



**TOKIO MARINE
HCC**

HOUSTON CASUALTY COMPANY

ADMINISTRATIVE OFFICES: 13403 NORTHWEST FREEWAY, HOUSTON, TEXAS 77040

NETGUARD® PLUS CYBER LIABILITY INSURANCE DECLARATIONS

1. **Named Insured:** «Declarations.InsuredFullName»
2. **Address:** «Declarations. Insuredstreetaddress» »
«Declarations.Insuredcity», «Declarations.Insuredstate»
«Declarations.Insuredzip»
3. **Policy Number:** «Declarations.PolicyNo» **Renewal of:** «Declarations.RenewalPolicyNo»
4. **Policy Period:** Effective Date: «Dec.InceptionDate» to Expiration Date: «Dec.ExpirationDate»
(12:01 a.m. Local Time at the Address of the **Named Insured** stated in Item 2 above)
5. **Retroactive Date:** «Declarations.RetroactiveDate»
6. **Knowledge Date:** «Declarations.KnowledgeDate»
7. **Premium:** \$«Declarations.Premium»
«Taxes.Description» «Taxes.BilledAmt»

8. Limits of Liability:

“Nil” or “N/A” indicates that the Coverage was not purchased, and that portion of the Policy does not apply.

A. Limits Per Insuring Agreement:

Third Party Liability Insuring Agreements

(Claims Made and Reported Coverage)

	Each Claim	Aggregate
Multimedia Liability Coverage	\$« »	\$« »
Security and Privacy Liability Coverage	\$« »	\$« »
Privacy Regulatory Defense and Penalties Coverage	\$« »	\$« »
PCI DSS Liability Coverage	\$« »	\$« »
Bodily Injury Liability Coverage	\$« »	\$« »
Property Damage Liability Coverage	\$« »	\$« »
TCPA Defense Coverage	\$« »	\$« »

First Party Insuring Agreements

(Event Discovered and Reported Coverage)

	Each Claim	Aggregate
Breach Event Costs Coverage	\$« »	\$« »
Post Breach Remediation Costs Coverage	\$« »	\$« »
BrandGuard® Coverage	\$« »	\$« »
System Failure Coverage	\$« »	\$« »
Dependent System Failure Coverage	\$« »	\$« »
Cyber Extortion Coverage	\$« »	\$« »



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	Each Claim	Aggregate
Cyber Crime Coverage		
A. Financial Fraud Sublimit	\$« »	\$« »
B. Telecommunications and Utilities Fraud Sublimit	\$« »	\$« »
C. Phishing Fraud Sublimits		
1. Your Phishing Fraud Loss Sublimit	\$« »	\$« »
2. Client Phishing Fraud Loss Sublimit	\$« »	\$« »
3. Phishing Fraud Aggregate Sublimit (C.1. & C.2. combined)		\$« »
Cyber Crime Aggregate Limit (A., B., & C. combined)		\$« »
Bricking Loss Coverage	\$« »	\$« »
Property Damage Loss Coverage	\$« »	\$« »
Reward Expenses Coverage	\$« »	\$« »
Court Attendance Costs Coverage	\$« »	\$« »

B. Maximum Policy Aggregate Limit: \$« »

C. Additional Defense Costs Limit: \$« »
(Not applicable to Bodily Injury Liability, Property Damage Liability or TCPA Defense Coverage)

D. Breach Event Costs Outside the Limit Enhancement: Purchased / Not Purchased

9. Deductibles, Waiting Periods, Periods of Indemnity and Period of Restoration:

A. Each Insuring Agreement:

Multimedia Liability Coverage Deductible	\$« » each Claim
Security and Privacy Liability Coverage Deductible	\$« » each Claim
Privacy Regulatory Defense and Penalties Coverage Deductible	\$« » each Claim
PCI DSS Liability Coverage Deductible	\$« » each Claim
Bodily Injury Liability Coverage Deductible	\$« » each Claim
Property Damage Liability Coverage Deductible	\$« » each Claim
TCPA Defense Coverage Deductible	\$« » each Claim
Breach Event Costs Coverage Deductible	\$« » each Claim
Post Breach Remediation Costs Coverage Deductible	\$« » each Claim
BrandGuard® Coverage	

Waiting Period: « »

Period of Indemnity: « »

System Failure Coverage

 A. Data Recovery Deductible \$« » each **Claim**

 B. Non-Physical Business Interruption

Waiting Period: « »

Period of Restoration: « »



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Dependent System Failure Coverage

- A. Data Recovery Deductible
- B. Non-Physical Business Interruption

\$« » each **Claim**

Waiting Period:

« »

Period of Indemnity:

« »

Cyber Extortion Coverage Deductible

\$« » each **Claim**

Cyber Crime Coverage Deductible

\$« » each **Claim**

Bricking Loss Coverage Deductible

\$« » each **Claim**

Property Damage Loss Coverage Deductible

\$« » each **Claim**

Reward Expenses Coverage Deductible

\$« » each **Claim**

Court Attendance Costs Coverage Deductible

None

B. Aggregate Deductible:

\$« »

10. How to Report a Claim:

Report any **Claim** or potential **Claim** to:

Tokio Marine HCC Cyber & Professional Lines Group

Claims Department

16501 Ventura Blvd., Suite 200

Encino, CA 91436

Claims Telephone Number: 888-627-8995

Claims Email Address: CyberClaims@tmhcc.com

Schedule of Endorsements

It is hereby agreed that the following endorsements are attached to and are made a part of this Policy at the time of issue:

«Endorsements.EndoNum»

«Endorsements.FormCode»

«Endorsements.FormName»

«Declarations.SignedBy(image)»

HOUSTON CASUALTY COMPANY

NetGuard® Plus Cyber Liability Insurance

Table of Contents

I. INSURING AGREEMENTS	1
(A) THIRD PARTY LIABILITY INSURING AGREEMENTS	1
(1) Multimedia Liability Coverage	1
(2) Security and Privacy Liability Coverage	1
(3) Privacy Regulatory Defense and Penalties Coverage	1
(4) PCI DSS Liability Coverage	1
(5) Bodily Injury Liability Coverage	2
(6) Property Damage Liability Coverage	2
(7) TCPA Defense Coverage	2
(B) FIRST PARTY INSURING AGREEMENTS	2
(1) Breach Event Costs Coverage	2
(2) Post Breach Remediation Costs Coverage	2
(3) BrandGuard® Coverage	2
(4) System Failure Coverage	3
(5) Dependent System Failure Coverage	3
(6) Cyber Extortion Coverage	3
(7) Cyber Crime Coverage	3
(8) Bricking Loss Coverage	4
(9) Property Damage Loss Coverage	4
(10) Reward Expenses Coverage	4
(11) Court Attendance Costs Coverage	4
II. DEFENSE, SETTLEMENT AND INVESTIGATION OF CLAIMS	4
III. LIMITS OF LIABILITY	5
IV. DEDUCTIBLE AND WAITING PERIOD	7
V. TERRITORIAL LIMITS	7
VI. DEFINITIONS	7
VII. EXCLUSIONS AS TO THE ENTIRE POLICY	20
VIII. EXCLUSIONS AS TO ALL FIRST PARTY INSURING AGREEMENTS	23
IX. EXCLUSIONS AS TO BODILY INJURY LIABILITY COVERAGE AND PROPERTY DAMAGE LIABILITY COVERAGE	23
X. EXCLUSIONS AS TO BRANDGUARD COVERAGE	23
XI. EXCLUSIONS AS TO SYSTEM FAILURE COVERAGE AND DEPENDENT SYSTEM FAILURE COVERAGE	23
XII. EXCLUSIONS AS TO CYBER CRIME COVERAGE	24
XIII. EXCLUSIONS AS TO PROPERTY DAMAGE LOSS COVERAGE	24
XIV. NOTIFICATION	24
XV. LOSS DETERMINATION	25
XVI. CONDITIONS AS TO PROPERTY DAMAGE LOSS COVERAGE	26
XVII. POLICY CONDITIONS	27
XVIII. MATERIAL CHANGES	31
XIX. COVERAGE IN THE EVENT OF A TAKEOVER AND CHANGE OF CONTROL EXTENDED REPORTING PERIOD	32
XX. CURRENCY AND PAYMENTS	33
XXI. ENTIRE AGREEMENT	33

NetGuard® Plus Cyber Liability Insurance

THE THIRD PARTY LIABILITY INSURING AGREEMENTS OF THIS POLICY ARE WRITTEN ON A CLAIMS MADE AND REPORTED BASIS, MEANING COVERAGE APPLIES ONLY TO CLAIMS FIRST MADE AGAINST AN INSURED DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD, IF APPLICABLE, AND REPORTED TO THE COMPANY PURSUANT TO THE TERMS AND CONDITIONS OF THIS POLICY. THE FIRST PARTY INSURING AGREEMENTS PROVIDE FIRST PARTY COVERAGE ON AN EVENT DISCOVERED AND REPORTED BASIS, UNLESS STATED OTHERWISE IN THIS POLICY. THE LIMITS OF LIABILITY FOR THE THIRD PARTY LIABILITY INSURING AGREEMENTS INCLUDE DEFENSE COSTS. PLEASE REVIEW THIS POLICY CAREFULLY WITH YOUR INSURANCE BROKER OR ADVISOR.

In consideration of the payment of the premium, the undertaking of the **Named Insured** to pay the applicable Deductible(s) herein, and in reliance upon all statements made and information in the **Application**, which is deemed attached hereto and made a part of this Policy, and subject to all terms, conditions, limitations and exclusions of this Policy, the Company agrees with the **Named Insured** as follows:

The Company shall mean the insurance carrier set forth in the Declarations of this Policy.

I. INSURING AGREEMENTS

This Policy applies only to those Insuring Agreements purchased by the **Named Insured**, as shown in the Declarations of this Policy.

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

(1) **Multimedia Liability Coverage**

Subject to the applicable Deductible and Limit of Liability, the Company shall pay **Damages**, including liability **Assumed Under Contract**, and related **Defense Costs**, that an **Insured** becomes legally obligated to pay as a result of a **Claim** for an actual or alleged **Multimedia Wrongful Act**, provided always that: (a) the **Claim** is first made against an **Insured** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **Claim** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy; (c) no **Executive** had knowledge of any circumstance, dispute, situation or incident giving rise to the **Claim** prior to the Knowledge Date set forth in the Declarations of this Policy; and (d) the **Multimedia Wrongful Act** is committed on or after the Retroactive Date set forth in the Declarations of this Policy.

(2) **Security and Privacy Liability Coverage**

Subject to the applicable Deductible and Limit of Liability, the Company shall pay **Damages**, including liability **Assumed Under Contract**, and related **Defense Costs**, that an **Insured** becomes legally obligated to pay as a result of a **Claim** for an actual or alleged **Security and Privacy Wrongful Act**, provided always that: (a) the **Claim** is first made against an **Insured** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **Claim** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy; (c) no **Executive** had knowledge of any circumstance, dispute, situation or incident giving rise to the **Claim** prior to the Knowledge Date set forth in the Declarations of this Policy; and (d) the **Security and Privacy Wrongful Act** is committed on or after the Retroactive Date set forth in the Declarations of this Policy.

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

Subject to the applicable Deductible and Limit of Liability, the Company shall pay a **Regulatory Compensatory Award** or **Regulatory Fines and Penalties**, and related **Defense Costs**, that an **Insured** becomes legally obligated to pay as a result of a **Privacy Regulatory Proceeding** instituted against the **Insured** because of a **Security Breach** or **Privacy Breach**, provided always that: (a) the **Privacy Regulatory Proceeding** is instituted against an **Insured** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **Privacy Regulatory Proceeding** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy; (c) no **Executive** had knowledge of any circumstance, dispute, situation or incident giving rise to the **Privacy Regulatory Proceeding** prior to the Knowledge Date set forth in the Declarations of this Policy; and (d) the **Security Breach** or **Privacy Breach** occurs on or after the Retroactive Date set forth in the Declarations of this Policy.

(4) **PCI DSS Liability Coverage**

Subject to the applicable Deductible and Limit of Liability, the Company shall pay **PCI DSS Fines and Assessments**, and related **Defense Costs**, that an **Insured** becomes legally obligated to pay because of a **PCI DSS Demand** resulting from a **Security Breach** or **Privacy Breach**, provided always that: (a) the **PCI DSS Demand** is first made against an **Insured** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **PCI DSS Demand** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy; (c) no **Executive** had knowledge of any circumstance, dispute, situation or incident giving rise to the **PCI**

DSS Demand prior to the Knowledge Date set forth in the Declarations of this Policy; and (d) the **Security Breach** or **Privacy Breach** occurs on or after the Retroactive Date set forth in the Declarations of this Policy.

(5) **Bodily Injury Liability Coverage**

Subject to the applicable Deductible and Limit of Liability, the Company shall pay **Damages**, and related **Defense Costs**, that an **Insured** becomes legally obligated to pay as a result of a **Bodily Injury Claim** for an actual or alleged **Bodily Injury Wrongful Act**, provided always that: (a) the **Bodily Injury Claim** is first made against an **Insured** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **Bodily Injury Claim** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy; (c) no **Executive** had knowledge of any circumstance, dispute, situation or incident giving rise to the **Bodily Injury Claim** prior to the Knowledge Date set forth in the Declarations of this Policy; and (d) the **Bodily Injury Wrongful Act** is committed on or after the Retroactive Date set forth in the Declarations of this Policy.

(6) **Property Damage Liability Coverage**

Subject to the applicable Deductible and Limit of Liability, the Company shall pay **Damages**, and related **Defense Costs**, that an **Insured** becomes legally obligated to pay as a result of a **Property Damage Claim** for an actual or alleged **Property Damage Wrongful Act**, provided always that: (a) the **Property Damage Claim** is first made against an **Insured** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **Property Damage Claim** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy; (c) no **Executive** had knowledge of any circumstance, dispute, situation or incident giving rise to the **Property Damage Claim** prior to the Knowledge Date set forth in the Declarations of this Policy; and (d) the **Property Damage Wrongful Act** is committed on or after the Retroactive Date set forth in the Declarations of this Policy.

(7) **TCPA Defense Coverage**

- (a) Subject to the applicable Deductible and Limit of Liability, the Company shall pay **Defense Costs** incurred by an **Insured** to defend against a **TCPA Claim** for an actual or alleged **TCPA Violation**, provided always that: (a) the **TCPA Claim** is first made against an **Insured** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **TCPA Claim** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy; (c) no **Executive** had knowledge of any circumstance, dispute, situation or incident giving rise to the **TCPA Claim** prior to the Knowledge Date set forth in the Declarations of this Policy; and (d) the **TCPA Violation** is committed on or after the Retroactive Date set forth in the Declarations of this Policy.
- (b) The Company shall not be obligated to pay any amounts other than **Defense Costs** under this Insuring Agreement.

(B) FIRST PARTY INSURING AGREEMENTS

(1) **Breach Event Costs Coverage**

Subject to the applicable Deductible and Limit of Liability, the Company shall 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**, provided always that: (a) the **Adverse Media Report**, **Security Breach** or **Privacy Breach** is first discovered by an **Executive** during the **Policy Period** or any Extended Reporting Period, if applicable; and (b) the **Adverse Media Report**, **Security Breach** or **Privacy Breach** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy.

(2) **Post Breach Remediation Costs Coverage**

Subject to the applicable Deductible and Limit of Liability, the Company shall pay **Post Breach Remediation Costs** that **You** incur with **Approval** after a **Security Breach** or **Privacy Breach** occurs, provided always that: (a) Section **I.(B)(1)** of this Policy applies to the **Security Breach** or **Privacy Breach**; and (b) an **Executive** has made a written request to the Company for indemnification of **Post Breach Remediation Costs** pursuant to Section **XIV.(A)** of this Policy.

(3) **BrandGuard® Coverage**

Subject to the applicable **Waiting Period** and Limit of Liability, the Company shall 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**, provided always that: (a) the **Security Breach** or **Privacy Breach** is first discovered by an **Executive** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **Security Breach** or **Privacy Breach** is reported to the Company in writing pursuant to Section **XIV.(B)** of this Policy; and (c) **You** provide clear evidence that the **Brand Loss** is directly attributable to the **Adverse Media Report** or **Notification**.

(4) **System Failure Coverage**

(a) **Data Recovery**

- (i) Subject to the applicable Deductible and Limit of Liability, the Company shall 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**, provided always that: (a) the **System Failure** is first discovered by an **Executive** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **System Failure** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy; and (c) **You** provide clear evidence that the **Digital Assets Loss** and **Special Expenses** directly result from the **System Failure**.
- (ii) The Company shall pay **Digital Assets Loss** and **Special Expenses** for up to twelve (12) months following an **Executive's** discovery of the **System Failure**, unless specified otherwise by endorsement to this Policy.

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

Subject to the applicable **Waiting Period** and Limit of Liability, the Company shall pay **Income Loss, Interruption Expenses** and **Special Expenses** that **You** incur during the **Period of Restoration** because of a **System Failure**, provided always that: (a) the **System Failure** is first discovered by an **Executive** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **System Failure** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy; and (c) **You** provide clear evidence that the **Income Loss, Interruption Expenses** and **Special Expenses** directly result from the **System Failure**.

(5) **Dependent System Failure Coverage**

(a) **Data Recovery**

- (i) Subject to the applicable Deductible and Limit of Liability, the Company shall pay **Digital Assets Loss** that **You** incur because of damage, alteration, corruption, distortion, theft, misuse or destruction of **Digital Assets** resulting from a **Dependent System Failure**, provided always that: (a) the **Dependent System Failure** is first discovered by an **Executive** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **Dependent System Failure** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy; and (c) **You** provide clear evidence that the **Digital Assets Loss** directly results from the **Dependent System Failure**.
- (ii) The Company shall pay **Digital Assets Loss** for up to twelve (12) months following an **Executive's** discovery of the **Dependent System Failure**, unless specified otherwise by endorsement to this Policy.

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

Subject to the applicable **Waiting Period** and Limit of Liability, the Company shall pay **Dependent Business Interruption Loss** that **You** incur during the **Period of Indemnity** because of an actual interruption or suspension of **Your** business directly caused by a **Dependent System Failure**, provided always that: (a) the **Dependent System Failure** is first discovered by an **Executive** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **Dependent System Failure** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy; and (c) **You** provide clear evidence that the **Dependent Business Interruption Loss** directly results from the **Dependent System Failure**.

(6) **Cyber Extortion Coverage**

- (a) Subject to the applicable Deductible and Limit of Liability, the Company shall pay **Cyber Extortion Expenses** and **Cyber Extortion Monies** that **You** pay as a direct result of a **Cyber Extortion Threat**, provided always that: (a) the **Cyber Extortion Threat** is first discovered by an **Executive** during the **Policy Period** or any Extended Reporting Period, if applicable; and (b) the **Cyber Extortion Threat** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy.
- (b) The Company shall not be obligated to pay **Cyber Extortion Expenses** or **Cyber Extortion Monies** for which the Company has not given **Approval**. Every **Insured** must make every reasonable effort to notify local law enforcement authorities and the Federal Bureau of Investigation or equivalent foreign agency before surrendering any **Cyber Extortion Monies** in response to a **Cyber Extortion Threat**.

(7) **Cyber Crime Coverage**

(a) **Financial Fraud**

Subject to the applicable Deductible and Limit of Liability, the Company shall pay **Financial Fraud Loss** that **You** sustain because of **Financial Fraud**, provided always that: (a) the **Financial Fraud** is first discovered by an **Executive** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **Financial Fraud** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy;

and (c) **You** provide written confirmation to the Company that **Your** bank or credit card company has refused to reverse or prevent a payment transaction or to indemnify or reimburse **You** for the **Financial Fraud Loss**.

(b) **Telecommunications and Utilities Fraud**

Subject to the applicable Deductible and Limit of Liability, the Company shall pay:

- (i) **Telecommunications Fraud Loss** that **You** sustain because of **Telecommunications Fraud**; or
- (ii) **Utilities Fraud Loss** that **You** sustain because of **Utilities Fraud**;

provided always that: (a) the **Telecommunications Fraud** or **Utilities Fraud** is first discovered by an **Executive** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **Telecommunications Fraud** or **Utilities Fraud** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy; and (c) **You** provide clear evidence that the **Telecommunications Fraud Loss** directly results from the **Telecommunications Fraud** or that the **Utilities Fraud Loss** directly results from the **Utilities Fraud**.

(c) **Phishing Fraud**

Subject to the applicable Deductible and Limit of Liability, the Company shall pay:

- (i) **Your Phishing Fraud Loss** that **You** sustain because of **Phishing Fraud**, provided always that: (a) the **Phishing Fraud** is first discovered by an **Executive** during the **Policy Period** or any Extended Reporting Period, if applicable; and (b) the **Phishing Fraud** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy; and
- (ii) **Client Phishing Fraud Loss** that **You** sustain because of **Client Phishing Fraud**, provided always that: (a) the **Client Phishing Fraud** directly results from a **Hacking Attack**; (b) the **Client Phishing Fraud** is first discovered by an **Executive** during the **Policy Period** or any Extended Reporting Period, if applicable; and (c) the **Client Phishing Fraud** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy.

(8) **Bricking Loss Coverage**

Subject to the applicable Deductible and Limit of Liability, the Company shall pay **Bricking Loss** that **You** incur due to a **Bricking Event**, provided always that: (a) the **Bricking Event** occurs and is first discovered by an **Executive** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) the **Bricking Event** is reported to the Company in writing pursuant to Section **XIV.(A)** of this Policy, and (c) **You** provide clear evidence that the **Bricking Loss** results from the **Bricking Event**.

(9) **Property Damage Loss Coverage**

Subject to the applicable Deductible, Limit of Liability and Sections **XV.(D)** and **XVI.** of this Policy, the Company shall pay for physical damage to **Covered Property** caused by or resulting from a **Hacking Attack**, provided always that: (a) the **Hacking Attack** occurs and is first discovered by an **Executive** during the **Policy Period** or any Extended Reporting Period, if applicable; (b) **You** provide clear evidence that such physical damage is directly caused by or results from a **Hacking Attack**; and (c) there is no other valid and collectible insurance available to **You** for such physical damage.

(10) **Reward Expenses Coverage**

Subject to the applicable Deductible and Limit of Liability, the Company shall pay **Reward Expenses** that **You** incur with **Approval**, provided always that an **Executive** submits a written request for indemnification of **Reward Expenses** to the Company pursuant to Section **XIV.(A)** of this Policy.

(11) **Court Attendance Costs Coverage**

- (a) Subject to the applicable Limit of Liability, the Company shall reimburse an **Insured** for **Court Attendance Costs** incurred by an **Insured** to attend mediation, 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 Policy, and a written request for indemnification of **Court Attendance Costs** is made by or on behalf an **Insured** pursuant to Section **XIV.(A)** of this Policy.
- (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. DEFENSE, SETTLEMENT AND INVESTIGATION OF CLAIMS

(A) Defense Provisions as to Sections I.(A)(1) through I.(A)(7)

- (1) The Company has the right and duty to defend any **Claim** under any Third Party Liability Insuring Agreement of this Policy, even if the allegations of the **Claim** are groundless, false or fraudulent, including the right to appoint an attorney to defend any such **Claim**. However, if a **Claim** is brought and maintained against an **Insured** in a

foreign jurisdiction where the Company is not permitted to defend such **Claim**, then the obligation to defend shall reside solely with an **Insured**, and the Company shall reimburse **Defense Costs** incurred by an **Insured**. A reasonable and good faith defense by an **Insured** shall be a condition precedent to such reimbursement.

- (2) The Company's payment of **Defense Costs** or any other amounts reduces, and may completely exhaust, the Limit of Liability available to pay **Damages**, where applicable, under this Policy.
- (3) The Company's duty to defend any **Claim**, or pay any **Damages**, **Defense Costs** or other amounts, shall cease upon exhaustion of the applicable Limit Per Insuring Agreement or the Maximum Policy Aggregate Limit, whichever is first. Upon exhaustion of the applicable Limit of Liability, the Company will have the right to withdraw from the defense of a **Claim** by tendering control to the **Named Insured**.

(B) Consent to Settlement Provisions as to Sections I.(A)(1) through I.(A)(6)

- (1) 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, make any payment, or confess or otherwise consent to any judgment without **Approval**. The Company shall 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 given **Approval**.
- (2) 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.
- (3) If an **Insured** refuses to consent to any settlement or compromise recommended by the Company that is acceptable to the claimant, and such **Insured** elects to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, the Company's liability for such **Claim** shall not exceed:
 - (a) the amount for which the **Claim** could have been settled, less the remaining Deductible, plus **Defense Costs** incurred up to the date such **Insured** withheld consent to such settlement, plus
 - (b) seventy percent (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 such **Insured** withheld consent to such settlement or compromise, subject always to all other terms and conditions of this Policy, including, but not limited to, the applicable Deductible and the Limit of Liability.
 - (c) the remaining thirty percent (30%) of **Defense Costs** and **Damages**, **Regulatory Compensatory Award**, **Regulatory Fines and Penalties** or **PCI DSS Fines and Assessments** referenced in paragraph (b) above shall be the sole responsibility of such **Insured**.
- (4) Section **II.(B)(3)** above will not apply to any settlement where the total incurred **Defense Costs** and **Damages**, **Regulatory Compensatory Award**, **Regulatory Fines and Penalties** or **PCI DSS Fines and Assessments**, whichever applies, do not exceed the applicable Deductible.

(C) Choice of Counsel (Applicable to All Insuring Agreements)

- (1) The Company may consider an **Insured's** choice of counsel to defend any **Claim**, or to advise and consult on the appropriate course of action with respect to any **First Party Insured Event**, but the final decision on selection of counsel rests with the Company. No **Insured** shall appoint counsel without **Approval**.
- (2) The Company will have no obligation to pay **Defense Costs**, **Initial Breach Consultation Costs** or any other legal expenses incurred by an **Insured** before the notice of **Claim** is received by the Company, or without **Approval**.

(D) Investigation (Applicable to All Insuring Agreements)

The Company has the right to make any investigation it deems necessary including, without limitation, any investigation with respect to the **Application**, statements made in the **Application** or coverage.

III. LIMITS OF LIABILITY

(A) Limits Per Insuring Agreement

The Limits Per Insuring Agreement set forth in the Declarations of this Policy are the maximum the Company shall pay under each Insuring Agreement of this Policy for each **Claim**, and in the aggregate for all **Claims**, first made during the **Policy Period** and any Extended Reporting Period, if applicable, including **Defense Costs** where applicable, regardless of the number of **Claims**, claimants or **Insureds**. If any Limit Per Insuring Agreement is exhausted, the Company's obligations under that Insuring Agreement shall cease.

(B) Maximum Policy Aggregate Limit

- (1) The Maximum Policy Aggregate Limit set forth in the Declarations of this Policy is the maximum the Company shall pay under this Policy for all **Claims** first made during the **Policy Period**, including **Defense Costs**, regardless of the number of Insuring Agreements that apply; however, if this Policy provides for an Additional **Defense Costs** Limit and/or Breach Event Costs Outside the Limit Enhancement, as indicated in the Declarations, the maximum the Company shall pay under this Policy is the sum of: (a) the Maximum Policy Aggregate Limit, plus (b) the Additional **Defense Costs** Limit, if purchased, plus (c) the Limit of Liability for Breach Event Costs Coverage, if the Breach Event Costs Outside the Limit Enhancement is purchased.
- (2) The Limit of Liability for any Extended Reporting Period, if applicable, will be part of, and not in addition to, the Limit of Liability set forth in the Declarations of this Policy. The existence of any Extended Reporting Period will not increase or reinstate any Limit of Liability.

(C) Additional Defense Costs Limit

- (1) If this Policy provides for an Additional **Defense Costs** Limit, as indicated in the Declarations of this Policy, such Limit will be the first Limit of Liability applied to **Defense Costs**. The Additional **Defense Costs** Limit will not reduce the Maximum Policy Aggregate Limit.
- (2) The Additional **Defense Costs** Limit will apply on an aggregate basis to all Third Party Liability Insuring Agreements, except Bodily Injury Liability Coverage, Property Damage Liability Coverage and TCPA Defense Coverage. The Limit Per Insuring Agreement applicable to Bodily Injury Liability Coverage, Property Damage Liability Coverage and TCPA Defense Coverage shall be the sole Limit of Liability for **Defense Costs** payable under those Insuring Agreements.
- (3) If the Additional **Defense Costs** Limit is exhausted, the Company will continue to defend any **Claim** under Multimedia Liability Coverage, Security and Privacy Liability Coverage, Privacy Regulatory Defense and Penalties Coverage or PCI DSS Liability Coverage, whichever Insuring Agreement applies, but **Defense Costs** that exceed the Additional **Defense Costs** Limit shall be paid as part of, and may completely exhaust, the applicable Limit Per Insuring Agreement and the Maximum Policy Aggregate Limit. Notwithstanding the foregoing, if the Maximum Policy Aggregate Limit is exhausted by payment of **Damages** or any other amounts to which this Policy applies, the Additional **Defense Costs** limit will also be considered exhausted, no further **Defense Costs** will be paid, and the Company's duty to defend any **Claim** under this Policy shall cease.
- (4) Only **Defense Costs** will be applied to the Additional **Defense Costs** Limit. All other amounts to which this Policy applies will be paid as part of and will reduce the applicable Limit Per Insuring Agreement set forth in the Declarations of this Policy.

(D) Breach Event Costs Outside the Limit Enhancement

- (1) If the **Named Insured** has purchased the Breach Event Costs Outside the Limit Enhancement, the Limit Per Insuring Agreement applicable to Breach Event Costs Coverage will be paid by the Company as separate from and in addition to the Maximum Policy Aggregate Limit.
- (2) The Limit Per Insuring Agreement applicable to Breach Event Costs Coverage shall be the sole Limit of Liability for **Privacy Breach Response Costs**, **Notification Expenses** and **Breach Support and Credit Monitoring Expenses**, and the Company shall have no further obligation to pay **Privacy Breach Response Costs**, **Notification Expenses** and **Breach Support and Credit Monitoring Expenses** after such Limit of Liability is exhausted.

(E) Related Claims

- (1) All **Claims** which arise out of the same, related or continuing **Wrongful Acts** or **First Party Insured Events** will be treated as follows:
 - (a) all such **Claims** will be considered to be a single **Claim**, regardless of the number of claimants or **Insureds**;
 - (b) all such **Claims** will be considered to have been first made on the date the earliest of all such **Claims** is first made and will be considered to be first reported to the Company on the date the earliest of all such **Claims** is reported to the Company;
 - (c) all such **Claims** will be subject to the applicable Limit of Liability of the Policy in effect when the earliest of all such **Claims** is first made; and
 - (d) only one Deductible will apply to such **Claim**.
- (2) If multiple Insuring Agreements of this Policy apply to any **Claim**, the Company's total maximum Limit of Liability under this Policy for such **Claim** shall be: (a) the Maximum Policy Aggregate Limit; plus (b) the Additional **Defense Costs** Limit, if purchased and applicable; plus (c) the Limit Per Insuring Agreement for Breach Event Costs Coverage, if the Breach Event Costs Outside the Limit Enhancement is purchased and such limit applies to the **Claim**. However, the Company will never pay more under any one Insuring Agreement than the applicable Limit Per Insuring Agreement set forth in the Declarations of this Policy. The Company has the sole discretion to allocate amounts paid, if any, against the appropriate Limit of Liability.

IV. DEDUCTIBLE AND WAITING PERIOD

(A) **Deductible Per Insuring Agreement**

- (1) The Deductible amount for each Insuring Agreement, as set forth in the Declarations of this Policy, applies separately to each **Claim**. The Limit of Liability shall not be reduced by the amount of any Deductible.
- (2) If more than one Insuring Agreement applies to a **Claim**, only the single highest Deductible will apply to such **Claim**.
- (3) An **Insured's** payment of the applicable Deductible is a condition precedent to payment by the Company of any amounts under this Policy, and the Company shall only be liable for the amount that exceeds the Deductible, up to the applicable Limit of Liability set forth in the Declarations of this Policy.
- (4) An **Insured** must make direct payments within the Deductible to the appropriate parties designated by the Company.

(B) **Aggregate Deductible**

Notwithstanding Section IV.(A) above, an **Insured's** obligation to pay the applicable Deductible shall not exceed the Aggregate Deductible, if any, shown in the Declarations of this Policy, regardless of the number of **Claims**, claimants, **Insureds** or applicable Insuring Agreements.

(C) **Waiting Period**

The **Waiting Periods** set forth in the Declarations of this Policy apply solely to Section I.(B)(3) BrandGuard Coverage; Section I.(B)(4)(b) System Failure Coverage: Non-Physical Business Interruption; and Section I.(B)(5)(b) Dependent System Failure Coverage: Non-Physical Business Interruption. The **Waiting Period** applies to each **Period of Restoration** and **Period of Indemnity**.

V. TERRITORIAL LIMITS

- (A) Except when Section V.(B) below applies, this Policy applies to **Claims** brought or maintained, **Wrongful Acts** committed and **First Party Insured Events** taking place anywhere in the world. Any provision in this Policy pertaining to coverage for **Claims** brought or maintained, **Wrongful Acts** committed or **First Party Insured Events** taking place anywhere outside the United States of America, its territories and possessions shall apply only where legally permissible.
- (B) The Property Damage Loss Coverage applies only to **Covered Property** and **Operations** at an **Insured Location**.

VI. DEFINITIONS

As used in this Policy:

- (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, ideological, religious, political or similar objectives.
- (3) **"Actual Cash Value"** means the amount it would cost to replace the damaged or destroyed **Covered Property** on the date of loss with property of like kind and quality, with proper deduction for obsolescence and physical depreciation.
- (4) **"Adverse Media Report"** means a report or communication of an actual or potential **Security Breach** or **Privacy Breach** which (a) has been publicized through any media channel, including, but not limited to, television, **Print Media**, radio, electronic networks, the internet or electronic mail, and (b) threatens material damage to **Your Reputation** or **Your** brand.
- (5) **"Application"** means all applications and supplemental applications, including any attachments thereto, and all other information and materials submitted to the Company by, or on behalf of, the **Named Insured** relating to the underwriting of this Policy, or any other policy or policies of which this Policy is a direct renewal or replacement. All such applications, attachments, information and materials are considered attached to and incorporated into this Policy.
- (6) **"Approval"** means the advance written agreement or consent by the Company, which will not be unreasonably withheld.
- (7) **"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.

- (8) **“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.
- (9) **“Bodily Injury Claim”** means any of the following alleging a **Bodily Injury Wrongful Act**:
- (a) a written demand for **Damages** or non-monetary relief made against an **Insured** for **Bodily Injury** caused by a **Security Breach** or **Privacy Breach**;
 - (b) a written request received by an **Insured** to toll or waive a statute of limitations relating to legal proceedings against an **Insured** for **Bodily Injury** caused by a **Security Breach** or **Privacy Breach**; or
 - (c) the service of a civil lawsuit or the institution of arbitration or other alternative dispute resolution proceedings against an **Insured** seeking **Damages** for **Bodily Injury** caused by a **Security Breach** or **Privacy Breach**.
- (10) **“Bodily Injury Wrongful Act”** means an **Insured’s** actual or alleged failure to prevent or avoid **Bodily Injury** caused by a **Security Breach** or **Privacy Breach**.
- (11) **“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.
- (12) **“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 the **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 **XV.(A)** of this Policy.
- (13) **“Breach Support and Credit Monitoring Expenses”** means reasonable and necessary expenses that **You** incur on **Your** behalf, or on behalf of a party for whom **You** are **Vicariously Liable**, to provide support activity to parties affected by a **Privacy Breach**, including the cost to set up and operate a call center and to provide a maximum of twenty-four (24) months of credit, identity or healthcare record monitoring services, fraud alert services, identity theft assistance services and credit or identity repair and restoration services. **Breach Support and Credit Monitoring Expenses** must be incurred with **Approval**.
- (14) **“Bricking Event”** means the unauthorized or malicious reprogramming of software or firmware installed on **Your** computer hardware or electronic equipment, including such reprogramming resulting from a **Hacking Attack**, which renders **Your** computer hardware or electronic equipment nonfunctional or useless for its intended purpose, without being physically damaged.
- (15) **“Bricking Loss”** means the cost to replace **Your** computer hardware or electronic equipment due to loss of use of such computer hardware or electronic equipment caused by a **Bricking Event**; provided, however, that the amount of **Bricking Loss** payable under this Policy shall not exceed 25% more than the cost to replace **Your** computer hardware or electronic equipment with computer hardware or electronic equipment that is functionally equivalent to that which existed prior to the **Bricking Event**. **“Bricking Loss”** does not include any costs to replace **Your** computer hardware or electronic equipment or **Other Property** which sustains physical damage due to a **Security Breach**.
- (16) **“Business Equipment”** means any machinery, vehicle or electronic device or equipment that (a) is owned by or leased to **You**, (b) is operated by **You** to conduct **Your** business, and (c) can send and receive **Data**. **“Business Equipment”** does not include any **Products**.
- (17) **“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.
- (18) **“Claim”** means:
- (a) with respect to Multimedia Liability Coverage and Security and Privacy Liability Coverage 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 legal proceedings 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 Privacy Regulatory Defense and Penalties Coverage only, a **Privacy Regulatory Proceeding**;
 - (c) with respect to PCI DSS Liability Coverage only, a **PCI DSS Demand**;
 - (d) with respect to Bodily Injury Liability Coverage only, a **Bodily Injury Claim**;
 - (e) with respect to Property Damage Liability Coverage only, a **Property Damage Claim**;
 - (f) with respect to TCPA Defense Coverage only, a **TCPA Claim**;
 - (g) with respect to Breach Event Costs Coverage only, written notice from an **Executive** to the Company of an **Adverse Media Report**, **Security Breach** or **Privacy Breach**;

- (h) with respect to Post Breach Remediation Costs Coverage only, a written request by an **Executive** to the Company for indemnification of **Post Breach Remediation Costs**;
- (i) with respect to BrandGuard Coverage only, written notice from an **Executive** to the Company of a **Security Breach** or **Privacy Breach**;
- (j) with respect to System Failure Coverage only, written notice from an **Executive** to the Company of a **System Failure**;
- (k) with respect to Dependent System Failure Coverage only, written notice from an **Executive** to the Company of a **Dependent System Failure**;
- (l) with respect to Cyber Extortion Coverage only, written notice from an **Executive** to the Company of a **Cyber Extortion Threat**;
- (m) with respect to Cyber Crime Coverage: Financial Fraud only, written notice from an **Executive** to the Company of **Financial Fraud**;
- (n) with respect to Cyber Crime Coverage: Telecommunications and Utilities Fraud only, written notice from an **Executive** to the Company of **Telecommunications Fraud** or **Utilities Fraud**;
- (o) with respect to Cyber Crime Coverage: Phishing Fraud only, written notice from an **Executive** to the Company of **Phishing Fraud** or **Client Phishing Fraud**;
- (p) with respect to Bricking Loss Coverage only, written notice from an **Executive** to the Company of a **Bricking Event**;
- (q) with respect to Property Damage Loss Coverage only, written notice from an **Executive** to the Company of an **Occurrence**;
- (r) with respect to Reward Expenses Coverage only, a written request by an **Executive** to the Company for indemnification of **Reward Expenses**; and
- (s) with respect to Court Attendance Costs Coverage only, a written request by an **Executive** to the Company for indemnification of **Court Attendance Costs**.

A **Claim** under Multimedia Liability Coverage or Security and Privacy Liability Coverage shall not include a **Privacy Regulatory Proceeding**, **PCI DSS Demand** or **TCPA Claim**.

A **Claim** under any Third Party Liability Insuring Agreement of this Policy will be deemed to have been first made against an **Insured** when any **Insured** first receives written notice of such **Claim**.

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

- (19) **"Client Account"** means a bank account held or maintained by **Your** client or **Your** customer, from which **You**, as an authorized user, may deposit, withdraw, transfer or disburse **Money**.
- (20) **"Client Phishing Fraud"** means the malicious use of intentionally misleading telephone calls, emails, texts, instant messages or other electronic communications or malicious websites to fraudulently induce **Your** client, customer or vendor to transfer, pay or deliver **Money**, **Securities** or **Other Property** to an unintended party by impersonating an **Insured**.
- (21) **"Client Phishing Fraud Loss"** means:
 - (a) **Your** loss of **Money**, **Securities** or **Other Property** which **Your** client, customer or vendor intended to transfer, pay or deliver to **You**, but which was transferred, paid or delivered to an unintended party due to **Client Phishing Fraud**; and
 - (b) the cost of reimbursing **Your** client, customer or vendor for their direct loss of **Money**, **Securities** or **Other Property** due to **Client Phishing Fraud**, provided such reimbursement is made by **You** with **Approval**.
- (22) **"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.
- (23) **"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 they hold **Data**) and electronic backup equipment.
- (24) **"Court Attendance Costs"** means the actual loss of earnings and reasonable costs and expenses incurred by an **Insured** after a total of three (3) days of required attendance at mediation, arbitration proceedings, hearings, depositions and trials relating to the defense of a **Claim** under any Third Party Liability Insuring Agreement of this Policy.

(25) **“Covered Property”** means:

- (a) tangible real and personal property, including **Other Property**, in which **You** have an insurable interest as of the Effective Date of the **Policy Period**;
- (b) tangible real and personal property, including **Other Property**, that **You** acquire during the **Policy Period**;
- (c) property, including **Other Property**, of others for which **You** had assumed liability prior to loss; and
- (d) **Your** financial interest in property, including **Other Property**, belonging to others.

“Covered Property” does not include currency, **Money**, **Securities**, precious metal in bullion form, notes, evidences of debt or title, letters of credit, stamps, tickets or precious and semi-precious stones; fine art; land, water or any other substance in or on land; animals, standing timber or growing crops; watercraft or aircraft; vehicles of **Executives** or **Employees**, or vehicles otherwise insured for physical loss or damage; underground mines or mine shafts or any property within such mines or shafts; property in transit; property sold by an **Insured** under conditional sale, trust agreement, installment plan or other deferred payment plan after delivery to customers; satellites; offshore property; dams, water shafts, power tunnels, dikes, levees, gates and flumes; or outside plants, including owned electrical power transmission and distribution lines, beyond 1,000 feet from **Your** business premises.

(26) **“Cryptojacking”** means the intentional, unauthorized and malicious use of or access to an **Insured Computer System** to mine for digital currency.

(27) **“Cyber Extortion Expenses”** means reasonable and necessary costs and expenses, other than **Cyber Extortion Monies**, that **You** incur with **Approval** 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**.

(28) **“Cyber Extortion Monies”** means **Money**, digital currency of any kind, including bitcoin, or **Other Property** that **You** pay with **Approval** to any person or group reasonably believed to be responsible for a **Cyber Extortion Threat**, to prevent or terminate such **Cyber Extortion Threat**.

(29) **“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, reveal, divulge, disseminate, destroy, publicly disclose or misuse **Private Information** taken from an **Insured** through 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 considered to have occurred at the time the first of such **Cyber Extortion Threats** occurred.

(30) **“Damages”** means:

- (a) a monetary judgment, award or settlement;
- (b) awarded attorneys' fees and costs;
- (c) prejudgment and post-judgment interest awarded against an **Insured** on that part of any judgment paid or to be paid by the Company; and
- (d) liquidated, punitive, exemplary or multiplied **Damages** to the extent insurable under the law pursuant to which this Policy is construed.

“Damages” does not include any **Insured's** future profits or royalties, restitution or disgorgement of any **Insured's** profits; the costs to comply with orders granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief; 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; taxes, fines, penalties or sanctions; contractual liquidated **Damages** that exceed the amount for which the **Insured** would have been liable in the absence of the liquidated **Damages** agreement; any amount which an **Insured** is not financially or legally obligated to pay; disgorgement of any remuneration or financial advantage to which an **Insured** was not legally entitled; settlements negotiated without **Approval**; monetary judgments, awards, settlements or any other amounts which are uninsurable under the law pursuant to which this Policy is construed, or any legal fees and costs awarded pursuant to such judgments, awards or settlements; or **PCI DSS Fines and Assessments**.

- (31) **"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.
- (32) **"Defense Costs"** means reasonable and necessary fees incurred with **Approval** and charged by an attorney(s) designated by the Company to defend a **Claim**; and 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 **Approval**. **"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**.
- (33) **"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**.
- (34) **"Dependent Business Interruption Loss"** means **Income Loss** and **Extra Expenses** that **You** incur during the **Period of Indemnity** as a direct result of a **Dependent System Failure**.
- (35) **"Dependent System Failure"** means an unplanned outage, interruption, failure, suspension or degradation of service of a **Service Provider Computer System** caused directly by:
- (a) unauthorized access to, or unauthorized use of, a **Service Provider Computer System**, including any such unauthorized access or unauthorized use resulting from the theft of a password;
 - (b) a **Denial of Service Attack** against a **Service Provider Computer System**;
 - (c) infection of a **Service Provider Computer System** by malicious code;
 - (d) an **Act of Cyber Terrorism**;
 - (e) accidental damage to, or destruction of, electronic media or computer hardware; or
 - (f) administrative or operational mistakes by an **Outsourced IT Service Provider** in the ongoing operation or maintenance of its **Service Provider Computer System**.
- (36) **"Digital Assets"** means:
- (a) with respect to System Failure Coverage: Data Recovery only, **Data** and computer programs that exist in an **Insured Computer System**; and
 - (b) with respect to Dependent System Failure Coverage: Data Recovery only, **Data** owned by or entrusted to **You** that is being held, stored, maintained, transferred or processed by an **Outsourced IT Service Provider** on **Your** behalf.
- "Digital Assets"** does not include computer hardware.
- (37) **"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 research costs incurred in recreating **Digital Assets**, expenses for materials and machine time, and 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. **Digital Assets Loss** will be determined in accordance with Section **XV.(B)** of this Policy.
- (38) **"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.
- (39) **"Escrow Account"** means a bank account held or maintained by **You** on behalf of **Your** client or customer.
- (40) **"Executive"** means any director or officer of the **Named Insured** or **Subsidiary**, including any 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.
- (41) **"Extra Expenses"** means reasonable and necessary expenses that **You** incur during the **Period of Indemnity** to minimize, reduce or avoid the suspension of **Your** business operations as a result of a **Dependent System Failure**, which **You** would not have incurred in the absence of such **Dependent System Failure**. The amount of **Extra Expenses** recoverable shall not exceed the amount by which the covered **Income Loss** is reduced by such incurred expenses.
- (42) **"Financial Account"** means **Your Account**, any **Client Account** and any **Escrow Account**.
- (43) **"Financial Fraud"** means:
- (a) an intentional, unauthorized and fraudulent written, electronic or telephonic instruction transmitted to a financial institution, directing such institution to debit, transfer, withdraw or disburse **Money** or **Securities** from a **Financial**

Account, which instruction purports to have been transmitted by **You** or an **Executive** or **Employee**, but was in fact fraudulently transmitted by a **Third Party** without **Your** knowledge or consent; or

- (b) the theft of **Money** or **Securities** from a **Financial Account** or **Your** corporate credit cards as a result of a **Hacking Attack**.

(44) “Financial Fraud Loss” means:

- (a) the loss of **Your Money** or **Securities** resulting from **Financial Fraud**; and
- (b) the loss of **Money** or **Securities** that **You** sustain to reimburse **Your** client or customer for the theft of their **Money** or **Securities** as a direct result of **Financial Fraud**, provided such reimbursement is made with **Approval**.

(45) “First Party Insured Event” means:

- (a) with respect to Breach Event Costs Coverage only, an **Adverse Media Report**, **Security Breach** or **Privacy Breach**;
- (b) with respect to Post Breach Remediation Costs Coverage and BrandGuard Coverage only, a **Security Breach** or **Privacy Breach**;
- (c) with respect to System Failure Coverage only, a **System Failure**;
- (d) with respect to Dependent System Failure Coverage only, a **Dependent System Failure**;
- (e) with respect to Cyber Extortion Coverage only, a **Cyber Extortion Threat**;
- (f) with respect to Cyber Crime Coverage: Financial Fraud only, a **Financial Fraud**;
- (g) with respect to Cyber Crime Coverage: Telecommunications and Utilities Fraud only, a **Telecommunications Fraud** or **Utilities Fraud**;
- (h) with respect to Cyber Crime Coverage: Phishing Fraud only, a **Phishing Fraud** or **Client Phishing Fraud**;
- (i) with respect to Bricking Loss Coverage only, a **Bricking Event**;
- (j) with respect to Property Damage Loss Coverage only, a **Hacking Attack**;
- (k) with respect to Reward Expenses Coverage only, a **Security Breach**, **Privacy Breach**, **Phishing Attack**, **System Failure**, **Cyber Extortion Threat**, **Financial Fraud**, **Telecommunications Fraud**, **Utilities Fraud**, **Phishing Fraud** or **Client Phishing Fraud**; and
- (l) with respect to Court Attendance Costs Coverage only, **Court Attendance Costs** incurred by an **Insured**.

(46) “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**.

(47) “Income Loss” means:

- (a) the net profit loss that **You** sustain during the **Period of Restoration** as a direct result of a **System Failure**; or
- (b) the net profit loss that **You** sustain during the **Period of Indemnity** as a direct result of a **Dependent System Failure**.

“Income Loss” will be determined in accordance with the provisions of Section **XV.(C)** of this Policy.

(48) “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.

(49) “Initial Breach Consultation Costs” means reasonable and necessary legal fees that You incur on Your behalf, or on behalf of a party for whom You are Vicariously Liable, to retain qualified legal counsel to provide You with initial advice

regarding the appropriate response to an actual or suspected **Privacy Breach** or **Security Breach**. **Initial Breach Consultation Costs** will not be subject to a Deductible if **You** retain counsel pre-approved by the Company.

(50) “**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, 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 Policy, 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.

(51) “**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**; and any **Insured Telecommunications System**;
- (b) in addition to paragraph (a) above, with respect to Security and Privacy Liability Coverage, Privacy Regulatory Defense and Penalties Coverage, PCI DSS Liability Coverage, Breach Event Costs Coverage and Cyber Extortion Coverage 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; and
- (c) in addition to paragraph (a) above, with respect to Bodily Injury Liability Coverage and Property Damage Liability Coverage only, **Insured Computer System** also includes **Business Equipment**, but only while owned and operated by **You**.

(52) “**Insured Location**” means, and is limited to, **Your** business premises, including the **Named Insured’s** address stated in the Declarations of this Policy; any premises added by endorsement to this Policy; and any site at which operations are performed by **You** or by an **Insured** on **Your** behalf.

(53) “**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.

(54) “**Interruption Expenses**” means reasonable and necessary expenses, excluding **Special Expenses**, incurred by **You** to avoid or minimize the suspension of **Your** business as a result of a **System Failure**, which **You** would not have incurred in the absence of such **System Failure**, including, but not limited to, the use of rented/leased external equipment, substitution of other work or production procedures, 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.

(55) “**Managerial Control**” means:

- (a) ownership interests representing more than fifty percent (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 fifty percent (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.
- (56) **“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 **Products**.
- (57) **“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.
- (58) **“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.
- (59) **“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 paragraphs (a) through (h) above.
- (60) **“Named Insured”** means the individual or entity designated as such in the Declarations of this Policy.
- (61) **“Notification”** means **Your** written notice to parties affected by a **Security Breach** or **Privacy Breach**, whether such written notice is made by **You** voluntarily or to comply with **Privacy Regulations**.
- (62) **“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.
- (63) **“Occurrence”** means the sum of all individual covered losses, or a series of individual covered losses, under Property Damage Loss Coverage that are directly caused by any one **Hacking Attack**.
- (64) **“Operations”** means **Your** business activities occurring at an **Insured Location** which rely on **Covered Property**.
- (65) **“Other Property”** means any tangible property, other than **Money** or **Securities**, which has intrinsic value.
- (66) **“Outsourced IT Service Provider”** means a **Third Party** that provides information technology services to **You**, including but not limited to, hosting, security management, co-location and **Data** storage, under a written contract with **You** to provide such services. **“Outsourced IT Service Provider”** includes any **Cloud Provider**.
- (67) **“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**.
- (68) **“PCI DSS Demand”** means:
- (a) 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 the **Insured’s** non-compliance with the **PCI Data Security Standard**; or

- (b) 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**.

(69) **“PCI DSS Fines and Assessments”** means monetary fines, penalties or assessments, including fraud recoveries, card reissuance costs, operational expenses, mandatory audit costs and 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**.

(70) **“Period of Indemnity”** means:

- (a) with respect to BrandGuard Coverage only, the period beginning on the earlier of the date of **Notification** or the first **Adverse Media Report**, and ending on the earlier of:
- the date that gross revenues are restored to the level they had been prior to **Notification** or the first **Adverse Media Report**, whichever applies; or
 - the last day of the period set forth in the Declarations of this Policy as the **Period of Indemnity** for BrandGuard Coverage;
- (b) with respect to Dependent System Failure Coverage only, the period beginning on the date when an **Executive** first discovers the **Dependent System Failure**, and ending on the earlier of:
- the date that gross revenues are restored to the level they had been prior to the **Dependent System Failure**; or
 - the last day of the period set forth in the Declarations of this Policy as the **Period of Indemnity** for Dependent System Failure Coverage.

The **Period of Indemnity** shall not be affected by the expiration of the **Policy Period**.

(71) **“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 an **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 thirty (30) additional consecutive days after the restoration of an **Insured Computer System** to allow for restoration of **Your** business; or
- (b) the last day of the period set forth in the Declarations of this Policy as the **Period of Restoration** for System Failure Coverage.

The **Period of Restoration** shall not be affected by the expiration of the **Policy Period**.

(72) **“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**.

(73) **“Phishing Attack”** means the use by a **Third Party** of fraudulent and intentionally misleading telephone calls, emails, texts, instant messages or other electronic communications or malicious websites to impersonate **You, Your** brand, **Your** services or **Products** to solicit **Private Information** from an **Executive** or **Employee**.

(74) **“Phishing Fraud”** means the malicious use of intentionally misleading telephone calls, emails, texts, instant messages or other electronic communications or malicious websites to fraudulently induce an **Insured** to:

- (a) transfer or deliver **Other Property** to an unintended party by impersonating another **Insured** or **Your** client, **Your** customer or **Your** vendor; or
- (b) transfer or disburse **Money** or **Securities** from a **Financial Account** to an unintended party by impersonating another **Insured** or **Your** client, **Your** customer or **Your** vendor.

(75) **“Policy Period”** means the period from the Effective Date of this Policy to its Expiration Date, as set forth in the Declarations of this Policy, or this Policy's earlier termination date, if any. **“Policy Period”** specifically excludes the period following expiration referenced in Section **XIV.(A)** and any Extended Reporting Period.

(76) **“Post Breach Remediation Costs”** means reasonable and necessary costs that **You** incur after a **Security Breach** or **Privacy Breach** to which the Breach Event Costs Coverage of this Policy applies, to mitigate the potential of a future **Security Breach** or **Privacy Breach**, including, but not limited to, costs to complete an information security risk assessment, conduct an information security gap analysis, develop an information security document set, deliver an information security awareness training session to **Employees** and **Executives**, and hire a company specializing in **Data**

or **Computer System** security to determine how to protect **Data** or an **Insured Computer System** from a future **Security Breach** or **Privacy Breach**.

(77) **“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.

(78) **“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) the theft or loss of **Private Information**, including the theft or loss of **Private Information** stored on an unsecured **Data** storage or mobile device, including any smartphone, tablet or 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** in a **Phishing Attack**;
- (e) failure to implement, maintain or comply with privacy policies and procedures stating **Your** obligations relating to **Private Information**, including but not limited to **Your Privacy Policy**;
- (f) failure to develop or administer an identity theft prevention program;
- (g) failure to implement specific security practices with respect to **Private Information**, as required by any statute, rule, regulation or other law;
- (h) an infringement or violation of any rights to privacy;
- (i) breach of a person’s right of publicity, false light or intrusion upon a person’s seclusion;
- (j) failure to comply with **Privacy Regulations** pertaining to an **Insured’s** responsibilities with respect to **Private Information**, but only with respect to an act listed in paragraphs (a) through (h) above; or
- (k) failure to comply with **Privacy Regulations** prohibiting unfair or deceptive trade practices or consumer fraud pertaining to an **Insured’s** responsibilities with respect to **Private Information**, but only with respect 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 considered to have occurred at the time the first of such **Privacy Breaches** occurred.

(79) **“Privacy Breach Response Costs”** means:

- (a) **Initial Breach Consultation Costs**;
- (b) reasonable and necessary **Public Relations Expenses** that **You** incur with **Approval** prior to or following the publication of an **Adverse Media Report** to avert or mitigate any material damage to **Your Reputation** or **Your** brand, which results or reasonably could result from the **Adverse Media Report**;
- (c) 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**.
- (d) reasonable and necessary fees and costs that **You** incur on **Your** 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
- (e) overtime salaries of non-exempt **Employees** assigned to handle inquiries from parties affected by a **Privacy Breach**.

(80) **“Privacy Regulations”** means federal, state, local or foreign statutes, rules, regulations and other laws in effect now, or as hereafter amended, associated with the confidentiality, access, control, use or protection 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, 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 a privacy policy, adopt specific privacy controls or inform customers of an actual or suspected **Privacy Breach**;

- (e) 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;
 - (g) the EU General Data Protection Regulation or other similar privacy and security statutes, rules, regulations or other laws worldwide;
 - (h) the California Consumer Privacy Act and any rules or regulations promulgated thereunder; and
 - (i) 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.
- (81) **"Privacy Regulatory Proceeding"** means a civil or administrative proceeding, regulatory action, request for information or investigation instituted against an **Insured** by a **Regulatory Authority** because of a **Security Breach** or **Privacy Breach**. **"Privacy Regulatory Proceeding"** does not include a **PCI DSS Demand** or **TCPA Claim**.
- (82) **"Private Information"** means 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**, and **Personally Identifiable Information**.
- (83) **"Products"** means any tangible goods or devices that are manufactured, produced, processed, prepared, assembled, packaged, labeled, sold, handled or distributed by **You**, by others trading under **Your** name, or by a person or organization whose business or assets have been acquired by **You**; and containers, materials, parts or equipment furnished in connection with such goods or devices.
- (84) **"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**.
- (85) **"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. **"Property Damage"** does not include the loss of use of **Your** computer hardware or electronic equipment which is caused by a **Bricking Event**.
- (86) **"Property Damage Claim"** means any of the following alleging a **Property Damage Wrongful Act**:
- (a) a written demand for **Damages** or non-monetary relief made against an **Insured** for **Property Damage** caused by a **Security Breach** or **Privacy Breach**;
 - (b) a written request received by an **Insured** to toll or waive a statute of limitations relating to legal proceedings against an **Insured** for **Property Damage** caused by a **Security Breach** or **Privacy Breach**; or
 - (c) the service of a civil lawsuit or the institution of arbitration or other alternative dispute resolution proceedings against an **Insured** seeking **Damages** for **Property Damage** caused by a **Security Breach** or **Privacy Breach**.
- (87) **"Property Damage Wrongful Act"** means an **Insured's** actual or alleged failure to prevent or avoid **Property Damage** caused by a **Security Breach** or **Privacy Breach**.
- (88) **"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**.
- (89) **"Regulatory Authority"** means a federal, state, local or foreign governmental agency or regulatory authority responsible for investigating and enforcing **Privacy Regulations**, including an authorized Data Protection Authority under the EU General Data Protection Regulation.
- (90) **"Regulatory Compensatory Award"** means a sum of **Money** which an **Insured** is legally obligated to pay as a **Regulatory Authority'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**, including consumer redress funds. **"Regulatory Compensatory Award"** does not include any criminal fines or penalties of any nature whatsoever.
- (91) **"Regulatory Fines and Penalties"** means civil fines or penalties imposed by a **Regulatory Authority** against an **Insured** as a result of a **Privacy Regulatory Proceeding**. **"Regulatory Fines and Penalties"** does not include any amounts deemed uninsurable under the law pursuant to which this Policy is construed, criminal fines or penalties of any nature or **PCI DSS Fines and Assessments**.

- (92) **“Reward Expenses”** means the reasonable amount that **You** pay with **Approval** 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**.
- (93) **“Securities”** means negotiable or non-negotiable instruments or contracts representing **Money** or **Other Property**. **“Securities”** does not include **Money**.
- (94) **“Security and Privacy Wrongful Act”** means any of the following, but only if actually or allegedly committed by an **Insured**:
- (a) the failure to prevent or hinder a **Security Breach** or **Privacy Breach**;
 - (b) the failure to timely disclose a **Security Breach** or **Privacy 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 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 or hinder participation by an **Insured Computer System** in a **Denial of Service Attack** directed against the internet site or **Computer System** of a **Third Party**; or
 - (g) infliction of emotional distress or mental anguish, but only if directly resulting from a peril described in paragraphs (a) through (f) above.
- (95) **“Security Breach”** means any of the following, whether a specifically targeted attack or a generally distributed attack:
- (a) a **Hacking Attack**; or
 - (b) the theft or loss of an unsecured **Data** storage or mobile device containing **Private Information**, including any smartphone, tablet or 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).
- A series of continuing **Security Breaches**, related or repeated **Security Breaches**, or multiple **Security Breaches** resulting from a continuing attack, event, incident or failure of computer security will be considered a single **Security Breach** and will be considered to have occurred at the time the first of such **Security Breaches** occurred.
- (96) **“Service Provider Computer System”** means a **Computer System** that is owned or leased by, and under the direct operational control of, an **Outsourced IT Service Provider**.
- (97) **“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 parties of a **System Failure**.
- (98) **“Subsidiary”** means any entity in which the **Named Insured**, either directly or indirectly, through one or more of its **Subsidiaries**:
- (a) had **Managerial Control** before the Effective Date of this Policy and was insured under a policy issued by the Company, or issued by NAS Insurance Services, LLC, of which this Policy is a direct and continuous renewal;
 - (b) had **Managerial Control** as of the Effective Date of this Policy; or
 - (c) acquires **Managerial Control** after the Effective Date of this Policy, subject to Section **XVIII.(A)** of this Policy.
- (99) **“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**, **Voluntary Shutdown**, administrative error or **Programming Error**. **“System Failure”** does not include any **Dependent System Failure**.
- (100) **“Takeover”** means:
- (a) any person, entity or affiliated group of persons or entities obtains more than fifty percent (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 fifty percent (50%) of the **Named Insured’s** trustees, **Executives** 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, or sold to, 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.

(101) **“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 legal proceedings against an **Insured** for a **TCPA Violation**.

(102) **“TCPA Violation”** means any of the following, but only if actually or allegedly 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.

(103) **“Telecommunications Fraud”** means the intentional, unauthorized and fraudulent gaining of access to outgoing telephone service through infiltration and manipulation of an **Insured Telecommunications System**.

(104) **“Telecommunications Fraud Loss”** means the charges that **You** incur for unauthorized calls directly resulting from **Telecommunications Fraud**.

(105) **“Third Party”** means any entity, company, organization or person who does not qualify as an **Insured** under this Policy.

(106) **“Unauthorized Trading”** means trading, which at the time of the trade, exceeds permitted financial limits or is outside of permitted product lines.

(107) **“Utilities Fraud”** means the intentional, unauthorized and fraudulent use of or access to an **Insured Computer System** as a direct result of a **Hacking Attack**, including **Cryptojacking**, which results in the fraudulent use of electricity, water, natural gas, oil, internet access, mobile **Data**, cable or satellite services, sewage, **Cloud Provider** services or other utilities, services or resources.

(108) **“Utilities Fraud Loss”** means the overage charges or increased expenses that **You** incur as a direct result of **Utilities Fraud**, provided that (a) such overage charges or increased expenses are charged to **You** in a periodic billing statement by the provider of the utility, service or resource, pursuant to a written contract or agreement executed between **You** and such provider before the **Utilities Fraud** occurred; and (b) such overage charges or increased expenses are not charged at a flat fee which does not scale with the rate of use of the utility, service or resource. In determining the amount of **Utilities Fraud Loss** payable, due consideration will be given to **Your** prior utility expenses and the probable utility expenses **You** would have incurred had no **Utilities Fraud** occurred.

(109) **“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 Policy to any **Third Party**, other than as provided in this Definition.

(110) **“Voluntary Shutdown”** means an intentional and discretionary total or partial shutdown of an **Insured Computer System** based upon an **Executive’s** reasonable belief that such total or partial shutdown is necessary to mitigate, minimize or avoid the economic impact of a **Hacking Attack** on **Your** business.

(111) **“Waiting Period”** means the amount of time, as set forth in the Declarations of this Policy, that must elapse before any loss or expenses may be payable under BrandGuard Coverage, System Failure Coverage: Non-Physical Business

Interruption or Dependent System Failure Coverage: Non-Physical Business Interruption. The **Waiting Period** applies to each **Period of Restoration** and **Period of Indemnity**.

(112) **“Wrongful Act”** means:

- (a) with respect to Multimedia Liability Coverage only, a **Multimedia Wrongful Act**;
- (b) with respect to Security and Privacy Liability Coverage only, a **Security and Privacy Wrongful Act**;
- (c) with respect to Privacy Regulatory Defense and Penalties Coverage and PCI DSS Liability Coverage only, a **Security Breach** or **Privacy Breach**;
- (d) with respect to Bodily Injury Liability Coverage only, a **Bodily Injury Wrongful Act**;
- (e) with respect to Property Damage Liability Coverage only, a **Property Damage Wrongful Act**; and
- (f) with respect to TCPA Defense Coverage only, a **TCPA Violation**.

(113) **“You”** and **“Your”** means the **Named Insured** and any **Subsidiary**.

(114) **“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**.

(115) **“Your Phishing Fraud Loss”** means:

- (a) the loss of **Money**, **Securities** or **Other Property** that **You** sustain due to **Phishing Fraud**;
- (b) the loss of **Money** or **Securities** that **You** sustain to reimburse **Your** client or customer for the loss of their **Money** or **Securities** as a direct result of **Phishing Fraud**, provided such reimbursement is made with **Approval**; and
- (c) expenses that **You** incur with **Approval** to create and issue a specific press release or to establish a specific website to advise **Your** customers and prospective customers of **Phishing Fraud**.

(116) **“Your Privacy Policy”** means **Your** published policies provided to **Employees** or **Third Parties** that govern the collection, use, disclosure, correction, dissemination, confidentiality, integrity, accuracy or availability of **Private Information**.

(117) **“Your Reputation”** means the estimation of trust that customers or clients have in doing business with **You** or in purchasing **Your** services or **Products**.

VII. EXCLUSIONS AS TO THE ENTIRE POLICY

This Policy does not apply to any **Claim**:

(A) made by or on behalf of an **Insured** against another **Insured**. However, this Exclusion does not apply to:

- (1) a **Claim** under Security and Privacy Liability Coverage which is brought by any past, present or future **Employee** against **You**; or
- (2) a **Claim** under Multimedia Liability Coverage or Security and Privacy Liability Coverage which is brought by a person or entity qualifying as an **Insured** under Section **VI.(50)(f)** against another **Insured**.

(B) 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, dishonest or criminal act or omission;
- (2) any intentional violation of law; or
- (3) 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.

(C) for **Bodily Injury** or **Property Damage**. However, this Exclusion does not apply to a **Bodily Injury Claim**, **Property Damage Claim** or **Occurrence**.

(D) based upon, arising from or in any way involving any of the following, regardless of any other cause or event that contributes concurrently or in any sequence to the **Claim**:

- (1) electrical or mechanical failures or interruption, including electrical disturbance, spike, brownout or blackout;
 - (2) 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; or
 - (3) the cessation of **Your** business activities due to a shutdown by order of any public authority for whatever reason.
- (E)** 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.
- (F)** 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.
- (G)** 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;
 - (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) a **Claim** under Security and Privacy Liability Coverage 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) a **Claim** under PCI DSS Liability Coverage for an unintentional breach of the provisions of a **Merchant Services Agreement** relating to compliance with the **PCI DSS Standard**.
- (H)** 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) any liability an **Insured** would have had in the absence of such contract or agreement;
 - (2) a **Claim** under Multimedia Liability Coverage or Security and Privacy Liability Coverage for liability **Assumed Under Contract**; or
 - (3) a **Claim** under PCI DSS Liability Coverage for liability for **PCI DSS Fines and Assessments** assumed by **You** under a **Merchant Services Agreement**.
- (I)** 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, asbestos, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste ("waste" includes materials to be recycled, reconditioned or reclaimed), whether or not such presence results 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 in any way respond to or assess the effects of pollutants or contamination of any kind.
- However, this Exclusion does not apply to a **Bodily Injury Claim** or **Property Damage Claim**.
- (J)** based upon, arising from or in any way involving **Income Loss** caused by or resulting from **Unauthorized Trading**.
- (K)** based upon, arising from or in any way involving:
- (1) the actual or alleged purchase or sale of **Securities**;
 - (2) the actual or alleged loss of value of any **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.

However, Exclusion (K)(4) does not apply to a **Privacy Regulatory Proceeding** or a **Claim** under Security and Privacy Liability Coverage alleging violation of SEC Regulation S-P (17 C.F.R. §248) or similar rules or regulations promulgated under **Securities** laws concerning the security, access or use of a customer's **Private Information** which was obtained in the course of a **Securities** transaction.

- (L)** based upon, arising from or in any way involving the actual or alleged government enforcement of any federal, state, local or foreign regulation, including, but not limited to, regulations promulgated by the United States Federal Trade

Commission, the Federal Communications Commission or the Securities and Exchange Commission. However, this Exclusion does not apply to a **Privacy Regulatory Proceeding**.

(M) 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 with respect to **Employees**.

However, this Exclusion does not apply to a **Claim** under Security and Privacy Liability Coverage, Privacy Regulatory Defense and Penalties Coverage or Breach Event Costs Coverage which is based upon or arising from a breach of the **Personally Identifiable Information** of any **Employee**.

(N) based upon, arising from or in any way involving any actual or alleged harassment or discrimination including, but not limited to, discrimination based on age, color, race, gender, creed, national origin, marital status, sexual preferences, disability or pregnancy.

(O) based upon, arising from or in any way involving:

- (1) the violation of any pension, healthcare, welfare, profit sharing, mutual or investment plan, fund or trust; or
- (2) the 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 (O)(2) does not apply to a **Claim** under Security and Privacy Liability Coverage, Privacy Regulatory Defense and Penalties Coverage or Breach Event Costs Coverage which is based upon or arising from a breach of the **Personally Identifiable Information** of any **Employee**.

(P) for any loss, damage, cost or expense directly or indirectly caused by, resulting from or in connection with any war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or confiscation, nationalization, requisition or destruction of or damage to property by or under the order of any government or public or local authority, regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or for any loss, damage, cost or expense 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. However, this Exclusion does not apply to an **Act of Cyber Terrorism**.

(Q) 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) the implementation or maintenance of, or compliance with, any security measures or standards relating 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**.

(R) 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 (R)(1) does not apply to:

- (1) allegations of unfair competition that form a part of a **Claim** under Multimedia Liability Coverage, Security and Privacy Liability Coverage or Privacy Regulatory Defense and Penalties Coverage; or
- (2) allegations of deceptive trade practices that form a part of a **Claim** under Security and Privacy Liability Coverage or Privacy Regulatory Defense and Penalties Coverage.

(S) based upon, arising from or in any way involving any actual or alleged infringement of any patent.

(T) 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 Security and Privacy Liability Coverage for failure to prevent the misappropriation of a trade secret which results from a **Security and Privacy Wrongful Act**.

(U) based upon, arising from or in any way involving the confiscation, commandeering, requisition or 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.

(V) based upon, arising from or in any way involving any unsolicited communication of information or advertising by telephone, email, fax, text or any other means prohibited by law, or 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 law, whether such law is 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**.

VIII. EXCLUSIONS AS TO ALL FIRST PARTY INSURING AGREEMENTS

In addition to the Exclusions under Section **VII.**, the Company will not be liable under any First Party Insuring Agreement of this Policy for:

- (A) any liability to any **Third Party** for whatever reason, including contractual penalties, **Damages** or legal costs and expenses of any type.
- (B) sanctions, fines or penalties imposed by law.
- (C) 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. However, this Exclusion does not apply to an **Occurrence**.
- (D) business interruption loss or costs or expenses resulting from lost productivity, including the throttling or capping of bandwidth by an internet or mobile **Data** service provider due to **Utilities Fraud**.

IX. EXCLUSIONS AS TO BODILY INJURY LIABILITY COVERAGE AND PROPERTY DAMAGE LIABILITY COVERAGE

In addition to the Exclusions under Section **VII.**, the Company will not be liable for any **Bodily Injury Claim** or **Property Damage Claim** based upon, arising from or in any way involving actual or alleged warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **Products**, or the providing of, or failure to provide, warnings or instructions for **Products**.

X. EXCLUSIONS AS TO BRANDGUARD COVERAGE

In addition to the Exclusions under Section **VII.**, the Company will not be liable under BrandGuard Coverage for:

- (A) any loss, cost, liability or expense that **You** incur to protect, restore or re-establish **Your Reputation**, including **Public Relations Expenses**.
- (B) any loss, cost, liability or expense that is insured by any other insurance, except excess insurance.
- (C) 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 **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**.
- (D) any amounts paid or payable under Breach Event Costs Coverage.

XI. EXCLUSIONS AS TO SYSTEM FAILURE COVERAGE AND DEPENDENT SYSTEM FAILURE COVERAGE

In addition to the Exclusions under Section **VII.**, the Company will not be liable under System Failure Coverage or Dependent System Failure Coverage for:

- (A) the cost of restoring, updating or replacing **Digital Assets** to a level beyond that which existed prior to the **System Failure** or **Dependent System Failure**.
- (B) physical damage to, or the costs to repair or replace, any computer hardware or **Data** center.
- (C) the economic or market value of **Digital Assets**.
- (D) the costs or expenses incurred to identify, patch or remediate software **Programming Errors** or **Computer System** vulnerabilities.
- (E) 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**.
- (F) the cost of restoring, replacing or repairing any electronic media.
- (G) the cost to upgrade, improve, repair, redesign, reconfigure or maintain a **Service Provider Computer System**.
- (H) loss of goodwill or harm to **Your Reputation**.

XII. EXCLUSIONS AS TO CYBER CRIME COVERAGE

In addition to the Exclusions under Section **VII.**, the Company will not be liable under Cyber Crime Coverage for:

- (A) any **Claim** based upon, arising from or in any way involving any actual or alleged unauthorized acquisition, access, use or disclosure of **Private Information** that is held or transmitted in any form. However, this Exclusion does not apply to **Financial Fraud** which directly results from the use of **Private Information**.
- (B) any **Claim** based upon, arising from or in any way involving the seizure, confiscation, nationalization, requisition or destruction of an **Insured Telecommunications System** by or under the order of any government or public authority.
- (C) amounts that have been wholly or partially reversed by a credit card company or financial institution.
- (D) loss of **Other Property** arising out of, resulting from or in any way involving the fraudulent or purportedly fraudulent use of a credit or debit card.
- (E) any **Claim** based upon, arising from or in any way involving any fraudulent instruction, if the sender, or any person or organization acting in collusion with the sender, ever had authorized access to **Your** password, PIN or other security code. However, this Exclusion does not apply to **Your Phishing Fraud Loss**.
- (F) any **Claim** based upon, arising from or in any way involving the giving or surrendering of **Money, Securities or Other Property** in any exchange for or purchase of goods or services:
 - (1) that are not yet delivered, whether fraudulent or not;
 - (2) that fail to conform to advertised quality or performance; or
 - (3) that fail to conform to the quality or performance expected from the standpoint of the **Insured**.
- (G) any **Claim** based upon, arising from or in any way involving potential income, including interest and dividends, not realized by **You, Your** customers or **Your** clients.

XIII. EXCLUSIONS AS TO PROPERTY DAMAGE LOSS COVERAGE

In addition to the Exclusions under Section **VII.**, the Company will not be liable under Property Damage Loss Coverage for:

- (A) any amounts which are covered in whole or in part under any other valid and collectible insurance.
- (B) costs to upgrade, redesign, reconfigure or maintain an **Insured Computer System** to a level of functionality beyond that which existed prior to a **Hacking Attack**.
- (C) loss of market or loss of use.
- (D) loss, damage or deterioration resulting from any delay.
- (E) loss, damage, cost or expense of whatsoever nature caused by or resulting from the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials, regardless of any other cause or event contributing concurrently or in any other sequence thereto.
- (F) loss resulting from the lack of any of the following services or systems:
 - (1) incoming electricity, fuel, water, gas, steam or refrigerant;
 - (2) outgoing sewerage; or
 - (3) incoming or outgoing voice, **Data**, video or satellite services.

However, this Exclusion does not apply to loss resulting from an outage of any of the foregoing services or systems, if such services or systems are under **Your** direct operational control and the outage is directly caused by a **Hacking Attack**.

- (G) loss resulting from damage caused by changes in temperature or changes in humidity, whether atmospheric or not.

XIV. NOTIFICATION

- (A) **Notice Provisions as to All Insuring Agreements Except BrandGuard Coverage and Property Damage Loss Coverage**

With respect to all Insuring Agreements of this Policy except BrandGuard Coverage and Property Damage Loss Coverage, an **Executive** must provide written notice to the Company, through the persons named in the Declarations of this Policy, of any **Claim** as soon as practicable during the **Policy Period**, but no later than sixty (60) days after expiration of the **Policy Period**, or during any Extended Reporting Period, if applicable.

(B) Notice Provisions as to BrandGuard Coverage

An **Executive** must provide written notice to the Company, through the persons named in the Declarations of this Policy, of any **Claim** during the **Period of Indemnity**.

(C) Notice Provisions as to Property Damage Loss Coverage

An **Executive** must provide immediate written notice to the Company, through the persons named in the Declarations of this Policy, of any **Occurrence**.

(D) Notice of Potential Claim

If, during the **Policy Period**, an **Executive** becomes aware of any incident, act, fact or circumstance that could reasonably be a basis for a **Claim** under any Third Party Liability Insuring Agreement of this Policy, and if the **Executive** gives written notice to the Company during the **Policy Period** that describes:

- (1) the specific details of the incident, act, fact or circumstance that could reasonably be the basis for the **Claim**;
- (2) the possible **Damages, Regulatory Fines and Penalties** or other amounts to which this Policy applies that may result or has resulted from the incident, act, fact or circumstance; and
- (3) the details regarding how the **Executive** first became aware of the incident, act, fact or circumstance,

then any **Claim** arising out of such reported incident, act, fact or circumstance will be considered to be a **Claim** first made on the date when the Company first received written notice complying with the above requirements.

XV. LOSS DETERMINATION

(A) Brand Loss

- (1) The **Brand Loss** payable under BrandGuard Coverage will be calculated by taking into account:
 - (a) 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;
 - (b) income derived from substitute methods, facilities or personnel **You** use to maintain **Your** revenue stream;
 - (c) **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
 - (d) any fixed operating expenses, including ordinary payroll, but only to the extent that such operating expenses must continue during the **Period of Indemnity**.
- (2) For purposes of calculating **Brand Loss**, "net profit" will include the amount of **Money** paid or payable to **You**, including donations, for goods, **Products** or services sold, delivered or rendered in the normal course of **Your** business.

(B) Digital Assets Loss

Digital Assets Loss under System Failure Coverage: Data Recovery and Dependent System Failure Coverage: Data Recovery will be determined as follows:

- (1) If the impacted **Digital Asset** was purchased from a **Third Party**, the Company will pay only the lesser of the original purchase price of the **Digital Asset** or the reasonable and necessary **Digital Assets Loss**.
- (2) If it is determined that the **Digital Assets** cannot be replaced, restored or recreated, the Company will only reimburse the actual and necessary **Digital Assets Loss** incurred up to such determination.

(C) Income Loss

- (1) The **Income Loss** payable under System Failure Coverage: Non-Physical Business Interruption and Dependent System Failure Coverage: Non-Physical Business Interruption will be calculated as follows:
 - (a) **Your** net profit, as could have been reasonably projected, but which has been lost as a direct result of a **System Failure** or **Dependent System Failure**, whichever applies; plus
 - (b) any fixed operating expenses incurred, including ordinary payroll, but only to the extent that such operating expenses must continue during the **Period of Restoration** or **Period of Indemnity**, whichever applies.

- (2) **Income Loss** will be calculated by taking into account:
- (a) the prior experience of **Your** business preceding the date of the **System Failure** or **Dependent System Failure**, whichever applies, and **Your** likely net profit had no such **System Failure** or **Dependent System Failure** occurred;
 - (b) income derived from substitute methods, facilities or personnel **You** use to maintain **Your** revenue stream; and
 - (c) **Your** documentation of the trends in **Your** business and variations in or other circumstances affecting **Your** business before or after the **System Failure** or **Dependent System Failure**, whichever applies, which would have affected **Your** business had no such **System Failure** or **Dependent System Failure** occurred.
- (3) For purposes of calculating **Income Loss**, "net profit" will include the amount of **Money** paid or payable to **You**, including donations, for goods, **Products** or services sold, delivered or rendered in the normal course of **Your** business.

(D) Property Damage Loss Adjustment and Settlement

(1) Loss Adjustment

Loss, if any, under Property Damage Loss Coverage will be adjusted with and payable to **You**, or as may be directed by **You**. The interests of any lender, mortgagee and/or loss payee will also be included in loss payments as their interests may appear, when named on this Policy as a lender, mortgagee and/or loss payee.

(2) Valuation

- (a) Adjustment of the physical loss amount payable under Property Damage Loss Coverage will be computed as of the date of the loss at the location of the loss. The Company shall not pay more than **Your** financial interest in the **Covered Property**, subject to the provisions of paragraph (b) below.
- (b) For all **Covered Property**, the loss amount will not exceed the lesser of the following:
 - (i) all with due diligence and dispatch:
 - a. the cost to repair **Covered Property**;
 - b. the cost to rebuild or replace **Covered Property** on the same site with new materials of like size, kind and quality;
 - c. the cost of rebuilding, repairing or replacing **Covered Property** on the same or another site, but not to exceed the size and operating capacity that existed on the date of loss; or
 - d. the cost to replace unrepairable electrical or mechanical equipment, including computer equipment, with equipment that is the most functionally equivalent to that damaged or destroyed, even if such equipment has technological advantages and/or represents an improvement in function and/or forms part of a program of system enhancement;
 - (ii) the selling price of real property or machinery and equipment, other than stock, offered for sale on the date of loss;
 - (iii) the increased cost of demolition, if any, resulting from loss covered by Property Damage Loss Coverage, if **Covered Property** is scheduled for demolition;
 - (iv) the unamortized value of improvements and betterments, if **Covered Property** is not repaired or replaced at **Your** expense; or
 - (v) the **Actual Cash Value** if the **Covered Property** is useless to **You** or is not repaired, replaced or rebuilt on the same or another site within two (2) years from the date of the loss.
- (c) **You** may elect not to repair or replace **Covered Property** that is lost, damaged or destroyed. Loss settlement may be elected on the lesser of repair or replacement cost basis if the proceeds of such loss settlement are expended on other capital expenditures related to **Your Operations** within two (2) years from the date of loss. As a condition of collecting under this provision, such expenditure must be unplanned as of the date of the loss and must be made at an **Insured Location**.

XVI. CONDITIONS AS TO PROPERTY DAMAGE LOSS COVERAGE

The conditions in this section apply only to Property Damage Loss Coverage.

(A) Your Duties in the Event of an Occurrence

You must:

- (1) give immediate written notice to the Company of any **Occurrence**;
- (2) make best efforts to protect the **Covered Property** from further loss or damage;
- (3) promptly separate the damaged and undamaged property, put it in the best possible order and furnish a complete inventory of the lost, destroyed, damaged and undamaged property showing in detail the quantities, costs, **Actual Cash Value**, replacement value and amount of loss claimed;
- (4) give a signed and sworn proof of loss to the Company within 120 days after the loss, unless that time is extended in writing by the Company. The proof of loss must state **Your** knowledge and belief as to:
 - (a) the time and origin of the loss;
 - (b) **Your** interest, and that of all others, in the **Covered Property**;
 - (c) the **Actual Cash Value** and replacement value of each item and the amount of loss to each item; all encumbrances; and all other contracts of insurance, whether valid or not, covering any of the **Covered Property**;
 - (d) any changes in the title, use, occupation, location, possession or exposures of the **Covered Property** since the effective date of the **Policy Period**; and
 - (e) by whom and for what purpose any **Insured Location** was occupied on the date of the loss, and whether it then stood on leased ground;
- (5) include a copy of all descriptions and schedules in all policies and, if required, provide verified plans and specifications of any buildings, fixtures, machinery or equipment destroyed or damaged; and
- (6) as often as may be reasonably required exhibit to any person designated by the Company all that remains of any property, submit to examination under oath by any person designated by the Company and sign all written records of examinations, and produce for examination, at the Company's request, all books of accounts, business records, bills, invoices and other vouchers, or certified copies if originals are lost, at such reasonable times and places that may be designated by the Company and permit extracts and machine copies to be made.

(B) Insurer's Option

The Company has the option to take all or any part of damaged **Covered Property** at the agreed or appraised value. The Company must give written notice to **You** of its intention to do so within thirty (30) days after receipt of proof of loss.

(C) Abandonment

There may be no abandonment of any property to the Company.

(D) Control of Damaged Property

This Policy gives control of **Covered Property** that suffers insured physical damage as follows:

- (1) **You** will have full rights to the possession and control of damaged **Covered Property** in the event of insured physical damage to such **Covered Property**, provided proper testing is done to show which **Covered Property** is physically damaged;
- (2) using reasonable judgment, **You** will decide if the physically damaged **Covered Property** can be reprocessed or sold;
- (3) **Covered Property** so judged by **You** to be unfit for reprocessing or selling will not be sold or disposed of except by **You** or with **Your** consent; and
- (4) any salvage proceeds shall be paid to the Company at the time of loss settlement, or to **You**, if received prior to loss settlement and such proceeds will reduce the amount of loss payable accordingly.

XVII. POLICY CONDITIONS

(A) Assistance and Cooperation

- (1) As a condition precedent to coverage under this Policy, every **Insured** shall cooperate with the Company and its representatives and, upon the Company's request, shall submit to examination by a representative of the Company, under oath if required; attend hearings, depositions and trials; assist in effecting settlement; cooperate in the securing and giving of evidence, obtaining the attendance of witnesses and in the conduct of suits; and shall give a written statement(s) to the Company's representatives for the purpose of investigation and/or defense, all without charge to the Company, except as provided under Court Attendance Costs Coverage. Every **Insured** shall further cooperate with the Company to do whatever is necessary to secure and effect any rights of

indemnity, contribution or apportionment that any **Insured** may have. No **Insured** shall take any action which in any way increases the Company's exposure under this Policy.

- (2) Every **Insured** must execute or cause to be executed all papers and render all assistance as reasonably requested by the Company, which may require an **Insured** to provide copies of a **Third Party's** system security and event logs.
- (3) No **Insured** will admit liability, make any payment, assume any obligation, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without **Approval**, unless otherwise permitted under any Insuring Agreement of this Policy. However, the prompt public admission of a **Privacy Breach** or **Security Breach** potentially impacting the **Personally Identifiable Information of Employees** or **Third Parties**, as required by **Privacy Regulations** or **Card Association** operating requirements, will not be considered an admission of liability requiring **Approval**; provided, however, that an **Executive** must provide notice to the Company, in accordance with Section **XIV.(D)** of this Policy, of such public admission, if it is a circumstance that could lead to a **Claim**.

(B) Subrogation

- (1) If any payment is made under this Policy, the Company shall be subrogated to the extent of such payment to all rights of recovery thereof, and the **Insured** shall execute all documents required and do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company to effectively bring suit in the name of any **Insured**, and shall provide all other assistance and cooperation which the Company may reasonably require. The **Insured** shall do nothing after a **Claim** is made to prejudice the Company's subrogation rights.
- (2) Any recoveries shall be applied first to subrogation expenses, second to **Damages, Defense Costs** or any other amounts incurred by the Company, and lastly to the Deductible. Any additional amounts recovered will be paid to the **Insured**.

(C) Other Insurance

If other valid and collectible insurance is available to any **Insured** for a **Claim** to which this Policy applies, the Company's obligations are limited as follows:

- (1) **Primary Insurance – All First Party Insuring Agreements Except Property Damage Loss Coverage**
All First Party Insuring Agreements of this Policy, except Property Damage Loss Coverage, are primary to any other valid and collectible insurance available to any **Insured**.
- (2) **Excess Insurance – All Third Party Liability Insuring Agreements**
All Third Party Liability Insuring Agreements of this Policy are excess over any other valid and collectible insurance (including the amount of any deductibles and/or retentions) available to any **Insured**, including any insurance under which there is a duty to defend and regardless of whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such insurance is written specifically as excess insurance of this Policy by reference in such other policy to the Policy number set forth in the Declarations of this Policy.
- (3) **Contingent Insurance – Property Damage Loss Coverage**
The Property Damage Loss Coverage of this Policy provides coverage for physical loss of or damage to **Covered Property** only in the absence of other valid and collectible insurance.

(D) Cancellation

- (1) The **Named Insured** may cancel this Policy by giving the Company advance, written notice stating when thereafter cancellation shall take effect. If this Policy is canceled by the **Named Insured**, the earned premium will be computed on a short rate basis. Payment or tender of any unearned premium by the Company will not be a condition precedent to the effectiveness of cancellation.
- (2) If the Company decides to cancel this Policy, the Company will mail a written notice to the **Named Insured** stating on what date cancellation shall be effective and the reason for cancellation. If the reason is because of non-payment of premium, then the date of cancellation will be at least ten (10) days from the date of the Company's notice of cancellation. If it is for any other reason, then the date of cancellation will be at least sixty (60) days from the date of the Company's notice of cancellation. If this Policy is canceled by the Company before the Expiration Date, the return portion of the premium shall be computed on a prorated basis.
- (3) If the provisions of **(D)(2)** above are in conflict with any governing law or regulation, then such provisions shall be deemed amended to comply with the requirements of any such law or regulation, including any minimum cancellation notice period permitted thereunder.
- (4) Cancellation is not contingent upon acceptance by the **Named Insured** of the unearned premium.

(E) Non-Renewal

- (1) If the Company elects to non-renew this Policy, it will mail a written notice to the **Named Insured** stating the reason for non-renewal at least sixty (60) days before the Expiration Date of this Policy.
- (2) If the provisions of **(E)(1)** above are in conflict with any governing law or regulation, then such provisions shall be deemed amended to comply with the requirements of any such law or regulation, including any minimum non-renewal notice period permitted thereunder.

(F) Optional Extended Reporting Period

- (1) If this Policy is canceled 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 this Policy, then the **Named Insured** shall have the right, following the effective date of such cancellation, if applicable, or the Expiration Date of this Policy, to purchase an Optional Extended Reporting Period, upon written request and payment of an additional premium of up to the percentage of the full annual premium not to exceed:
 - (a) for twelve (12) months: 100% of the full annual premium.
 - (b) for twenty-four (24) months: 150% of the full annual premium.
 - (c) for thirty-six (36) months: 200% of the full annual premium.
- (2) As used herein, "full annual premium" means the equivalent annual premium level for the coverage terms in effect immediately prior to the end of the **Policy Period**, including any additional premium for endorsements.
- (3) At the commencement of the Optional Extended Reporting Period, the entire premium shall be considered fully earned.
- (4) If purchased, the Optional Extended Reporting Period will only apply to:
 - (a) with respect to the Third Party Liability Insuring Agreements of this Policy, any **Claim** first made against an **Insured** during the Optional 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 **Policy Period**, and the **Claim** is reported to the Company during the Optional Extended Reporting Period; and
 - (b) with respect to the First Party Insuring Agreements of this Policy, any **Claim** reported to the Company during the Optional Extended Reporting Period, provided always that the **First Party Insured Event** giving rise to such **Claim** first occurs during the **Policy Period** but before the effective date of cancellation or the Expiration Date of this Policy, whichever applies, and the **First Party Insured Event** is first discovered by an **Executive** during the Optional Extended Reporting Period.
- (5) Any such Optional Extended Reporting Period:
 - (a) shall be evidenced by issuance of an endorsement to this Policy;
 - (b) shall apply only to those Insuring Agreements purchased by the **Named Insured**, as set forth in the Declarations of this Policy;
 - (c) is subject to all terms, conditions, limitations and exclusions of this Policy;
 - (d) shall require payment within thirty (30) days from the **Named Insured's** written request to bind such Optional Extended Reporting Period; and
 - (e) shall be effective on the effective date of cancellation, if applicable, or the Expiration Date of this Policy.
- (6) The Limit of Liability for the Optional Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability set forth in the Declarations of this Policy. The purchase of the Optional Extended Reporting Period shall not increase or reinstate the Limit of Liability set forth in the Declarations.
- (7) A change in Policy terms, conditions or exclusions, including the quotation by the Company of a different premium, Deductible, Limit of Liability or policy language at renewal shall not be considered a nonrenewal for purposes of triggering the **Named Insured's** right to purchase the Optional Extended Reporting Period.
- (8) The rights contained in this provision shall terminate unless the **Named Insured** provides written notice of the **Named Insured's** election to purchase the Optional Extended Reporting Period to the Company within thirty (30) days of the effective date of cancellation, if applicable, or the Expiration Date of this Policy. Furthermore, as a condition precedent to the **Named Insured's** rights to purchase the Optional Extended Reporting Period, the total premium for this Policy must have been paid in full and any outstanding Deductible fully satisfied.

(G) Spousal or Domestic Partner Extension

This Policy will, subject to all terms, conditions, limitations and exclusions, be extended to apply to a **Claim** against a person who, at the time the **Claim** is made, is a lawful spouse or domestic partner of an **Insured**, but only if such spouse or domestic partner is the subject of any **Claim** because of marriage or domestic partnership to such **Insured**. In no event

will the coverage afforded under this provision apply to any **Claim** caused by, resulting from or in any way involving the acts of an **Insured's** spouse or domestic partner.

(H) Most Favorable Law

- (1) With respect to the insurability of **Damages, Regulatory Compensatory Awards, Regulatory Fines and Penalties and PCI DSS Fines and Assessments**, the applicable law will be the law of the state most favorable to the **Insured**, provided such state has a reasonable relationship to the **Claim**.
- (2) A state will be considered to have a reasonable relationship to the **Claim** if it is the state where:
 - (a) the **Named Insured** is incorporated or has a place of business;
 - (b) the **Claim** is pending;
 - (c) the **Wrongful Acts** giving rise to the **Claim** were committed or allegedly committed;
 - (d) with respect to Bodily Injury Liability Coverage only, the **Bodily Injury** occurred; or
 - (e) with respect to Property Damage Liability Coverage only, the **Property Damage** occurred.

(I) Action Against the Company

No action shall lie against the Company unless, as a condition precedent thereto, there has been full compliance with all of the terms of this Policy, nor until the amount of an **Insured's** obligation to pay with respect to a **Claim** has been finally determined either by judgment against an **Insured** after actual trial or by written agreement of an **Insured**, the claimant and the Company. Any individual or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No individual or organization shall have any right under this Policy to join the Company as a party to any action against any **Insured** to determine an **Insured's** liability, nor shall the Company be impleaded by any **Insured** or their legal representative.

(J) Dispute Resolution

(1) Mediation

If any dispute arises between any **Insured** and the Company involving this Policy or a **Claim** hereunder, the **Named Insured** and the Company agree that such dispute will be referred to a qualified mediator in a good faith effort to negotiate a resolution of the dispute prior to the initiation of any arbitration or other proceedings. The party invoking the agreement to mediate will provide written notice to the other party setting forth its request to mediate and a brief statement regarding the issue to be mediated. The **Named Insured** is authorized and directed to accept the Notice of Mediation on behalf of any **Insured**.

(2) Appraisal – Property Damage Loss Coverage

If **You** and the Company disagree on the value of the **Covered Property** or the amount of loss to which the Property Damage Loss Coverage applies, either party may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will pay its chosen appraiser and bear the other expenses of the appraisal and umpire equally. If there is an appraisal, the Company will still retain the right to deny the **Claim**.

(3) Arbitration

As a condition precedent to any right of action hereunder, in the event that a good faith effort to mediate pursuant to Section **XVII.(J)(1)**, or to appraise any loss pursuant to **XVII.(J)(2)**, does not resolve a dispute between any **Insured** and the Company involving this Policy or a **Claim**, the **Named Insured** and the Company agree that such dispute will be determined by final and binding arbitration before a single arbitrator. If the parties cannot mutually select the arbitrator, the parties will refer the selection of the arbitrator to the American Arbitration Association.

(K) Assignment

No assignment of interest under this Policy shall bind the Company unless its prior written consent is endorsed hereon.

(L) Authorization Clause

The **Named Insured** designated in the Declarations of this Policy shall have the sole authority and responsibility to act on behalf of every **Insured** with respect to: (1) the payment or return of premium; (2) the receipt and agreement of any endorsements issued to form a part of this Policy; and (3) the exercise of the right to purchase any Extended Reporting

Period. By acceptance of this Policy, every **Insured** under this Policy understands and agrees that the **Named Insured** shall have the authority set forth in this Section **XVII.(L)**.

(M) Representations

- (1) Each **Insured** represents and acknowledges that the statements made in the **Application** and the information submitted therewith are true and accurate, and that such statements and information are the bases upon which this Policy was issued, are considered to be incorporated herein and form a part of this Policy, and are deemed material to the acceptance of the risk assumed by the Company under this Policy.
- (2) Each **Insured** understands and agrees that this Policy was issued in reliance upon the truth and accuracy of the representations, statements and information made in or submitted with the **Application**.

(N) Forfeiture

Any action or failure to act by the **Named Insured** with the intent to defraud the Company, or the material misrepresentation or non-disclosure of any material fact or **Claims** by the **Named Insured** in the **Application** or in any supplemental materials submitted to the Company, will render this Policy null and void, and all coverage hereunder will be forfeited.

(O) Bankruptcy or Insolvency

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

(P) Office of Foreign Assets Control

Payment under this Policy shall only be made in full compliance with all United States of America economic or trade sanctions, laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

(Q) Headings

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

(R) Policy Conformance

Any terms of this Policy that conflict with any local or state law, regulation or ordinance of the state that applies, will be thereby amended to the extent necessary in order to conform to such local or state law, regulation or ordinance.

XVIII. MATERIAL CHANGES

(A) Created or Acquired Subsidiaries

- (1) If, after the Effective Date of this Policy, the **Named Insured** creates or directly or indirectly acquires a **Subsidiary** whose annual gross revenues do not exceed thirty percent (30%) of the **Named Insured's** annual gross revenues prior to the acquisition date, as reflected in the most recent **Application** for this Policy, the new **Subsidiary** will be automatically included within the definition of **Insured** for the duration of the **Policy 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** and provided that (a) the **Named Insured** gives the Company written notice of such transaction or event as soon as practicable, but no later than sixty (60) days after the effective date of the transaction or event, and (b) the **Named Insured** gives the Company information regarding the transaction or event as the Company may reasonably require.
- (2) If, after the Effective Date of this Policy, the **Named Insured** creates or directly or indirectly acquires a **Subsidiary** whose annual gross revenues exceed thirty percent (30%) of the **Named Insured's** annual gross revenues prior to the acquisition date, as reflected in the most recent **Application** for this Policy, coverage shall be afforded to the **Subsidiary** for a period of ninety (90) days after the effective date of such transaction or event, but only with respect to **Claims first made during such ninety (90) day period for Wrongful Acts or First Party Insured Events** that occur after the effective date of such transaction or event. The Company shall have the option of providing coverage for the **Subsidiary** beyond the ninety (90) days provided that (a) the **Named Insured** gives the Company written notice of such transaction or event as soon as practicable, but no later than sixty (60) days after the effective date of the transaction or event, (b) the **Named Insured** gives the Company information regarding the transaction or event as the Company may reasonably require, and (c) the **Named Insured** accepts any terms,

conditions, exclusions, limitations and additional premium, if any, as the Company, at its sole discretion, may impose.

- (3) If the Company, at its sole discretion, elects to provide coverage for any **Subsidiary** subject to the provisions of Section **XVIII.(A)(1)** or **XVIII.(A)(2)** above, this Policy shall not apply to any **Claim** based upon, arising out of, directly or indirectly resulting from or in any way involving any **Wrongful Act** or **First Party Insured Event** occurring before the effective date of the transaction or event or the effective date of coverage under this Policy as set forth in an endorsement, whichever is later.

(B) Sold Subsidiaries

If, after the Effective Date of this Policy, the **Named Insured** sells a **Subsidiary**, that **Subsidiary** will continue to be an **Insured** for the duration of the **Policy 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. The **Named Insured** must give the Company written notice of any such sale within sixty (60) days of the effective date of the sale. There will be no return premium.

XIX. COVERAGE IN THE EVENT OF A TAKEOVER AND CHANGE OF CONTROL EXTENDED REPORTING PERIOD

- (A) In the event of a **Takeover** during the **Policy Period**, this Policy will remain in effect until the Expiration Date, or earlier termination date, if any, for any **Claim** made during the **Policy 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**. The **Named Insured** must give the Company written notice of the **Takeover** as soon as practicable, but in no event later than thirty (30) days from the effective date of the **Takeover**. This Policy cannot be canceled by the **Named Insured** after the effective date of the **Takeover**, and the premium will be considered fully earned. This Policy cannot thereafter be renewed.
- (B) In the event of a **Takeover**, the **Named Insured** shall not have a right to purchase an Optional Extended Reporting Period pursuant to Section **XVII.(F)** of this Policy. However, the **Named Insured** shall have the right to purchase a Change of Control Extended Reporting Period pursuant to the provisions set forth below, provided the **Named Insured** has otherwise complied with the terms and conditions of this Policy.
- (C) In the event of a **Takeover**, the **Named Insured** shall have the right and option to purchase a Change of Control Extended Reporting Period, upon written request and payment of an additional premium of up to the percentage of the full annual premium not to exceed:
- | | | |
|-----|------------------------------|----------------------------------|
| (1) | for twelve (12) months: | 100% of the full annual premium. |
| (2) | for twenty-four (24) months: | 150% of the full annual premium. |
| (3) | for thirty-six (36) months: | 200% of the full annual premium. |
- (D) As used herein, "full annual premium" means the equivalent annual premium level for the coverage terms in effect immediately prior to the end of the **Policy Period**, including any additional premium for endorsements.
- (E) At the commencement of the Change of Control Extended Reporting Period, the entire premium shall be considered fully earned.
- (F) If purchased, the Change of Control Extended Reporting Period will only apply to:
- (1) with respect to the Third Party Liability Insuring Agreements of this Policy, any **Claim** first made against an **Insured** during the Change of Control 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 before the effective date of the **Takeover**, and the **Claim** is reported to the Company during the Change of Control Extended Reporting Period; and
 - (2) with respect to the First Party Insuring Agreements of this Policy, any **Claim** reported to the Company during the Change of Control Extended Reporting Period, provided always that the **First Party Insured Event** giving rise to such **Claim** first occurs during the **Policy Period**, but before the effective date of the **Takeover**, and the **First Party Insured Event** is first discovered by an **Executive** during the Change of Control Extended Reporting Period.
- (G) Any such Change of Control Extended Reporting Period:
- (1) shall be evidenced by issuance of an endorsement to this Policy;
 - (2) shall apply only to those Insuring Agreements purchased by the **Named Insured**, as set forth in the Declarations of this Policy;
 - (3) is subject to all terms, conditions, limitations and exclusions of this Policy;
 - (4) shall require payment within thirty (30) days from the **Named Insured's** written request to bind such Change of Control Extended Reporting Period; and

(5) shall be effective on the Expiration Date of this Policy.

- (H) The Limit of Liability for the Change of Control Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability set forth in the Declarations of this Policy. The purchase of the Change of Control Extended Reporting Period shall not increase or reinstate the Limit of Liability set forth in the Declarations.
- (I) The rights contained in this provision shall terminate unless the **Named Insured** provides written notice of the **Named Insured's** election to purchase the Change of Control Extended Reporting Period to the Company within thirty (30) days of the Expiration Date of this Policy. As a condition precedent to the **Named Insured's** right to purchase the Change of Control Extended Reporting Period, the total premium for this Policy must have been paid in full and any outstanding Deductible fully satisfied.

XX. CURRENCY AND PAYMENTS

All premium and losses under this Policy shall be payable in United States dollars.

XXI. ENTIRE AGREEMENT

By acceptance of this Policy, the **Named Insured** agrees that this Policy embodies all agreements between the **Named Insured** and the Company relating to this Policy. Notice to any agent, or knowledge possessed by any agent, or by any other person, will not affect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy; nor will the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy and signed by the Company.