar terms to a general security issue, an industry, or **your** specific competitors without any specific allegations regarding a **security breach** or a **privacy breach** committed by an **Insured**, or by others acting on **your** behalf, for whom **you** are legally responsible, including **BPO service providers** or **outsourced IT service providers**;

(AA) With respect to Insuring Agreement **I.(B)(3)** (System Failure) of this Endorsement only:

- (1) the cost of restoring, updating or replacing **digital assets** to a level beyond that which existed prior to the **system failure**;
- (2) physical damage to, or the costs to repair or replace, any computer hardware or **data** center;
- (3) the economic or market value of **digital assets**;
- (4) the costs or expenses incurred to identify, patch, or remediate software **programming errors** or **computer system** vulnerabilities;
- (5) the cost to upgrade, improve, repair, redesign, reconfigure, or maintain an **insured computer system** to a level of functionality beyond that which existed prior to the **system failure**;
- (6) the cost of restoring, replacing or repairing any electronic media; or
- (7) loss of goodwill or harm to **your reputation**.

VIII. CHANGES IN EXPOSURE

- (A) In the event of a **takeover** during the **endorsement period**, coverage under this Endorsement will continue until its natural expiration date for any **claim** made during the **endorsement period**, but only if the **wrongful acts** or **first party insured events** giving rise to such **claim** occur on or after the applicable **retroactive date** and prior to the effective date of the **takeover**.
- (B) If, after the effective date of the **endorsement period**, the **Named Insured** acquires or creates a **Subsidiary**, and the Company has agreed, by endorsement to the Policy, to provide coverage for such **Subsidiary**, then such **Subsidiary** will be included within the definition of **Insured** for the duration of the **endorsement period**, but only with respect to **claims** for **wrongful acts** or **first party insured events** that occur after the creation or acquisition of such **Subsidiary**.
- (C) If, after the effective date of the **endorsement period**, the **Named Insured** sells a **Subsidiary**, that **Subsidiary** will be an **Insured** for the duration of the **endorsement period**, but only with respect to **claims** for **wrongful acts** or **first party insured events** that occur on or after the applicable **retroactive date** and prior to the effective date of the sale.

IX. LOSS DETERMINATION

- (A) **Brand Loss.** The **brand loss** payable under Insuring Agreement I.(B)(2) will be calculated by considering:
 - (1) the prior experience of **your** business preceding the date of the **adverse media report** or **notification**, whichever applies, and **your** likely net profit, had no **adverse media report** been published or **notification** occurred;
 - (2) income derived from substitute methods, facilities, or personnel **you** use to maintain **your** revenue stream;
 - (3) **Your** documentation of the trends in **your** business and variations in, or other circumstances affecting, **your** business before or after the **adverse media report** or **notification**, which would have affected **your** business had no **adverse media report** been published or **notification** occurred; and
 - (4) **Your** fixed operating expenses (including ordinary payroll), but only to the extent that such fixed operating expenses must continue during the **period of indemnity**.

For purposes of calculating **brand loss**, “net profit” will include the amount paid or payable to **you** for goods, products, or services sold, delivered, or rendered in the normal course of **your** business.

- (B) **Digital Assets Loss.** The **digital assets loss** payable under Insuring Agreement I.(B)(3)(a) will be determined as follows:
 - (1) if the impacted **digital asset** was purchased from a **third party**, we will pay only the lesser of the original purchase price of the **digital asset** or the reasonable and necessary **digital assets loss**; or
 - (2) if it is determined that the **digital assets** cannot be replaced, restored or recreated, we will only reimburse the actual and necessary **digital assets loss** incurred up to such determination.
- (C) **Income Loss.** The **income loss** payable under Insuring Agreement I.(B)(3)(b) will be calculated as follows:

- (1) **Your** net profit, as could have been reasonably projected, but which has been lost as a direct result of a **system failure**; plus
- (2) **Your** fixed operating expenses (including ordinary payroll) incurred, but only to the extent that such operating expenses must continue during the **period of restoration**.

Income loss will be calculated by considering:

- (1) the prior experience of **your** business preceding the date of the **system failure**, and **your** likely net profit, had no **system failure** occurred;
- (2) income derived from substitute methods, facilities, or personnel **you** use to maintain **your** revenue stream; and
- (3) **Your** documentation of the trends in **your** business and variations in, or other circumstances affecting, **your** business before or after the **system failure**, which would have affected **your** business had no **system failure** occurred.

For purposes of calculating **income loss**, “net profit” will include the amount paid or payable to **you** for goods, products, or services sold, delivered, or rendered in the normal course of **your** business.

X. TRANSFER OF DUTIES WHEN THE LIMIT OF LIABILITY IS EXHAUSTED

- (A) If the Company concludes that, based on **claims** which have been reported, the applicable Limit of Liability set forth in the Cyber Liability Supplemental Declarations is likely to be exhausted, the Company will notify **you** to that effect.
- (B) When the applicable Limit of Liability has been exhausted:
 - (1) The Company will notify **you** in writing as soon as practicable that: (a) such Limit of Liability has been exhausted; and (b) the Company’s obligation to defend any **claim** or pay any amounts has ended.
 - (2) The Company will initiate and cooperate in the transfer of control to the appropriate **Insured** all **claims** which are subject to the Limit of Liability and were reported to the Company before the Limit of Liability was exhausted. **You**, and any other **Insured**, must cooperate in the transfer of control of said **claims**. **You**, and any other **Insured** involved in a **claim**, must arrange for the defense and payment of such **claim** within the period agreed to by the appropriate **Insured** and the Company. Absent any such agreement, arrangements for defense and payment of the **claim** must be made as soon as practicable. The Company will take such steps as deemed appropriate to avoid default in, or continue the defense or handling of, such **claim** until transfer of control is completed, provided the **Insured** is cooperating in completing such transfer.
 - (3) The **Insured** shall reimburse the Company for the costs it incurs in transferring control of a **claim**. The Company will take no action whatsoever with respect to any **claim** that would have been subject to the applicable Limit of Liability had it not been exhausted, if the **claim** is reported to the Company after the Limit of Liability is exhausted.
 - (4) The **Insured** will also be responsible for providing **notification** and customer support, including credit monitoring services and identity theft education or assistance, to affected individuals. The **Insured** may continue to utilize vendors recommended by the Company to provide such services.

- (5) The exhaustion of the Limit of Liability and the resulting end of the Company's obligation to defend any **claim** or pay any amount will not be affected by the Company's failure to comply with any of the provisions of this clause.

XI. OTHER INSURANCE

The coverage provided by this Endorsement will be excess insurance over any other valid and collectible insurance available, including any self-insured retention or deductible portion thereof, whether such insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such insurance specifically applies as excess insurance over the insurance provided under this Endorsement.

XII. ARBITRATION

Notwithstanding any other provision of this Endorsement or the Policy, any irreconcilable dispute between the Company and an **Insured** concerning this Endorsement or coverage for any **claim** is to be resolved by arbitration in accordance with the then current rules of the American Arbitration Association, except that the arbitration panel shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by the Company, and a third independent arbitrator selected by the first two arbitrators. Judgment upon the award may be entered in any court having jurisdiction. The arbitrator has the power to decide any dispute between the Company and the **Insured** concerning the application or interpretation of this Endorsement. However, the arbitrator shall have no power to change or add to the provisions of this Endorsement. The **Insured** and the Company will share equally in the cost of arbitration.