

1. **Insured Organisation:** «Declarations.InsuredFullName»
2. **Address:** «Declarations.Insuredstreetaddress»  
«Declarations.Insuredcity», «Declarations.Insuredcounty»  
«Declarations.Insuredpostcode»
3. **Policy Number:** «Declarations.PolicyNo» **Renewal of:** «Declarations.RenewalPolicyNo»
4. **Period of Insurance:** Inception Date:«Dec.InceptionDate» to Expiry Date: «Dec.ExpirationDate»  
(both dates inclusive, local UK time)
5. **Retroactive Date:** « Declarations.RetroactiveDate »
6. **Continuity Date:** «Declarations.ContinuityDate»
7. **Premium:** £«Declarations.Premium», plus Insurance Premium Tax

8. **Limits of Liability:**

If a Limit of Liability for any Liability Insuring Clause or First Party Insuring Clause is shown as "Nil", "N/A", or is left blank, such Insuring Clause has not been purchased.

**A. Limits Per Insuring Clause:**

**Liability Insuring Clauses**  
(Claims Made and Reported Coverage)

	Each Claim	Aggregate
Media Liability	£« »	£« »
Security and Privacy Liability	£« »	£« »
Privacy Regulatory Defence and Penalties	£« »	£« »
PCI DSS Liability	£« »	£« »
Court Attendance Costs	£« »	£« »

**First Party Insuring Clauses**  
(Event Discovered and Reported Coverage)

	Each Event	Aggregate
Breach Event Costs	£« »	£« »
Post Breach Remediation Costs	£« »	£« »
Reputational Loss	£« »	£« »
Business Interruption		
A. Malicious System Failure	£« »	£« »
B. Operational System Failure	£« »	£« »
Dependent Business Interruption		
A. Dependent Malicious System Failure	£« »	£« »
B. Dependent Operational System Failure	£« »	£« »
Data Recovery Costs	£« »	£« »
Cyber Extortion	£« »	£« »
Bricking Loss	£« »	£« »
Reward Expenses	£« »	£« »
Cyber Crime		
A. Transfer Fraud	£« »	£« »
B. Telephone Hacking and Utilities Fraud	£« »	£« »
C. Invoice Manipulation Fraud	£« »	£« »
<b>Cyber Crime Aggregate Limit</b> (A., B., & C. combined)		£« »

**B. Maximum Policy Aggregate Limit:** £« »  
(This is the maximum amount payable under the Policy for all Insuring Clauses combined unless expressly stated otherwise.)

**9. Retention, Waiting Periods, Period of Indemnity and Periods of Restoration:**

Retention  
Each **Claim** or **First Party Insured Event**: £« »

Reputational Loss  
**Waiting Period**: « »  
**Period of Indemnity**: « »

Business Interruption  
**Waiting Period**: « »  
**Period of Restoration**: « »

Dependent Business Interruption  
**Waiting Period**: « »  
**Period of Restoration**: « »

**10. How to Report a Claim or First Party Insured Event:**

Report any actual or potential **Claim** or **First Party Insured Event** to:

Tokio Marine HCC Cyber & Professional Lines Group

Claims Telephone Number: 0808 175 4376

Claims Email Address: ukcyberclaims@tmhcc.com

**Schedule of Endorsements**

The following endorsements form a part of this Policy at inception:

«Endorsements.EndoNum» «Endorsements.FormCode» «Endorsements.FormName»

«Declarations.SignedBy(image)»

# CyberGuard™ Plus

Cyber Liability Policy



# CyberGuard™ Plus Cyber Liability Policy

## Table of Contents

I. INSURING CLAUSES .....	1
II. DEFINITIONS .....	2
III. EXCLUSIONS.....	12
IV. LIMITS OF LIABILITY .....	15
V. RETENTION AND WAITING PERIOD .....	15
VI. POLICY CONDITIONS .....	16

SPECIMEN

# CyberGuard™ Plus Cyber Liability Policy

This Policy provides claims-made and notified coverage for Liability Insuring Clauses and event-discovered and notified coverage for First Party Insuring Clauses. Coverage applies to **Claims** first made against an **Insured** and notified to the Insurer during the **Period of Insurance** (or any applicable Extended Reporting Period); and **First Party Insured Events** first discovered during the **Period of Insurance** and notified to the Insurer during the **Period of Insurance** (or any applicable Extended Reporting Period). **Claim Expenses** are included within the Limits of Liability. Please read this Policy carefully and discuss it with **Your** insurance adviser.

In return for the premium paid, the **Insured Organisation's** agreement to pay the applicable Retention, and the statements and information provided in the **Proposal** (which form part of this Policy), and subject to all terms, conditions, limitations and exclusions herein, the Insurer agrees as follows:

"Insurer" means the entity issuing this Policy.

## I. **INSURING CLAUSES**

This Policy applies only to those purchased by the **Insured Organisation**, as shown in the Policy Schedule.

### (A) **LIABILITY INSURING CLAUSES**

The Insurer will pay, in excess of the applicable Retention, the amounts described below that the **Insured** is legally obligated to pay as a result of a **Claim** first made against the **Insured** during the **Period of Insurance** (or any applicable Extended Reporting Period) and reported in accordance with Section **VI.(A)** of the Policy, arising from a **Wrongful Act** committed on or after the Retroactive Date set forth in the Policy Schedule:

- (1) Media Liability  
**Damages and Claim Expenses** arising from a **Media Liability Wrongful Act**.
- (2) Security and Privacy Liability  
**Damages and Claim Expenses** arising from a **Security and Privacy Wrongful Act**.
- (3) Privacy Regulatory Defence and Penalties  
**Regulatory Fines and Penalties and Claim Expenses** that the **Insured** is legally obligated to pay because of a **Privacy Regulatory Proceeding** arising from a **Security Breach** or **Privacy Breach**.
- (4) PCI DSS Liability  
**PCI DSS Fines and Assessments and Claim Expenses** that the **Insured** is legally obligated to pay because of a **PCI DSS Demand** arising from a **Security Breach** or **Privacy Breach**.
- (5) Court Attendance Costs  
Reimbursement to an **Insured** for **Court Attendance Costs** incurred at the Insurer's request to attend mediation, arbitration proceedings, hearings, depositions and trials, in connection with the defence of a **Claim** under any Liability Insuring Clause.

### (B) **FIRST PARTY INSURING CLAUSES**

The Insurer will pay, in excess of the applicable Retention or following the applicable **Waiting Period**, the **First Party Loss** described below that **You** incur as a direct result of a **First Party Insured Event** first discovered by an **Executive** during the **Period of Insurance** and reported in accordance with Section **VI.(A)** of the Policy:

- (1) Breach Event Costs  
**Breach Response Costs, Notification Expenses and Breach Support and Credit Monitoring Expenses** incurred as a direct result of an **Adverse Media Report, Security Breach** or **Privacy Breach**.
- (2) Post Breach Remediation Costs  
**Post Breach Remediation Costs** incurred with the Insurer's prior written consent as a direct result of a **Security Breach** or **Privacy Breach**.
- (3) Reputational Loss  
Provable and ascertainable **Reputational Loss** sustained during the **Period of Indemnity** as a direct result of an **Adverse Media Report**.
- (4) Business Interruption  
**Income Loss, Interruption Expenses and Special Expenses** incurred during the **Period of Restoration** as a direct result of a:
  - (A) **Malicious System Failure**; or
  - (B) **Operational System Failure**.

- (5) Dependent Business Interruption  
**Dependent Business Interruption Loss** incurred during the **Period of Restoration** as a direct result of an actual interruption or suspension of **Your** business directly caused by a:
- (A) **Dependent Malicious System Failure**; or
- (B) **Dependent Operational System Failure**.
- (6) Data Recovery Costs  
**Data Recovery Costs** incurred as a direct result of damage, alteration, corruption, distortion, theft, misuse or destruction of **Data Assets** caused by a **System Failure** or **Dependent System Failure**; and **Special Expenses** incurred as a direct result of damage, alteration, corruption, distortion, theft, misuse or destruction of **Data Assets** caused by a **System Failure**.
- (7) Cyber Extortion  
**Cyber Extortion Expenses** and **Cyber Extortion Monies** incurred with the Insurer's prior written consent as a direct result of a **Cyber Extortion Threat**.
- (8) Bricking Loss  
**Bricking Loss** incurred as a direct result of a **Bricking Event**.
- (9) Reward Expenses  
**Reward Expenses** incurred as a direct result of a **First Party Insured Event**.

#### Cyber Crime Insuring Clauses

**Crime Loss** sustained as a direct result of:

- (10) Transfer Fraud  
**Transfer Fraud**.
- (11) Telephone Hacking and Utilities Fraud  
**Telecommunications Fraud** or **Utilities Fraud**.
- (12) Invoice Manipulation Fraud  
 an **Invoice Manipulation Event**.

#### (C) **CONDITIONS APPLICABLE TO INSURING CLAUSES**

- (1) Coverage under any First Party Insuring Clause shall apply only if **You** provide clear evidence that the **First Party Loss** is incurred as a direct result of the defined triggering event under that Insuring Clause.
- (2) The following conditions will apply:
- (a) Data Recovery Costs: The Insurer shall pay **Data Recovery Costs** and **Special Expenses** for up to twelve (12) months following the discovery of the **System Failure** or **Dependent System Failure**.
- (b) Cyber Extortion: **You** must make reasonable efforts to notify local law enforcement authorities and the National Crime Agency (NCA) or equivalent foreign agency before surrendering any **Cyber Extortion Monies** in response to a **Cyber Extortion Threat**.
- (c) Transfer Fraud: **You** must provide written confirmation to the Insurer that **Your** financial institution has refused to reverse or prevent a payment transaction or to indemnify or reimburse **You** for the **Crime Loss**.
- (d) Invoice Manipulation Fraud: (1) The payment instruction or banking details contained within a genuine invoice, purchase order, or remittance advice were altered, corrupted, or redirected by a **Third Party** without **Your** knowledge or consent; and (2) **You** verified the authenticity of the invoice or payment instruction using commercially reasonable internal controls or verification procedures prior to payment, or would have done so but for the fraudulent alteration of such payment detail.

## II. **DEFINITIONS**

As used in this Policy:

- (1) **"Act of Cyber Terrorism"** means the use of disruptive activities, or threat of disruptive activities, against a **Computer System**, where such activities are intended to cause harm or further political, religious, racial, or ideological, or similar objectives; are designed to influence a government or an international governmental organisation, and are intended to intimidate any persons, company, or entity in the furtherance of such objectives. **"Act of Cyber Terrorism"** does not mean any such activities that are part of, connected with, or related to any **War** or **Cyber Operation**.
- (2) **"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 brand.
- (3) **"Breach Response Costs"** means:
- (a) **Initial Breach Consultation Costs**;

- (b) reasonable and necessary **Public Relations Expenses** that **You** incur with the Insurer's prior written consent prior to or following the publication of an **Adverse Media Report** to avert or mitigate any material damage to **Your Reputation** or 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 whose acts **You** are legally 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 whose acts **You** are legally 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 **Employees** assigned to handle inquiries from parties affected by a **Privacy Breach**.
- (4) **"Breach Support and Credit Monitoring Expenses"** means reasonable and necessary expenses that **You** incur, with the Insurer's prior written consent, on **Your** behalf, or on behalf of a party for whose acts **You** are legally liable, to provide support activity to parties affected by a **Security Breach**, **Privacy Breach**, or an **Adverse Media Report**, including the cost to set up and operate a call centre 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.
- (5) **"Bricking Event"** means the unauthorised or malicious reprogramming of software or firmware installed on **Your** computer hardware or electronic equipment, including such reprogramming resulting from a **Security Breach**, which renders **Your** computer hardware or electronic equipment unusable for its intended purpose without physical damage.
- (6) **"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 twenty-five (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**.
- (7) **"Claim"** means:
- (a) with respect to Media Liability and Security and Privacy Liability only:
    - (i) a written demand made against any **Insured** for **Damages** or non-monetary relief;
    - (ii) the service of a civil proceeding, arbitration, or other alternative dispute resolution proceeding commenced against any **Insured**;
    - (iii) a written request received by any **Insured** to toll or waive a statute of limitations relating to a potential proceeding against such **Insured**;
  - (b) with respect to Privacy Regulatory Defence and Penalties only, a **Privacy Regulatory Proceeding**;
  - (c) with respect to PCI DSS Liability only, a **PCI DSS Demand**; and
  - (d) with respect to Court Attendance Costs only, a written request by an **Executive** to the Insurer for indemnification of **Court Attendance Costs**.

A **Claim** will be deemed to have been first made against an **Insured** when any **Insured** first receives written notice of such **Claim**.

- (8) **"Claim Expenses"** means reasonable and necessary fees incurred with the Insurer's prior written consent and charged by an attorney(s) designated by the Insurer to defend a **Claim**; and all other reasonable and necessary fees, costs and expenses resulting from the defence and appeal of a **Claim**, if incurred by the Insurer or by an **Insured** with the Insurer's prior written consent. **"Claim Expenses"** 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 defence of a **Claim** or a potential **Claim**.
- (9) **"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, operating systems, firmware, servers, and media libraries; associated input and output devices; networking equipment, websites, extranets, and off-line storage facilities (to the extent they hold **Data**); electronic backup equipment; mobile devices, smartphones, tablets, laptops, and devices, including such items connected to or controlled by the internet (including "smart devices" and Internet of Things ("IoT") devices); and supervisory control and data acquisition ("SCADA") systems and industrial control systems ("ICS").
- (10) **"Court Attendance Costs"** means reasonable and necessary 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 defence of a **Claim** under any Liability Insuring Clause.
- (11) **"Crime Loss"** means the direct financial loss sustained by **You** as a result of any event covered under the Cyber Crime Insuring Clauses, including reasonable and necessary costs incurred by **You** to establish the existence and amount of such loss, as follows:

- (a) with respect to Transfer Fraud:
  - (i) the loss of **Money** or **Securities** that **You** sustain directly resulting from a **Transfer Fraud**; and
  - (ii) the loss of **Money** or **Securities** that **You** sustain to reimburse a client, customer, or vendor for their direct loss resulting from a **Transfer Fraud**, provided such reimbursement is made with the Insurer's prior written consent.
- (b) with respect to Telephone Hacking and Utilities Fraud:
  - (i) the charges that **You** incur for unauthorised calls directly resulting from **Telecommunications Fraud**;
  - (ii) the overage charges or increased expenses that **You** incur directly resulting from **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 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.
- (c) with respect to Invoice Manipulation Fraud:
  - (i) the loss of **Money** or **Securities** that **You** sustain directly resulting from an **Invoice Manipulation Event**; and
  - (ii) the loss of **Money** or **Securities** that **You** sustains to reimburse a client, customer or vendor for their direct loss of **Money** or **Securities** directly resulting from an **Invoice Manipulation Event**, provided such reimbursement is made with the Insurer's prior written consent.

**"Crime Loss"** does not include any consequential loss, interest, penalties, or unrealised profit.

- (12) **"Cyber Extortion Expenses"** means reasonable and necessary costs and expenses, other than **Cyber Extortion Monies**, that **You** incur with the Insurer's prior written consent as a direct result of a **Cyber Extortion Threat**, including the cost to retain or hire a **Third Party** specializing in IT security to determine the validity and severity of a **Cyber Extortion Threat**.
- (13) **"Cyber Extortion Monies"** means **Money**, digital currency of any kind, including bitcoin, or **Other Property** that **You** pay with the Insurer's prior written consent to any person or group reasonably believed to be responsible for a **Cyber Extortion Threat**, to prevent or terminate such **Cyber Extortion Threat**.
- (14) **"Cyber Extortion Threat"** means a credible threat, 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 unauthorised access to, or unauthorised 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 brand by posting false or misleading comments about **You** or **Your** organisation on social media websites or platforms, or by threatening to disclose or publish **Your** confidential or proprietary information, including intellectual property.
- (15) **"Cyber Operation"** means the use of a **Computer System** by, at the direction, or under the control of a sovereign state to:
  - (a) disrupt, deny access to, or degrade functionality of a **Computer System**; and/or
  - (b) copy, remove, manipulate, deny access to or destroy information in a **Computer System**.
- (16) **"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 Insurer; 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:

- (i) any **Insured's** future profits or royalties, restitution or disgorgement of any **Insured's** profits;
- (ii) the costs to comply with orders granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief;

- (iii) 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;
  - (iv) taxes, fines, penalties or sanctions;
  - (v) contractual liquidated **Damages** that exceed the amount for which the **Insured** would have been liable in the absence of the liquidated **Damages** agreement;
  - (vi) any amount which an **Insured** is not financially or legally obligated to pay;
  - (vii) disgorgement of any remuneration or financial advantage to which an **Insured** was not legally entitled;
  - (viii) settlements negotiated without the Insurer's prior written consent;
  - (ix) 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;
  - (x) **PCI DSS Fines and Assessments**;
  - (xi) or any **Crime Loss**, or any loss, cost or expense arising from, or in any way involving, any act, event or occurrence that would otherwise fall within the definition of **Crime Loss**, whether or not any such act, event or occurrence is covered under the Cyber Crime Insuring Clauses of this Policy.
- (17) **"Data"** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.
- (18) **"Data Assets"** means:
- (a) **Data** and computer programs that exist in an **Insured Computer System**; and
  - (b) **Data** owned by or entrusted to **You** that is being held, stored, maintained, transferred or processed by a **Service Provider** on **Your** behalf.
- "Data Assets"** does not include computer hardware.
- (19) **"Data Recovery Costs"** means reasonable and necessary expenses and costs that **You** incur to replace, recreate or restore **Data Assets** to the same state and with the same contents immediately before the **Data Assets** were damaged, destroyed, altered, misused or stolen, including research costs incurred in recreating **Data Assets**, expenses for materials and machine time, and amounts representing **Employee** work time to replace, recreate or restore **Data Assets**, which will be determined on a predefined billable hour or per-hour basis as based upon **Your** schedule of **Employee** billable hours. **Data Recovery Costs** will be determined in accordance with Section **VI.(E)(2)** of the Policy.
- (20) **"Denial of Service Attack"** means an unauthorised or unexpected interference or a malicious attack, which is intended to overwhelm the capacity of a **Computer System** by sending an excessive volume of **Data** to such **Computer System** to prevent authorised access.
- (21) **"Dependent Business Interruption Loss"** means **Income Loss** and **Extra Expenses** that **You** incur during the **Period of Restoration** as a direct result of a **Dependent System Failure**.
- (22) **"Dependent Malicious System Failure"** means an unplanned outage, interruption, failure, suspension or degradation of service of a **Service Provider Computer System** caused directly by:
- (a) unauthorised access to, or unauthorised use of, a **Service Provider Computer System**, including any such unauthorised access or unauthorised 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**.
- (23) **"Dependent Operational System Failure"** means an unplanned outage, interruption, failure, suspension or degradation of service of a **Service Provider Computer System** caused directly by:
- (a) accidental damage to, or destruction of, electronic media or computer hardware; or
  - (b) administrative or operational mistakes by a **Service Provider** in the ongoing operation or maintenance of its **Service Provider Computer System**.
- (24) **"Dependent System Failure"** means any **Dependent Malicious System Failure** or **Dependent Operational System Failure**.
- (25) **"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.
- (26) **"Essential Service"** means any service that is essential for the maintenance of vital functions of a sovereign state, including, but not limited to, financial institutions and associated financial market infrastructure, health services or utility services.
- (27) **"Executive"** means any director or officer of the **Insured Organisation** 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 individual in a functionally equivalent position.

- (28) **“Extra Expenses”** means reasonable and necessary expenses that **You** incur during the **Period of Restoration** 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.
- (29) **“Financial Account”** means any bank account, payment account, client account, or escrow account used by **You** in the course of **Your** business, whether for **Your** own funds, **Money** or **Securities** held on behalf of others.
- (30) **“First Party Insured Event”** means:
- (a) with respect to Breach Event Costs only, an **Adverse Media Report**, **Security Breach** or **Privacy Breach**;
  - (b) with respect to Post Breach Remediation Costs only, a **Security Breach** or **Privacy Breach**;
  - (c) with respect to Reputational Loss only, an **Adverse Media Report** arising directly from an actual **Security Breach** or **Privacy Breach**;
  - (d) with respect to Business Interruption only, a **Malicious System Failure** or an **Operational System Failure**;
  - (e) with respect to Dependent Business Interruption only, a **Dependent Malicious System Failure** or a **Dependent Operational System Failure**;
  - (f) with respect to Data Recovery Costs only, a **System Failure** or **Dependent System Failure**;
  - (g) with respect to Cyber Extortion only, a **Cyber Extortion Threat**;
  - (h) with respect to Bricking Loss only, a **Bricking Event**;
  - (i) with respect to Reward Expenses only, a **Security Breach**, **Privacy Breach**, **Phishing Attack**, **System Failure**, **Cyber Extortion Threat**, **Transfer Fraud**, **Telecommunications Fraud**, **Utilities Fraud**, or **Invoice Manipulation Event**;
  - (j) with respect to Transfer Fraud only, a **Transfer Fraud**;
  - (k) with respect to Telephone Hacking and Utilities Fraud only, a **Telecommunications Fraud** or **Utilities Fraud**; and
  - (l) with respect to Invoice Manipulation Fraud only, an **Invoice Manipulation Event**.
- (31) **“First Party Loss”** means the following reasonable and necessary costs, expenses, and financial losses covered under the First Party Insuring Clauses of this Policy:
- (a) **Breach Response Costs**;
  - (b) **Notification Expenses**;
  - (c) **Breach Support and Credit Monitoring Expenses**;
  - (d) **Post Breach Remediation Costs**;
  - (e) **Reputational Loss**;
  - (f) **Income Loss**;
  - (g) **Interruption Expenses**;
  - (h) **Special Expenses**;
  - (i) **Dependent Business Interruption Loss**;
  - (j) **Data Recovery Costs**;
  - (k) **Cyber Extortion Expenses**;
  - (l) **Cyber Extortion Monies**;
  - (m) **Bricking Loss**;
  - (n) **Reward Expenses**; and
  - (o) **Crime Loss**.
- “First Party Loss”** does not include:
- (i) any direct loss, costs or expenses incurred by any individual falling under Section II.(35), paragraphs (a) and (b).
  - (ii) any liability to any **Third Party** for whatever reason, including contractual penalties, **Damages** or legal costs and expenses of any type.
  - (iii) sanctions, fines or penalties imposed by law.
  - (iv) any loss, costs or expenses 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.
  - (v) 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**.
  - (vi) any loss resulting solely from routine maintenance, software updates, end-of-life system failure, or obsolescence.
- (32) **“Impacted State”** means any state where a **Cyber Operation** has had a major detrimental impact on:
- (a) the functioning of that sovereign state due to disruption to the availability, integrity or delivery of an **Essential Service** in that sovereign state; and/or
  - (b) the security or defence of that sovereign state.

- (33) **“Income Loss”** means the net profit loss that **You** sustain during the **Period of Restoration** as a direct result of a **System Failure** or **Dependent System Failure**.
- “Income Loss”** will be determined in accordance with the provisions of Section **VI.(E)(3)** of the Policy.
- (34) **“Initial Breach Consultation Costs”** means reasonable and necessary legal fees that **You** incur on **Your** behalf, or on behalf of a party for whose acts **You** are legally 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**, including advice relating to **Your** obligations to notify any governmental, regulatory or supervisory authority. **Initial Breach Consultation Costs** will not be subject to a Retention if **You** retain counsel pre-approved by the Insurer.
- (35) **“Insured”** means:
- (a) the **Insured Organisation**, and any **Subsidiary** of the **Insured Organisation**, but only with respect to **Wrongful Acts** committed or **First Party Insured Events** first discovered while such **Subsidiary** is owned or controlled by the **Insured Organisation** in accordance with the terms of this Policy;
  - (b) any past, present or future **Executive**, trustee, court-appointed receiver or **Employee** of the **Insured Organisation** or **Subsidiary**, but only while acting solely within the scope of his or her duties as such;
  - (c) if the **Insured Organisation** 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;
  - (d) any agent or independent contractor of the **Insured Organisation** or **Subsidiary**, but only while acting on behalf of, at the direction of, and under the supervision of the **Insured Organisation** or **Subsidiary**; and
  - (e) any individual or legal entity the **Insured Organisation** 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 (d) above, and only if the written contract is executed prior to the date any **Wrongful Act** is committed or **First Party Insured Event** is first discovered.
- (36) **“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, Privacy Regulatory Defence and Penalties, PCI DSS Liability, Breach Event Costs and Cyber Extortion only, **Insured Computer System** also includes a **Computer System** operated by a **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
- (37) **“Insured Organisation”** means the individual or entity designated as such in the Policy Schedule.
- (38) **“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.
- (39) **“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.
- (40) **“Invoice Manipulation Event”** means the unauthorised alteration, corruption, redirection or falsification of payment or banking details contained in an invoice, purchase order, or remittance advice, transmitted to or from **You**, by a **Third Party** through unauthorised access to, or unauthorised use of, or deception involving a fraudulent electronic communication purporting to originate from **You** or a **Third Party**.
- “Invoice Manipulation Event”** does not include any **Transfer Fraud** where an **Insured, Employee**, client, customer or vendor is fraudulently induced to initiate a transfer of **Money** or **Securities**.
- (41) **“Malicious 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 **Security Breach, Cyber Extortion Threat**, or any other malicious or unauthorised act by a **Third Party**.
- (42) **“Media Liability 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 individual or entity, 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) false arrest, detention or imprisonment;
  - (g) trespass, wrongful entry or eviction, eavesdropping, or other invasion of the right of private occupancy; or
  - (h) unfair competition, but only when arising out of a peril described in paragraphs (a) through (g) above.
- (43) **“Media Material”** means any content or communication that **You** produce, publish, or disseminate in any form or medium, including written, printed, broadcast, digital, or online formats such as words, text, images, graphics, code, video, audio, sounds, or **Data**. **“Media Material”** does not include any:
- (a) tangible **Products** of the **Insured**;
  - (b) business, company, product, or trading name of the **Insured**;
  - (c) product packaging or labelling created for the **Insured’s** own **Products** or services; or
  - (d) the **Insured’s** goods, **Products**, or services described, referenced, illustrated, or displayed in such **Media Material**.
- (44) **“Money”** means a medium of exchange in current use and authorised 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.
- (45) **“Operational 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 **Voluntary Shutdown**, administrative error or **Programming Error**. **“Operational System Failure”** does not include any **Dependent Operational System Failure**.
- (46) **“Notification”** means **Your** written notice to parties affected by a **Security Breach** or **Privacy Breach** and to governmental, regulatory or supervisory authorities informing them of such **Security Breach** or **Privacy Breach**, whether such written notice is made by **You** voluntarily or to comply with **Privacy Regulations**.
- (47) **“Notification Expenses”** means reasonable and necessary expenses that **You** incur on **Your** own behalf, or on behalf of a party for whose acts **You** are legally 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.
- (48) **“Other Property”** means any tangible property, other than **Money** or **Securities**, which has intrinsic value.
- (49) **“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**.
- (50) **“PCI DSS Fines and Assessments”** means:
- (a) 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 to a card brand, payment processor, or acquiring bank under the terms of its card-processing agreement, but only where such monetary fines, penalties or assessments result from a **Security Breach** or **Privacy Breach**; or
  - (b) reasonable and necessary fees and expenses incurred to engage a PCI Forensic Investigator (PFI) approved or required by a card brand, payment processor, or acquiring bank, to investigate and determine the cause and extent of a **Security Breach** or **Privacy Breach** giving rise to a **PCI DSS Demand**.
- “PCI DSS Fines and Assessments”** does not include any chargebacks, interchange fees, discount fees or other fees unrelated to a **Security Breach** or **Privacy Breach**.
- (51) **“Period of Indemnity”** means the period beginning on the date of the first **Adverse Media Report**, and ending on the earlier of:
- (a) the date that net profit is restored to the level reasonably expected had neither event occurred; or
  - (b) the last day of the period set forth in the Policy Schedule as the **Period of Indemnity** for the Reputational Loss Insuring Clause.

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

- (52) **“Period of Insurance”** means the period from the Inception Date of this Policy to its Expiry Date, as set forth in the Policy Schedule, or this Policy’s earlier termination date, if any. **“Period of Insurance”** specifically excludes the period following expiration referenced in Section **VI.(A)** of the Policy and any Extended Reporting Period.
- (53) **“Period of Restoration”** means the period beginning on the date when the **System Failure** or **Dependent System Failure** began and ending on the earlier of:
- (a) the date when an **Insured Computer System** or **Service Provider 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** or **Dependent 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 Policy Schedule as the **Period of Restoration** for the Business Interruption Insuring Clause or the Dependent Business Interruption Insuring Clause.

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

- (54) **“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 or National Insurance numbers, driver’s licence numbers, addresses, passwords, and any other non-public information as defined in **Privacy Regulations**.
- (55) **“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**.
- (56) **“Post Breach Remediation Costs”** means reasonable and necessary costs that **You** incur after a **Security Breach** or **Privacy Breach** to which Breach Event Costs 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**.
- (57) **“Privacy Breach”** means any of the following:
- (a) the inability to access or failure to provide **Private Information**;
  - (b) 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**, and used for **Your** business activities;
  - (c) the surrender of **Private Information** in a **Phishing Attack**;
  - (d) failure to implement specific security practices with respect to **Private Information**, as required by any statute, rule, regulation or other law applicable to the **Insured**;
  - (e) an infringement or violation of any rights to privacy; or
  - (f) 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 (e) above.
- “Privacy Breach”** does not include any data subject request to exercise rights of access, correction, deletion, restriction, portability, or objection under **Privacy Regulations**, including any complaint alleging failure to comply with such request.
- (58) **“Privacy Regulations”** means any applicable laws, statutes, regulations, directives or regulatory requirements in force in England and Wales, or in any other jurisdiction relevant to the **Insured’s** business, as amended or replaced from time to time, associated with the confidentiality, access, control, use or protection of **Private Information**, including, but not limited to:
- (a) the UK GDPR (being as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018);
  - (b) the Data Protection Act 2018;
  - (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) (PECR); and
  - (d) any other applicable data protection, privacy or electronic communications law or regulation in force in the United Kingdom from time to time, or any equivalent law in another jurisdiction that applies to the **Insured’s** business activities.
- (59) **“Privacy Regulatory Proceeding”** means any civil or administrative proceeding, regulatory action, request for information or investigation instituted against an **Insured** by the Information Commissioner’s Office, any competent data protection supervisory authority, or any local, state, or foreign authority exercising equivalent functions under applicable **Privacy Regulations**, because of a **Security Breach** or **Privacy Breach**. **“Privacy Regulatory Proceeding”** does not include a **PCI DSS Demand**.
- (60) **“Private Information”** means:
- (a) proprietary or confidential information owned by a **Third Party** that is in the care, custody or control of an **Insured**, or is used by an **Insured** with the consent of such **Third Party**; and
  - (b) **Personally Identifiable Information**.
- (61) **“Products”** means any tangible goods or devices, including containers, materials, parts or equipment furnished in connection with such goods or devices.
- (62) **“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**.

- (63) **“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**.
- (64) **“Proposal”** means all applications and supplemental applications, including any attachments thereto, and all other information and materials submitted to the Insurer by, or on behalf of, the **Insured Organisation** in connection with the underwriting of this Policy.
- (65) **“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**.
- (66) **“Regulatory Fines and Penalties”** means any civil, regulatory, or administrative fine, penalty, or monetary sanction imposed by the Information Commissioner’s Office, any competent data protection supervisory authority, or any local, state, or foreign authority exercising equivalent functions under applicable **Privacy Regulations**, against the **Insured** as a result of a **Privacy Regulatory Proceeding**, but does not include any criminal fine or penalty, taxes, or amounts deemed uninsurable under applicable law.
- (67) **“Reputation”** means the estimation of trust held by customers, clients, or other relevant stakeholders in doing business with, or purchasing the services or **Products** of, an individual or entity.
- (68) **“Reputational Loss”** means the net profit that **You** could have reasonably been expected to earn during the **Period of Indemnity** had the first **Adverse Media Report** not occurred, calculated by reference to **Your** projected net profit immediately prior to date of the first **Adverse Media Report**. **Reputational Loss** will be determined in accordance with the provisions of Section **VI.(E)(1)** of the Policy. **Reputational Loss** shall only be covered where the **Adverse Media Report** arises directly from an actual **Security Breach** or **Privacy Breach**.
- (69) **“Reward Expenses”** means the reasonable amount that **You** pay with the Insurer’s prior written consent to an informant (other than any **Insured**, the perpetrator of the illegal act, or any individual engaged to investigate such act on **Your** behalf) for information not otherwise available which leads to the arrest and conviction of any individual who commits an illegal act that causes a **First Party Insured Event**.
- (70) **“Securities”** means negotiable or non-negotiable instruments or contracts representing **Money** or **Other Property**. **“Securities”** does not include **Money**.
- (71) **“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.
- (72) **“Security Breach”** means any of the following directed at or enacted upon an **Insured Computer System**, whether a specifically targeted attack or a generally distributed attack:
- (a) unauthorised access to, or unauthorised use of, an **Insured Computer System**, including any such unauthorised access or unauthorised 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**;
  - (d) an **Act of Cyber Terrorism**; or
  - (e) 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**, and used for **Your** business activities.
- (73) **“Service Provider”** means any **Third Party** that provides:
- (a) 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;
  - (b) 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; or
  - (c) 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.
- (74) **“Service Provider Computer System”** means a **Computer System** that is owned or leased by, and under the direct operational control of, a **Service Provider**.

- (75) **“Special Expenses”** means reasonable and necessary costs and expenses that **You** incur to:
- (a) prevent, preserve, minimize, or mitigate any further damage to **Data 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 licences 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**.
- (76) **“Subsidiary”** means any entity in which the **Insured Organisation**, either directly or indirectly:
- (a) owns or controls more than fifty percent (50%) of the issued share capital or voting rights on or before the Inception Date of this Policy;
  - (b) has the right to appoint or remove a majority of the board of directors or equivalent management body on or before the Inception Date of this Policy;
  - (c) is deemed to be a **Subsidiary** undertaking of the **Insured Organisation** under the Companies Act 2006 on or before the Inception Date of this Policy; or
  - (d) acquires ownership or control after the Inception Date of this Policy, subject to Section **VI.(W)(1)** of the Policy.
- (77) **“System Failure”** means any **Malicious System Failure** or **Operational System Failure**. **“System Failure”** does not include any **Dependent Malicious System Failure** or **Dependent Operational System Failure**.
- (78) **“Takeover”** means any of the following events, whether occurring by agreement, operation of law or otherwise:
- (a) any individual, entity or affiliated group acquires ownership of, or control over, more than fifty percent (50%) of the issued share capital, voting rights, or assets of the **Insured Organisation**;
  - (b) any individual, entity or affiliated group obtains the right to appoint or remove a majority of the board of directors or equivalent management body of the **Insured Organisation**;
  - (c) any individual, entity or affiliated group acquires the right, whether by contract or otherwise, to exercise managerial or operational control over the **Insured Organisation**, whether or not such individual, entity or group owns a majority of the issued share capital or voting rights; or
  - (d) the **Insured Organisation** is dissolved, wound up, or permanently ceases to carry on its business.
- (79) **“Telecommunications Fraud”** means the intentional, unauthorised and fraudulent gaining of access to the **Insured’s** outgoing telephone service or voice network through infiltration and manipulation of an **Insured Telecommunications System**, resulting in unauthorised use and related charges.
- (80) **“Third Party”** means any entity, company, organisation or individual who does not qualify as an **Insured** under this Policy.
- (81) **“Transfer Fraud”** means any fraudulent written, electronic or telephonic instruction, misrepresentation, impersonation, or deceptive communication that causes or induces:
- (a) a financial institution to transfer, debit, or disburse **Money** or **Securities** from a **Financial Account**; or
  - (b) **You**, an **Executive** or an **Employee**, acting in good faith, to transfer, pay, or deliver **Money** or **Securities** from a **Financial Account** to an unintended recipient.
- (82) **“Unauthorised Trading”** means trading, which at the time of the trade, exceeds permitted financial limits or is outside of permitted product lines.
- (83) **“Utilities Fraud”** means the intentional, unauthorised and fraudulent use of, or access to, an **Insured Computer System** as a direct result of a **Security Breach**, including cryptojacking or other misuse of computing, processing power or utilities, which results in the fraudulent consumption of electricity, water, natural gas, oil, internet access, mobile **Data**, cable or satellite services, sewage, cloud services or other utilities, services or resources.
- (84) **“Voluntary Shutdown”** means an intentional 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 **Security Breach** on **Your** business.
- (85) **“Waiting Period”** means the amount of time, as set forth in the Policy Schedule, that must elapse before any loss or expenses may be payable under Reputational Loss, Business Interruption, or Dependent Business Interruption. The **Waiting Period** applies to each **Period of Restoration** and **Period of Indemnity**.
- (86) **“War”** means armed conflict involving physical force:
- (a) by a sovereign state against another sovereign state; and/or
  - (b) as part of a civil war, rebellion, revolution, insurrection, military action or usurpation of power; whether war be declared or not.
- (87) **“Wrongful Act”** means:
- (a) with respect to Media Liability only, a **Media Liability Wrongful Act**;
  - (b) with respect to Security and Privacy Liability only, a **Security and Privacy Wrongful Act**; and
  - (c) with respect to Privacy Regulatory Defence and Penalties and PCI DSS Liability only, a **Security Breach** or **Privacy Breach**;

(88) “You” and “Your” means the **Insured Organisation** and any **Subsidiary**.

### III. **EXCLUSIONS**

The Insurer will not be liable under this Policy for any **Claim** or **First Party Insured Event**:

- (1) *Prior Acts / Known Circumstances*: based upon, arising from or in any way involving any circumstance, fact, matter, act, error, or omission that could reasonably give rise to a **Wrongful Act** of which any **Executive** was aware, or reasonably should have been aware, prior to the Continuity Date set forth in the Policy Schedule.
- (2) *Dishonest or Intentional Conduct*: 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 individuals:
  - (a) a willful, intentional, deliberate, malicious, fraudulent, dishonest or criminal act or omission;
  - (b) any intentional violation of law; or
  - (c) the gaining of any profit or advantage to which an **Insured** is not legally entitled.

However, the Insurer may pay **Claim Expenses** incurred in connection with the defence of any conduct described in this Exclusion until such time as there is a final adjudication in fact, after exhaustion of all appeals, or by an **Insured's** own admission in a proceeding or otherwise. The Insurer will have the right to recover **Claim Expenses** 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.

- (3) *Insured v. Insured*: made by or on behalf of an **Insured** against another **Insured**. However, this Exclusion does not apply to:
  - (a) a **Claim** under Security and Privacy Liability which is brought by any past, present or future **Employee** against **You**; or
  - (b) a **Claim** under Media Liability or Security and Privacy Liability which is brought by an individual or entity qualifying as an **Insured** under Section II.(35)(e) against another **Insured**.
- (4) *Contractual Liability*: for:
  - (a) any actual or alleged liability assumed by any **Insured** under a contract or agreement;
  - (b) any actual or alleged breach of any express, implied, actual or constructive contract, warranty, guarantee or promise; or
  - (c) the rendering of, or failure to render, professional services by or on behalf of any **Insured**, including any **Claim** made by or on behalf of any client or customer of the **Insured** alleging a breach of duty in the provision of such professional services.

However, this Exclusion does not apply to:

- (i) any liability or obligation an **Insured** would have had in the absence of such contract, warranty, guarantee or promise;
  - (ii) an actual or alleged breach of **Privacy Regulations**, or any duty imposed by **Privacy Regulations** relating to **Private Information**;
  - (iii) an actual or alleged breach of an express, implied, actual or constructive contract, warranty, guarantee or promise to protect **Private Information**;
  - (iv) a **Claim** under Security and Privacy Liability 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
  - (v) a **Claim** under PCI DSS Liability for an unintentional breach of the provisions of any card-processing or payment-services agreement relating to compliance with the **PCI DSS Standard**.
  - (vi) a **Claim** under Media Liability or Security and Privacy Liability for liability assumed under contract, but only to the extent such liability arises from a **Wrongful Act** of the **Insured**;
  - (vii) a **Claim** under Media Liability for misappropriation of ideas under an implied contract; or
  - (viii) a **Claim** under PCI DSS Liability for liability for **PCI DSS Fines and Assessments** assumed by **You** under a card-processing or payment-services agreement.
- (5) *Employment-Related Practices*: based upon, arising from or in any way involving:
    - (a) any employment-related practices, policies, acts or omissions, including recruitment, evaluation, promotion, demotion, remuneration, discipline or termination; or
    - (b) any actual or alleged harassment, discrimination, or unfair treatment of any **Employee** or applicant for employment.

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

- (6) *Infrastructure and Utility Services*: 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** or **First Party Insured Event**:

- (a) electrical or mechanical failures or interruption, including electrical disturbance, spike, brownout or blackout;
  - (b) 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
  - (c) the cessation of **Your** business activities due to a shutdown by order of any public authority for whatever reason.
- (7) *Products, Pricing and Service Representations*: 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;
- (8) *Financial and Trading Activities*: based upon, arising from or in any way involving:
- (a) the purchase, sale, or trading of any securities, shares, currencies, commodities, or other financial instruments;
  - (b) any investment, market or trading loss, including **Unauthorised Trading**; or
  - (c) any actual or alleged breach of financial or securities regulations.

However, Exclusion (8)(c) does not apply to a **Privacy Regulatory Proceeding** or a **Claim** under Security and Privacy Liability alleging violation of **Securities** laws concerning the security, access or use of a customer's **Private Information** which was obtained in the course of a **Securities** transaction.

- (9) *Unfair Competition and Antitrust*: based upon, arising from or in any way involving:
- (a) any actual or alleged unfair competition, price fixing, deceptive trade practices or restraint of trade;
  - (b) the violation of any antitrust statute, legislation or regulation; or
  - (c) any actual or alleged false, deceptive or misleading advertising.

However, Exclusion (9)(a) does not apply to:

- (a) allegations of unfair competition that form a part of a **Claim** under Media Liability, Security and Privacy Liability or Privacy Regulatory Defence and Penalties; or
- (b) allegations of deceptive trade practices that form a part of a **Claim** under Security and Privacy Liability or Privacy Regulatory Defence and Penalties.

- (10) *Gathering or Distribution of Information*: based upon, arising from, or in any way involving:
- (a) the unlawful or unauthorised collection, acquisition, or retention of **Personally Identifiable Information**, or any other personal or private information, by or on behalf of the **Insured Organisation**; or
  - (b) the distribution, transmission, or dissemination of unsolicited email, text messages, direct mail, facsimiles, or other unsolicited communications, or any wiretapping, audio or video recording, or telemarketing activity, if such distribution, transmission, recording, or telemarketing is carried out by or on behalf of the **Insured Organisation**.

However, this Exclusion shall not apply to **Claim Expenses** incurred in defending the **Insured** against allegations of unlawful or unauthorised collection, acquisition, or retention of **Personally Identifiable Information** or unauthorised audio or video recording.

- (11) *Specified Statutory Violations (United States)*: based upon, arising from, or in any way involving any actual or alleged violation of any statute, regulation, or rule of the United States of America, or any state or local jurisdiction therein, governing:
- (a) biometric information or biometric identifiers, including, but not limited to, the Illinois Biometric Information Privacy Act (BIPA) or any similar law;
  - (b) unsolicited, automated, or mass communications, including, but not limited to, the Telephone Consumer Protection Act (TCPA), CAN-SPAM Act, or any similar law;
  - (c) wiretapping, surveillance, interception, monitoring, or recording of communications, except where such **Claim** arises directly from a **Security Breach** or **Privacy Breach**; or
  - (d) the offer, sale, purchase, or ownership of securities, including any federal or state securities laws, except that this paragraph (d) shall not apply to a **Claim** alleging a **Security Breach** or **Privacy Breach** in violation of any law or regulation governing the safeguarding of **Personally Identifiable Information**.

However, this Exclusion does not apply to any **Claim** under Security and Privacy Liability or Privacy Regulatory Defence and Penalties arising directly from a **Security Breach** or **Privacy Breach**.

- (12) *Patent Infringement*: based upon, arising from or in any way involving any actual or alleged infringement of any patent.
- (13) *Trade Secret Misappropriation*: 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 for failure to prevent the misappropriation of a trade secret which results from a **Security and Privacy Wrongful Act**.
- (14) *Pollution, Contamination and Nuclear Risks*: based upon, arising from or in any way involving:

- (a) 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; or
  - (b) 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.
- (15) *Nuclear and Radioactive Contamination*: arising directly or indirectly from:
- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
  - (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- (16) *War and Cyber Operations*: for any loss, damage, liability, cost or expense, of any kind:
- (a) directly or indirectly arising from a **War**;
  - (b) arising from a **Cyber Operation** that is carried out as part of a **War**, or the immediate preparation for a **War**; or
  - (c) arising from a **Cyber Operation** that causes a sovereign state to become an **Impacted State**;
- Provided, however, that paragraph (c) above shall not apply to the direct or indirect effect of a **Cyber Operation** on an **Insured Computer System** or a **Service Provider Computer System** that is not physically located in an **Impacted State** but is affected by a **Cyber Operation**.
- (17) *Governmental and Regulatory Action*: based upon, arising from or in any way involving:
- (a) the actual or alleged enforcement of any law or regulation by any governmental, supervisory or regulatory authority in the United Kingdom, or in any other jurisdiction relevant to the **Insured's** business; or
  - (b) the seizure, confiscation, nationalization, requisition or destruction of an **Insured Telecommunications System** by or under the order of any government or public authority.
- However, this Exclusion does not apply to a **Privacy Regulatory Proceeding**.
- (18) *Bodily Injury and Property Damage*: for:
- (a) any bodily injury, sickness, disease or death. However, this Exclusion does not apply to emotional distress or mental anguish directly resulting from a **Security and Privacy Wrongful Act** or from a **Media Liability Wrongful Act**.
  - (b) any damage to, loss of use of, or destruction of any tangible property. However electronic **Data** is not considered tangible property.
- (19) *Reputational Loss*: With respect to Reputational Loss, for any loss, cost, liability or expense:
- (a) that **You** incur to protect, restore or re-establish **Your Reputation**, including **Public Relations Expenses**.
  - (b) that is insured by any other insurance, except excess insurance.
  - (c) 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 **Service Providers**.
  - (d) any amounts paid or payable under Breach Event Costs.
- (20) *Business Interruption and Dependent Business Interruption Limitations*: With respect to Business Interruption and Dependent Business Interruption, for any loss, cost, liability or expense:
- (a) the cost of restoring, updating or replacing **Data 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** centre.
  - (c) the economic or market value of **Data 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**.
- (21) *Cyber Crime Limitations*: With respect to the Cyber Crime Insuring Clauses, for any loss, cost, liability or expense based upon, arising from or in any way involving:
- (a) any 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.

- (b) any fraudulent instruction, if the sender, or any individual or entity acting in collusion with the sender, at the time of the fraudulent instruction, had authorised access to **Your** password, PIN or other security code. However, this Exclusion does not apply to any **Crime Loss** resulting from a **Transfer Fraud** that is caused by impersonation, misrepresentation, or deceptive communication, where the **Insured** acted in good faith and without knowledge that such instruction was fraudulent.
- (c) potential income, including interest and dividends, not realized by **You**, **Your** customers or **Your** clients.

#### **IV. LIMITS OF LIABILITY**

##### **(A) Limits Per Insuring Clause – Liability Insuring Clauses**

With respect to the Liability Insuring Clauses, the Limits shown in the Policy Schedule for each Liability Insuring Clause are the maximum amounts the Insurer shall pay for each **Claim**, and in the aggregate for all **Claims**, first made during the **Period of Insurance** and any Extended Reporting Period, if applicable, including **Claim Expenses** where applicable, regardless of the number of **Claims**, claimants or **Insureds**. The Insurer's payment of **Claim Expenses** shall reduce and may exhaust the applicable Limit of Liability. If any Limit Per Insuring Clause is exhausted, the Insurer's obligations under that Insuring Clause shall cease.

##### **(B) Limits Per Insuring Clause – First Party Insuring Clauses**

With respect to the First Party Insuring Clauses, the Limits shown in the Policy Schedule for each First Party Insuring Clause are the maximum amounts the Insurer shall pay for each **First Party Insured Event**, and in the aggregate for all **First Party Insured Events**, first discovered during the **Period of Insurance**. If any Limit Per Insuring Clause is exhausted, the Insurer's obligations under that Insuring Clause shall cease.

##### **(C) Maximum Policy Aggregate Limit**

- (1) The Maximum Policy Aggregate Limit set forth in the Policy Schedule is the maximum the Insurer shall pay under this Policy for all **Claims** first made and all **First Party Insured Events** first discovered during the **Period of Insurance**, including **Claim Expenses**, regardless of the number of Insuring Clauses that apply.
- (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 Policy Schedule. The existence of any Extended Reporting Period will not increase or reinstate any Limit of Liability.

##### **(D) Cyber Crime Aggregate Limit**

The maximum liability of the Insurer for all **Crime Loss** under all Cyber Crime Insuring Clauses shall not exceed the Cyber Crime Aggregate Limit set forth in the Policy Schedule, regardless of the number of **Crime Losses**, related events, claimants, or **Insureds**. The Cyber Crime Aggregate Limit is part of, and will reduce, the Maximum Policy Aggregate Limit.

##### **(E) Related Claims and First Party Insured Events**

- (1) All **Claims** arising out of the same, related or continuing **Wrongful Acts** will be treated as a single **Claim**. Such single **Claim** will be deemed to have been first made on the earliest date on which any related **Claim** was first made or reported to the Insurer.
- (2) All **First Party Insured Events** arising out of the same or related originating source or cause shall be deemed a single **First Party Insured Event** and subject to one Retention and one Limit of Liability. Such single **First Party Insured Event** will be deemed first discovered on the earliest date on which any related originating source or cause was first discovered by an **Executive**.
- (3) If multiple Insuring Clauses of this Policy apply to any **Claim** and/or **First Party Insured Event**, the Insurer's total maximum Limit of Liability under this Policy for such **Claim** and/or **First Party Insured Event** shall be the Maximum Policy Aggregate Limit. However, the Insurer will never pay more under any one Insuring Clause than the applicable Limit Per Insuring Clause set forth in the Policy Schedule. The Insurer has the sole discretion to allocate amounts paid, if any, against the appropriate Limit of Liability.
- (4) A single Limit of Liability, Retention, and, where applicable, **Waiting Period** shall apply to each such single **Claim** or **First Party Insured Event**, regardless of: (1) the number of **Insureds** or claimants; (2) the number of Insuring Clauses or policy sections implicated; or (3) the number of continuing, repeated, or related acts, errors, or events involved.

#### **V. RETENTION AND WAITING PERIOD**

##### **(A) Retention Per Insuring Clause**

- (1) The Retention amount for each Insuring Clause, as set forth in the Policy Schedule, applies separately to each **Claim** or **First Party Insured Event**. The Limit of Liability shall not be reduced by the amount of any Retention.
- (2) If more than one Insuring Clause applies to a **Claim** or **First Party Insured Event**, only the single highest Retention will apply to such **Claim** or **First Party Insured Event**. Where multiple Insuring Clauses respond to the same **Claim** or **First Party Insured Event**, only the highest applicable Retention shall apply.

- (3) You must pay the Retention before the Insurer is liable to make any payment under this Policy. The Insurer will pay only that part of the covered loss which exceeds the applicable Retention, up to the relevant Limit of Liability
- (4) An **Insured** must make direct payments within the Retention to the appropriate parties designated by the Insurer.

**(B) Waiting Period**

The **Waiting Periods** set forth in the Policy Schedule apply solely to Reputational Loss, Business Interruption and Dependent Business Interruption. No payment will be made for any loss incurred during the **Waiting Period**. The **Waiting Period** applies to each **Period of Restoration** and **Period of Indemnity**.

For the Reputational Loss Insuring Clause, the **Waiting Period** shall begin on the date of the first **Adverse Media Report**.

**VI. POLICY CONDITIONS**

**(A) Notification**

**(1) Notice Provisions as to All Insuring Clauses Except Reputational Loss**

An **Executive** must notify the Insurer in writing as soon as reasonably practicable of any **Claim** first made during the **Period of Insurance** (or any applicable Extended Reporting Period), or of any **First Party Insured Event** first discovered during the **Period of Insurance**. Such notice must be sent to the contact details shown in the Policy Schedule.

**(2) Liability Insuring Clauses**

Notice must be given during the **Period of Insurance**, or within sixty (60) days after expiration of the **Period of Insurance**, or during any Extended Reporting Period, if applicable. Notification within these timeframes is a condition precedent to coverage under those Insuring Clauses.

**(3) First Party Insuring Clauses**

An **Executive** must notify the Insurer in writing as soon as reasonably practicable, but in no event later than sixty (60) days after discovery of any **First Party Insured Event** and any resulting **First Party Loss**.

For the Reputational Loss Insuring Clause, notice must be given during the relevant **Period of Indemnity**.

**(4) Notice of Potential Claim**

If, during the **Period of Insurance**, an **Executive** becomes aware of any circumstance that may reasonably be expected to give rise to a future **Claim** or **First Party Insured Event**, such **Executive** may give written notice of that circumstance to the Insurer. Such notice must include sufficient details to identify:

- (a) the event or act giving rise to concern;
- (b) the potential nature of the **Claim** or **First Party Insured Event**; and
- (c) how and when You first became aware of the matter.

Any **Claim** or **First Party Insured Event** later arising from such notified circumstances will be treated as if made and reported on the date the Insurer first received that notice.

**(B) Optional Extended Reporting Period**

(1) If this Policy is canceled or non-renewed by the Insurer for any reason other than non-payment of premium, or if the **Insured Organisation** cancels or chooses not to renew this Policy, then the **Insured Organisation**, following the effective date of such cancellation, if applicable, or the Expiry Date of this Policy, may 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 **Period of Insurance**, 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) The Optional Extended Reporting Period will only apply to:

- (a) any **Claim** first made against an **Insured** and reported to the Insurer during the Optional Extended Reporting Period, provided that the **Claim** arises from a **Wrongful Act** committed before the effective date of cancellation or expiration of this Policy;
- (b) any **First Party Insured Event** first discovered by an **Executive** before the effective date of cancellation or expiration of this Policy, provided that notice of such **First Party Insured Event** is given to the Insurer during the Optional Extended Reporting Period in accordance with Section **VI.(A)**; and
- (c) Insuring Clauses purchased by the **Insured Organisation**, as set forth in the Policy Schedule.

- (5) Any such Optional Extended Reporting Period is subject to all terms, conditions, limitations and exclusions 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 Policy Schedule. The purchase of the Optional Extended Reporting Period shall not increase or reinstate the Limit of Liability set forth in the Policy Schedule.
- (7) The premium for the Optional Extended Reporting Period is deemed fully earned at inception of that period.
- (8) The Optional Extended Reporting Period will only become effective upon:
  - (a) the **Insured Organisation's** written election within thirty (30) days of cancellation or expiration; and
  - (b) payment of the applicable additional premium in full within thirty (30) days of such election.
- (9) A change in Policy terms, conditions or exclusions, including the quotation by the Insurer of a different premium, Retention, Limit of Liability or policy language at renewal shall not be considered a nonrenewal for purposes of triggering the **Insured Organisation's** right to purchase the Optional Extended Reporting Period.

**(C) Defence, Settlement and Investigation of Claims**

**(1) Defence Provisions as to the Liability Insuring Clauses**

- (a) The Insurer has the right, but not the duty, to defend any **Claim** made under any Liability Insuring Clause, even if the allegations are groundless or false. The Insurer may appoint legal advisers, experts or other representatives to conduct the defence, investigation, or settlement of any such **Claim**. If a **Claim** is brought in a jurisdiction where the Insurer is not permitted to conduct the defence directly, **You** will defend that **Claim** using advisers approved by the Insurer, and the Insurer will reimburse reasonable **Claim Expenses** incurred with the Insurer's prior written consent.
- (b) The Insurer's payment of **Claim Expenses** reduces, and may exhaust, the applicable Limit of Liability. Upon exhaustion of the applicable Limit of Liability, the Insurer will have the right to withdraw from the defence of a **Claim** by tendering control to the **Insured Organisation**.

**(2) Consent to Settlement Provisions as to the Liability Insuring Clauses**

- (a) **You** must not admit liability, settle, offer to settle, or incur **Claim Expenses** without the Insurer's prior written consent.
- (b) The Insurer will not settle any **Claim** or pay any **Damages, Regulatory Fines and Penalties** or **PCI DSS Fines and Assessments** without **Your** consent, which must not be unreasonably withheld.
- (c) If an **Insured** refuses to consent to any settlement or compromise recommended by the Insurer that is acceptable to the claimant:
  - (i) the Insurer's liability for that **Claim** will not exceed the sum for which the **Claim** could have been settled, plus **Claim Expenses** incurred up to the date of **Your** refusal, and
  - (ii) thereafter, the Insurer will pay seventy percent (70%) of any additional **Claim Expenses** and **Damages**, and **You** will be responsible for the remaining thirty percent (30%).
- (d) The above allocation will not apply where the total amount of **Claim Expenses** and **Damages** does not exceed the applicable Retention

**(3) Choice of Counsel (Applicable to All Insuring Clauses)**

- (a) The Insurer may consider an **Insured's** choice of counsel, including any firm from the Insurer's approved panel, 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 Insurer. No **Insured** shall appoint counsel without the Insurer's prior written consent.
- (b) The Insurer will have no obligation to pay **Claim Expenses, Initial Breach Consultation Costs**, or any other legal expenses incurred before the notice of **Claim** or **First Party Insured Event** is received by the Insurer, or without the Insurer's prior written consent.

**(4) Investigation (Applicable to All Insuring Clauses)**

The Insurer may investigate any **Claim, First Party Insured Event**, or circumstance at any time and in any manner it considers appropriate. **You** must provide the Insurer with all assistance and information reasonably required for that purpose.

**(D) Territorial Limits**

This Policy applies to **Claims** brought or maintained, **Wrongful Acts** committed and **First Party Insured Events** taking place anywhere in the world, subject to applicable law and regulation.

**(E) Loss Determination**

**(1) Reputational Loss**

- (a) The amount payable for Reputational Loss will be determined by reference to **Your** financial records and any other relevant information, taking into account:
  - (i) the experience of **Your** business prior to date of the first **Adverse Media Report**;
  - (ii) the likely net profit that would have been earned had the first **Adverse Media Report** not occurred;
  - (iii) income derived from alternative methods, facilities or personnel used to maintain revenue;
 and

- (iv) any fixed operating expenses that must continue during the **Period of Indemnity**.
- (b) For purposes of calculating **Reputational Loss**, “net profit” includes **Money** paid or payable to **You** for goods or services provided in the ordinary course of **Your** business.

(2) **Data Recovery Costs**

- (a) The amount payable for **Data Recovery Costs** will be the reasonable and necessary cost to replace, recreate or restore **Data Assets** to the state and with the contents that existed immediately before the loss or damage.
- (b) If the affected **Data Assets** were purchased from a **Third Party**, the maximum amount payable will not exceed the original purchase price or the reasonable and necessary restoration cost, whichever is less.
- (c) If it is determined that the **Data Assets** cannot be replaced, restored or recreated, the Insurer will reimburse the reasonable and necessary costs incurred up to the point that determination is made.

(3) **Income Loss**

- (a) The amount payable for **Income Loss** will be based on:
  - (i) the reduction in Your net profit directly resulting from the **System Failure** or **Dependent System Failure**; plus
  - (ii) any fixed operating expenses, including ordinary payroll, that must continue during the **Period of Restoration** or **Period of Indemnity**.
- (b) **Income Loss** will be calculated by taking into account:
  - (i) the experience of **Your** business prior to the **System Failure** or **Dependent System Failure**;
  - (ii) the probable results that would have been achieved had no such failure occurred; and
  - (iii) the use of alternative methods, facilities or personnel to reduce the interruption.
- (c) For purposes of calculating **Income Loss**, “net profit” includes **Money** paid or payable to **You** for goods or services provided in the normal course of **Your** business.

(4) **Proof of Loss**

- (a) With respect to any **First Party Loss**, **You** must complete and sign a written, detailed, and affirmed proof of loss within ninety (90) days after the earlier of:
  - (i) the date the event giving rise to the loss is first discovered by an **Executive**; or
  - (ii) the date **You** first provide written notice of such loss or **First Party Insured Event** to the Insurer,unless such period is extended by the Insurer in writing.
- (b) The proof of loss must include:
  - (i) a full description of the circumstances, including time, place and cause of the event or incident;
  - (ii) the date and manner of its discovery;
  - (iii) the nature and amount of the loss, including a detailed calculation of any loss, and all underlying documents and materials that relate to or form part of the proof of such loss;
  - (iv) all documentation supporting the amount claimed; and
  - (v) the name of the individual or entity responsible for preparing the proof of loss.
- (c) With respect to the verification of loss, the Insurer reserves the right to examine and audit **Your** books and records related to this Policy at any time during the **Period of Insurance** and up to twelve (12) months following the Insurer’s receipt of any proof of loss in accordance with this Section.

(F) **Assistance and Cooperation**

(1) **Cooperation**

**You** must provide the Insurer with all reasonable assistance and information it requests in connection with any **Claim**, **First Party Loss**, investigation, or proceeding under this Policy. This includes giving access to relevant documents, systems, records and personnel, including access of systems, files, and information to computer forensics experts, and taking reasonable steps to secure and preserve evidence. The Insurer may, where necessary, require **You** or any **Insured** to attend meetings, hearings, mediations or proceedings and to provide statements or testimony. The Insurer will reimburse reasonable expenses incurred at its request in accordance with the Court Attendance Costs Insuring Clause. You must not do anything which may prejudice the Insurer’s position or increase the amount of any loss.

(2) **Admission of Liability**

**You** must not admit liability, make any payment, assume any obligation, incur any expense, or settle any **Claim** without the Insurer’s prior written consent, unless expressly permitted under an Insuring Clause of this Policy. The prompt public acknowledgement of a **Security Breach** or **Privacy Breach** required by law or regulation will not be considered an admission of liability, provided **You** notify the Insurer of such disclosure as soon as reasonably practicable.

(3) **Subrogation and Recovery Cooperation**

You must cooperate with the Insurer in securing and exercising any rights of recovery, contribution or indemnity against any other individual or entity. This includes providing all documents and assistance reasonably required to enable the Insurer to pursue such recovery in **Your** name.

**(G) Subrogation**

- (1) If any payment is made under this Policy, the Insurer is entitled to all of **Your** rights of recovery to the extent of that payment. **You** must not do anything to prejudice those rights and must provide reasonable assistance and information to help the Insurer exercise them, including signing any documents reasonably required for that purpose. The Insurer may, at its discretion, pursue recovery in **Your** or its name, and may waive or compromise any such rights as the Insurer considers appropriate.
- (2) Any amount recovered will be applied first to the Insurer's subrogation and recovery expenses, then to amounts paid by the Insurer under this Policy, and finally to reimburse **You** for any Retention already paid. Any remaining recovery will belong to **You**.

**(H) Other Insurance**

This Policy shall apply in excess of and not contribute with any other valid and collectible insurance available to any **Insured**, unless such other insurance is expressly written to apply in excess of this Policy. The Insurer shall only be liable for the amount of any loss which exceeds the limits of liability, retention or excess of such other insurance, whether or not such insurance is collectible. If any other insurance applies on the same excess basis as this Policy, the Insurer shall pay only its proportionate share of such loss, based upon the respective applicable Limits of Liability of all such policies. Nothing in this clause shall be construed to increase the Insurer's Limit of Liability under this Policy.

**(I) Cancellation and Non-Renewal**

**(1) Cancellation by You**

The **Insured Organisation** may cancel this Policy at any time by giving the Insurer written notice stating the date cancellation will take effect. If the **Insured Organisation** cancels, the Insurer will retain the premium for the period this Policy has been in force, calculated on a short-period basis, and will refund any balance of the premium paid.

**(2) Cancellation by the Insurer**

The Insurer may cancel this Policy by sending the **Insured Organisation** written notice (including electronic communication) stating the reason for cancellation and the date it will take effect. If the reason is non-payment of premium, the Insurer will give the **Insured Organisation** at least ten (10) days' notice. If for any other reason, the Insurer will give the **Insured Organisation** at least sixty (60) days' notice. If the Insurer cancels other than for non-payment of premium, it will refund the unused proportion of the premium on a pro-rata basis, subject to any minimum premium shown in the Policy Schedule, provided that no **Claim** has been made and no circumstance or **First Party Insured Event** has been notified under this Policy prior to the effective date of cancellation. Where the Insurer cancels this Policy for non-payment of premium, the premium shall be deemed earned to the effective date of cancellation and no return of premium shall be due.

**(3) Non-Renewal**

If the Insurer elects not to renew this Policy, it will provide the **Insured Organisation** with written notice (including electronic communication) stating the reason for non-renewal at least sixty (60) days before the Expiry Date. Non-renewal does not constitute cancellation for the purpose of any rights to purchase an Extended Reporting Period.

**(4) Regulatory Compliance**

If any applicable law or regulation requires a longer notice period or different procedure, this clause will automatically be amended to comply with such requirement.

**(5) Effect of Termination**

Cancellation or non-renewal will not affect any rights or obligations arising from any **Claim** made or **First Party Insured Event** first discovered before the effective date of termination.

**(J) Action Against the Insurer**

No individual may bring any legal action or proceeding against the Insurer in connection with this Policy unless:

- (1) **You** have fully complied with all terms and conditions of this Policy; and
- (2) the amount of **Your** liability under a **Claim** has been finally determined by:
  - (a) a judgment or arbitral award against **You** that has become final and non-appealable; or
  - (b) a written settlement or agreement between **You**, the claimant, and the Insurer.

No individual or entity has any right to join the Insurer in any legal action against **You** to determine **Your** liability.

**(K) Dispute Resolution**

**(1) Mediation**

Any dispute arising under or in connection with this Policy will first be referred to mediation under the rules of the Centre for Effective Dispute Resolution (CEDR), unless both parties agree otherwise. If the parties cannot agree on a mediator within fourteen (14) days, either may ask CEDR to appoint one. The mediation will be conducted in confidence, and the parties will share equally the mediator's and CEDR's costs.

(2) **Arbitration (ARIAS-UK Arbitration Clause)**

If the dispute is not resolved by mediation pursuant to Section **VI.(K)(1)**, the dispute shall be referred to and finally resolved by arbitration under the ARIAS (UK) Arbitration Rules in force at the time the dispute is referred to arbitration.

The arbitration tribunal shall consist of three arbitrators. Each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator to act as chair of the tribunal. The chair shall be appointed as soon as practicable and, in any event, no later than twenty-eight (28) days after the appointment of the two party-appointed arbitrators. The tribunal shall be constituted upon appointment of the chair.

If either party fails to appoint its arbitrator within fourteen (14) days of being called upon to do so, or if the two party-appointed arbitrators fail to appoint a chair within twenty-eight (28) days of their appointment, ARIAS (UK) shall appoint the arbitrator or chair, as applicable. A party or arbitrators in default may make such appointment at any time before ARIAS (UK) does so.

All arbitrators shall be individuals (including retired professionals) with not less than ten (10) years' experience in insurance, reinsurance, or insurance-related legal or advisory work.

The tribunal may make such orders and directions as it considers necessary for the final determination of the matters in dispute and shall have the widest discretion permitted under the laws of England and Wales. The decision of the tribunal shall be final and binding on the parties. The seat of the arbitration shall be London, England.

(3) **Governing Law and Jurisdiction**

Following completion of the dispute resolution procedures in Sections **VI.(K)(1)** and **VI.(K)(2)** above, this Policy shall be governed by and construed in accordance with the laws of England and Wales. Any dispute under this Policy shall be subject to the exclusive jurisdiction of the courts of England and Wales.

(L) **Assignment**

No assignment of interest under this Policy shall bind the Insurer unless the Insurer's prior written consent is endorsed hereon.

(M) **Authorisation Clause**

The **Insured Organisation** designated in the Policy Schedule is authorised 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. Every **Insured** agrees that the **Insured Organisation** shall have the authority set forth in this section.

(N) **Representations**

- (1) If, prior to entering into this insurance contract, the **Insured** shall breach the duty of fair presentation, the remedies available to the Insurer are set out below.
- (a) If the **Insured's** breach of the duty of fair presentation is deliberate or reckless:
    - (i) The Insurer may avoid the contract, and refuse to pay all claims; and
    - (ii) The Insurer need not return any of the premiums paid.
  - (b) If the **Insured's** breach of the duty of fair presentation is not deliberate or reckless, the Insurer's remedy shall depend upon what the Insurer would have done if the **Insured** had complied with the duty of fair presentation:
    - (i) If the Insurer would not have entered into the contract at all, the Insurer may avoid the contract and refuse all claims but must return the premiums paid.
    - (ii) If the Insurer would have entered into the contract, but on different terms (other than terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms from the outset, if the Insurer so requires.
    - (iii) In addition, if the Insurer would have entered into the contract, but would have charged a higher premium, the Insurer may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims). In those circumstances, the Insurer shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/higher premium}) \times 100$ .
- (2) If, prior to entering into a variation to this insurance contract, the **Insured** shall breach the duty of fair presentation, the remedies available to the Insurer are set out below.
- (a) If the **Insured's** breach of the duty of fair presentation is deliberate or reckless:
    - (i) The Insurer may by notice to the **Insured** treat the contract as having been terminated from the time when the variation was concluded; and
    - (ii) The Insurer need not return any of the premiums paid.
  - (b) If the **Insured's** breach of the duty of fair presentation is not deliberate or reckless, the Insurer's remedy shall depend upon what the Insurer would have done if the **Insured** had complied with the duty of fair presentation:
    - (i) If the Insurer would not have agreed to the variation at all, the Insurer may treat the contract as if the variation was never made, but must in that event return any extra premium paid.

- (ii) If the Insurer would have agreed to the variation to the contract, but on different terms (other than terms relating to the premium), the variation is to be treated as if it had been entered into on those different terms, if the Insurer so requires.
- (iii) If the Insurer would have increased the premium by more than it did or at all, then the Insurer may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the Insurer shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/higher premium}) \times 100$ .
- (iv) If the Insurer would not have reduced the premium as much as it did or at all, then the Insurer may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the Insurer shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/reduced total premium}) \times 100$ .

Nothing in these clauses is intended to vary the position under the Insurance Act 2015.

**(O) Fraudulent Claims**

- (1) If the **Insured** makes a fraudulent claim under this insurance contract, the Insurer:
  - (a) is not liable to pay the claim; and
  - (b) may recover from the **Insured** any sums paid by the Insurer to the **Insured** in respect of the claim; and
  - (c) may by notice to the **Insured** treat the contract as having been terminated with effect from the time of the fraudulent act.
- (2) If the Insurer exercises its right under clause (1) c) above:
  - (a) The Insurer shall not be liable to the **Insured** in respect of a relevant event occurring after the time of the fraudulent act. A relevant event is whatever gives rise to the Insurer's liability under the insurance contract (such as the occurrence of a loss, the making of a claim, or the notification of a potential claim); and
  - (b) The Insurer need not return any of the premiums paid.

Nothing in these clauses is intended to vary the position under the Insurance Act 2015.

**(P) Dishonest or Fraudulent Acts of Employees**

In the event of a **Claim** or **First Party Insured Event** arising from the dishonest, fraudulent or malicious act or omission of any **Employee**, the **Insured** shall take all reasonable steps to obtain reimbursement from the **Employee** concerned (and any **Employee** who conspired in or condoned such act or omission). The Insurer shall be entitled to deduct from any amount payable under this Policy any monies which the **Insured** would otherwise owe to such **Employee** or which are held by the **Insured** for the benefit of such **Employee**.

**(Q) Invalidity**

If any provision of this Policy is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable this will not affect the other provisions of this Policy which will remain in full force and effect.

**(R) Other Parties**

The **Insured** and the Insurer are the only parties to this contract and no other person has any rights to enforce any term of this Policy.

**(S) International Sanctions**

The Insurer will not provide coverage, be liable to pay any claim or provide any benefit under this Policy to the extent that the provision of such coverage, payment or benefit would expose the Insurer, any parent company, or any affiliated or controlling entity of the Insurer to any sanction, prohibition, restriction or penalty imposed by the United Nations, the United Kingdom, the European Union, the United States of America, or by any other applicable national or international authority with jurisdiction over the Insurer or the transaction in question.

The Insurer shall have no obligation to pay any claim or provide any benefit under this Policy to the extent that doing so would be unlawful under applicable trade or economic sanctions laws or regulations.

**(T) Bankruptcy or Insolvency**

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

**(U) Policy Conformance**

Any terms of this Policy that conflict with any applicable law or regulation shall be deemed amended to comply with such law or regulation.

**(V) Material Changes**

- (1) **Created or Acquired Subsidiaries**
  - (a) If, after the Inception Date of this Policy, the **Insured Organisation** creates or acquires a **Subsidiary** whose annual gross revenue does not exceed thirty percent (30%) of the **Insured Organisation's** consolidated annual gross revenue (as declared in the most recent **Proposal**), that **Subsidiary** will be automatically included as an **Insured** for the remainder of the **Period of Insurance**.

- (b) For any **Subsidiary** exceeding this threshold, automatic coverage will apply for ninety (90) days after the effective date of creation or acquisition. Coverage beyond this period will apply only if the **Insured Organisation**: (a) gives the Insurer written notice of the transaction within sixty (60) days; (b) provides any information the Insurer reasonably requests; and (c) agrees to any amended terms, conditions, exclusions or premium the Insurer requires.
- (c) If the Insurer, at its sole discretion, elects to provide coverage for any **Subsidiary** subject to the provisions of Section **VI.(V)(1)(a)** or **VI.(V)(1)(b)** above, this Policy shall not apply to any (a) **Claim** based upon, arising out of, directly or indirectly resulting from or in any way involving any **Wrongful Act** committed or (b) any **First Party Insured Event** first discovered, before the effective date of the transaction or event or the inception date of coverage under this Policy as set forth in an endorsement, whichever is later.

(2) **Sold Subsidiaries**

If the **Insured Organisation** sells or dissolves a **Subsidiary** after the inception of this Policy, coverage for that **Subsidiary** will continue only for **Claims** or **First Party Insured Events** arising from acts, errors, or events occurring before the effective date of sale or dissolution. The **Insured Organisation** must notify the Insurer in writing within sixty (60) days of the transaction. There will be no return premium.

**(W) Coverage in the Event of a Takeover and Change of Control Extended Reporting Period**

- (1) In the event of a **Takeover** during the **Period of Insurance**, this Policy will remain in effect until the Expiry Date, or earlier termination date, if any, for any **Claim** made or **First Party Insured Event** first discovered during the **Period of Insurance**, but only if the (a) **Wrongful Acts** giving rise to such **Claim** is committed or (b) the **First Party Insured Event** is first discovered on or after the applicable Retroactive Date and prior to the effective date of the **Takeover**. The **Insured Organisation** must give the Insurer written notice of the **Takeover** as soon as reasonably practicable, but in no event later than thirty (30) days from the effective date of the **Takeover**. This Policy cannot be canceled by the **Insured Organisation** after the effective date of the **Takeover**, and the premium will be considered fully earned. This Policy cannot thereafter be renewed.
- (2) In the event of a **Takeover**, the **Insured Organisation** shall not have a right to purchase an Optional Extended Reporting Period pursuant to Section **VI.(B)** of the Policy. However, the **Insured Organisation** shall have the right to purchase a Change of Control Extended Reporting Period pursuant to the provisions set forth below, provided the **Insured Organisation** has otherwise complied with the terms and conditions of this Policy.
- (3) In the event of a **Takeover**, the **Insured Organisation** may 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:
  - (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.
- (4) 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 **Period of Insurance**, including any additional premium for endorsements.
- (5) At the commencement of the Change of Control Extended Reporting Period, the entire premium shall be considered fully earned.
- (6) The Change of Control Extended Reporting Period will only apply to:
  - (a) **Claims** first made and notified to the Insurer during that period which arise from **Wrongful Acts** committed before the effective date of the **Takeover**;
  - (b) **First Party Insured Events** first discovered before the effective date of the **Takeover**, provided that notice of such **First Party Insured Event** is given to the Insurer during the Change of Control Extended Reporting Period in accordance with Section **VI.(A)**; and
  - (c) Insuring Clauses purchased by the **Insured Organisation**, as set forth in the Policy Schedule.
- (7) Any such Change of Control Extended Reporting Period is subject to all terms, conditions, limitations and exclusions of this Policy.
- (8) 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 Policy Schedule. The purchase of the Change of Control Extended Reporting Period shall not increase or reinstate the Limit of Liability set forth in the Policy Schedule.
- (10) The Change of Control Extended Reporting Period will only become effective upon:
  - (a) the **Insured Organisation** notifies the Insurer in writing of its election to purchase it within thirty (30) days of the effective date of the **Takeover**; and
  - (b) payment of the applicable additional premium in full within thirty (30) days of the **Insured Organisation's** election.

- (11) A change in Policy terms, conditions or exclusions, including the quotation by the Insurer of a different premium, Retention, Limit of Liability or policy language at renewal shall not be considered a nonrenewal for purposes of triggering the **Insured Organisation's** right to purchase the Optional Extended Reporting Period.

**(X) Currency and Payments**

All premium and losses under this Policy shall be payable in Pounds Sterling (GBP), unless another currency is specified in the Policy Schedule or otherwise agreed in writing.

CyberGuard™ Plus Cyber Liability Policy Wording

Tokio Marine HCC is a trading name of HCC International Insurance Company plc, which is a member of the Tokio Marine HCC Group of Companies. HCC International Insurance Company plc is authorised by the Prudential Regulation Authority (PRA) and regulated by the UK Financial Conduct Authority (FCA) and Prudential Regulation Authority. Registered in England and Wales No. 01575839 with registered office at The St Botolph Building, 138 Houndsditch, London, EC3A 7BT, United Kingdom.

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