

Zurich Cyber Solution

Base Policy Form

V 2.0 2023

Table of Contents

Section 1 – Insuring Agreements	4
A. Incident Response	4
1. Breach Costs.....	4
2. Emergency Costs.....	4
B. First Party Covers.....	4
3. Business Interruption Loss and Dependent Business Interruption Loss.....	4
4. Digital Asset Replacement Costs	4
5. Cyber Extortion Threat	4
6. System Failure	4
C. Third Party Covers.....	5
7. Security and Privacy Liability	5
8. Regulatory Proceeding.....	5
9. General Data Protection Regulation Proceeding.....	5
10. PCI-DSS Payments.....	5
11. Internet Media Liability.....	5
Section 2 – Definitions	6
Section 3 – Exclusions.....	20
3.1. Antitrust or Unfair Trade Practices	20
3.2. Biometric Information.....	20
3.3. Bodily Injury and Mental Anguish	20
3.4. Claims by Insureds or Related Entities.....	20
3.5. Communications Violations	20
3.6. Conduct.....	21
3.7. Contractual Liability	21
3.8. Critical Infrastructure Failure.....	22
3.9. Electromagnetic Field, Electromagnetic Radiation or Electromagnetism	22
3.10. Employment Related Practices	22
3.11. Government Seizure	22
3.12. Insolvency	22
3.13. Licensing, Merchandising, and Advertising	22
3.14. Money, Securities, or Cryptoassets	22
3.15. Nuclear Risks.....	22
3.16. Patents and Trade Secrets	23
3.17. Physical Events and Natural Perils.....	23
3.18. Pollution or Contamination.....	23
3.19. Prior Notice or Knowledge of Circumstances, Events or Claims.....	23

3.20.	Products & Professional Services.....	23
3.21.	Property Damage	23
3.22.	RICO	23
3.23.	Securities violations and shareholder actions	24
3.24.	Terrorism.....	24
3.25.	Trading and other monetary losses	24
3.26.	Unlicensed Software	24
3.27.	Violation of Imposed Employment Responsibilities, Obligations, or Duties.....	24
3.28.	War, Cyber Operation and Cyberwarfare.....	24
3.29.	Application of Exclusions.....	24
	Section 4 – Changes in Risk.....	25
4.1	Automatic Acquisition	25
4.2	Change in Circumstances.....	25
4.3	Change of Control.....	25
	Section 5 – Notification, Settlement and Valuation	26
5.1	Claims Procedures.....	26
5.2	Fraudulent Claims	27
5.3	Subrogation and Recoveries.....	27
5.4	Valuation of Business Interruption Loss	28
5.5	Valuation of Digital Assets Replacement Costs.....	28
	Section 6 – General Conditions.....	29
6.1.	Arbitration	29
6.2.	Attribution to War, Cyber Operation and Cyberwarfare	29
6.3.	Authorisation Clause and Assignment.....	29
6.4.	Bankruptcy.....	29
6.5.	Cancellation and Non-Renewal	29
6.6.	Consent.....	30
6.7.	Currency	30
6.8.	Extended Reporting Period.....	30
6.9.	Fair Presentation of the risk	30
6.10.	Limits of Liability and Deductibles	31
6.11.	Other Insurances	31
6.12.	Policy Interpretation, Jurisdiction and Governing Law.....	32
6.13.	Representation	32
6.14.	Sanctions.....	32
6.15.	Territorial Scope of Cover.....	32
6.16.	Third Parties’ Rights in Contracts.....	33

Section 1 – Insuring Agreements

The following covers will apply, but only where Section 3 of the **Schedule** states that they are operative, subject to all the terms and conditions of this Policy, including the **Limits of Liability**, the **Aggregate Limit of Liability**, and the **Deductible** and **Waiting Periods** specified in the **Schedule**, and in consideration of the payment of premium.

Where Section 3 of the **Schedule** states that a cover is not operative then this Policy shall not provide any cover in respect of it.

A. Incident Response

1. Breach Costs

The **Insurer** will pay to or on behalf of the **Insured**, **Breach Costs** incurred by the **Insured** from a **Privacy Event**, **Security Event** or **Electronic Publishing Event** first discovered by the **Insured** during the **Policy Period**.

2. Emergency Costs

If the **Insurer's** written consent cannot reasonably be obtained before **Breach Costs**, **Digital Asset Replacement Costs**, **Increased Costs of Working** or **Defence Costs** are incurred with respect to any covered **Event** or **Claim** the **Insurer** will give retrospective approval for such costs.

The **Insured** may also contact the **Breach Response Service** set forth in Section 6. of the **Schedule** to manage and coordinate the response to the **Privacy Event**, **Security Event**, or **Electronic Publishing Event**.

B. First Party Covers

3. Business Interruption Loss and Dependent Business Interruption Loss

The **Insurer** will pay the **Insured** for:

- **Business Interruption Loss**, **Dependent Business Interruption Loss**, and
- **Increased Costs of Working**,

incurred by the **Insured** during the **Period of Restoration**, as a result of an **Interruption of Service** that is first discovered during the **Policy Period** and directly arises from a **Security Event** or **Privacy Event**.

4. Digital Asset Replacement Costs

The **Insurer** will pay the **Insured** for **Digital Asset Replacement Costs** incurred by the **Insured** due to the corruption or destruction of **Digital Assets** as a result of a **Privacy Event** or **Security Event** that is first discovered during the **Policy Period**.

5. Cyber Extortion Threat

The **Insurer** will pay for:

- **Extortion Expenses**, and
- **Extortion Payments**

incurred by the **Insured**, arising directly from a **Cyber Extortion Threat**, that is first received during the **Policy Period**.

Provided always that:

- (a) one of the **Insured's** directors consents to the payment of such **Extortion Expenses** and/or **Extortion Payments**; and
- (b) payment of such **Extortion Expenses** and **Extortion Payment** is legally permissible under applicable trade or economic sanctions law, regulations, or any other similar law that governs such payment; and
- (c) if the Cyber Extortion Threat – Conditions Endorsement is attached to this Policy, any additional conditions set out therein are complied with.

6. System Failure

The **Insurer** will pay the **Insured** for:

- **Business Interruption Loss**, and
- **Increased Costs of Working**

incurred by the **Insured** during the **Period of Restoration**, as a result of an **Interruption of Service** that is first discovered during the **Policy Period** and directly arises from a **System Failure** or an **Administrative Error**.

C. Third Party Covers

7. Security and Privacy Liability

The **Insurer** will pay to or on behalf of the **Insured**:

- **Loss** which the **Insured** becomes legally liable to pay including claimants' costs and expenses, and
- **Defence Costs** incurred by the **Insured**,

arising from a **Claim** first made against the **Insured** during the **Policy Period** or the **Extended Reporting Period**, if applicable, that directly results from a **Privacy Wrongful Act** or **Security Wrongful Act** that takes place on or after the **Retroactive Date** and prior the end of the **Policy Period**.

8. Regulatory Proceeding

The **Insurer** will pay to or on behalf of the **Insured**:

- **Civil Fines and Penalties** which the **Insured** becomes legally liable to pay, and
- **Defence Costs** incurred by the **Insured**,

arising from a **Regulatory Proceeding** first commenced against the **Insured** during the **Policy Period** or the **Extended Reporting Period**, if applicable, that directly results from a **Privacy Wrongful Act** or **Security Wrongful Act** that takes place on or after the **Retroactive Date** and prior the end of the **Policy Period**.

9. General Data Protection Regulation Proceeding

The **Insurer** will pay to or on behalf of the **Insured**:

- **Civil Fines and Penalties** which the **Insured** becomes legally liable to pay, and
- **Defence Costs** incurred by the **Insured**,

arising from a **GDPR Proceeding** first commenced against the **Insured** during the **Policy Period** or the **Extended Reporting Period**, if applicable, that directly results from a **Privacy Wrongful Act** or **Security Wrongful Act** that takes place on or after the **Retroactive Date** and prior the end of the **Policy Period**.

10. PCI-DSS Payments

The **Insurer** will pay to or on behalf of the **Insured**:

- **PCI-DSS Payments** which the **Insured** becomes legally liable to pay, and
- **Defence Costs** incurred by the **Insured**,

arising from a **PCI-DSS Claim** first made against the **Insured** during the **Policy Period** or the **Extended Reporting Period**, if applicable, that directly results from a **Privacy Wrongful Act** or **Security Wrongful Act** that takes place on or after the **Retroactive Date** and prior to the end of the **Policy Period**.

11. Internet Media Liability

The **Insurer** will pay to or on behalf of the **Insured**:

- **Loss** which the **Insured** becomes legally liable to pay including claimants' costs and expenses, and
- **Defence Costs** incurred by the **Insured**,

arising from a **Claim** first made against the **Insured** during the **Policy Period** or the **Extended Reporting Period**, if applicable, that directly results from an **Electronic Publishing Wrongful Act** that takes place on or after the **Retroactive Date** and prior to the end of the **Policy Period**.

Section 2 – Definitions

The **bold** printed terms in this Policy, whether in the singular or in the plural, whether in this Section 2. Definitions, or as defined in other sections of this Policy, shall have the meaning specified for the scope of this Policy.

2.1 Act of Terrorism

Act of Terrorism means

- (a) Any act formally certified an act of terrorism pursuant to a federal Terrorism Risk Insurance Act or otherwise identified or declared an act of terrorism by governments of the United States, United Kingdom, European Union members, or the North Atlantic Treaty Organization or any of its members; or
- (b) Any act committed by any individual or group of individuals designated as a terrorist or terrorist group or any act committed by any individual or group of individuals acting on behalf of or in connection with any organization designated as a terrorist organization by governments of the United States, United Kingdom, European Union members, or the North Atlantic Treaty Organization or any of its members.

2.2 Administrative Error

Administrative Error means an accidental, unintentional, or negligent act or an error or omission committed by the **Insured** or a **Service Provider** in the course of:

- (a) data processing, programming, maintenance, service, conversion, modifying, handling, developing or maintaining **Electronic Data** or **Software**; or
- (b) operating, maintaining or repair of **Computer Systems**;

including the collection, compilation, processing, warehousing, mining, storage, or management of data.

2.3 Aggregate Limit of Liability

Aggregate Limit of Liability means the maximum aggregate amount set out in Section 2 of the **Schedule** that the **Insurer** will pay per **Policy Period** in respect of all **Claims** and **First Party Loss** covered by this Policy including **Defence Costs**.

2.4 Attribution

Attribution means the identification of a **Nation-State** as responsible for **War, Cyber Operation** or **Cyberwarfare**, resulting in any loss, damage, consequential loss, legal liability, fees, costs, disbursements, awards or other expenses of whatsoever nature, whether specifically defined in this Policy or generally.

2.5 Betterment

Betterment means:

- (a) unavoidable, standard technological advancements included within any newer **Computer System** of the **Insured**, such as increased memory capacity or processing speed; or
- (b) reasonably necessary to install a more secure and efficient version of the affected **Computer System** of the **Insured**.

Provided always that **Betterment** does not include costs to upgrade a **Computer System** of the **Insured** that has not been reasonably maintained or updated.

2.6 Breach Costs

Breach Costs means any reasonable and necessary charges, costs, expenses and fees incurred by the **Insured** with the **Insurer's** prior written consent, within 24 months of the **Insured** first having knowledge of a **Privacy Event, Security Event** or **Electronic Publishing Event** in retaining an accountant, IT consultant, solicitor, lawyer, public relations consultant or other breach response vendor to:

- (a) conduct a computer forensic analysis to investigate the **Computer System** of the **Insured** to determine the cause and extent of such **Privacy Event, Security Event** or **Electronic Publishing Event**;
- (b) determine indemnification obligations under any written contract with respect to a **Wrongful Act** by a **Service Provider** in connection with any **Privacy Event, Security Event** or **Electronic Publishing Event**, provided, however, this shall not include any expense incurred to enforce such indemnification obligation(s);
- (c) determine the extent to which the **Insured** is obliged to notify any regulatory authority or potentially affected individuals following any **Privacy Event, Security Event** or **Electronic Publishing Event**;

- (d) effect compliance with any **Privacy Regulation** under the applicable **Privacy Regulation** most favourable to the **Insured's** affected individuals (once compliance has been effected following a **Privacy Event** or **Security Event**. Provided, however, this Policy will not cover costs of maintaining ongoing compliance with any **Privacy Regulation**;
- (e) notify any individual(s) or applicable regulatory agency(ies) of the breach of any **Personal Information** arising from any **Privacy Event**, **Security Event** or **Electronic Publishing Event**, whether or not such individual(s) or agency(ies) are required to be notified pursuant to legislation (save that the **Insured** will seek the **Insurer's** consent before making any notification to such individual(s) or regulatory agency(ies) where there is no legal or regulatory requirement to do so);
- (f) plan, implement, execute and manage a public relations campaign to counter or minimise any actual or anticipated adverse effects of negative publicity from a **Privacy Event**, **Security Event** or **Electronic Publishing Event** to protect or restore the **Insured's** business reputation in response to negative publicity following such event;
- (g) provide credit and identification monitoring services, identification restoration services, and identification theft insurance, provided that the **Insurer** shall have no obligation to apply for or furnish such insurance, for individuals affected by the destruction, loss, alteration, disclosure or access to **Personal Information**; or
- (h) provide call centre services if they are needed to handle enquiries from individuals affected by the destruction, loss, alteration, disclosure or access to **Personal Information**.

Provided always that **Breach Costs** do not include:

- (i) regular or overtime wages, salaries or fees of any **Business Partner**, director, **Member**, or **Employee**;
- (ii) the cost to comply with any injunctive or other non-monetary relief;
- (iii) principal, interest or other monies paid or due as the result of any loan, lease or extension of credit; or
- (iv) taxes, fines, sanctions or penalties, or monetary assessments; provided, however, this limitation does not apply to any taxes assessed on **Breach Costs** otherwise covered under this Policy; or
- (v) **Extortion Expense**; provided, however, this limitation does not apply to **Breach Costs** related to a covered **Privacy Event** from the loss, theft, or disclosure of **Personal Information** arising from **Cyber Extortion**.

2.7 Breach Response Service

Breach Response Service means the providers specified as such in Section 6. in the **Schedule**, designated by the **Insurer** to work with the **Insured** to help manage a **Security Event**, **Cyber Extortion Threat**, or **Privacy Event**.

2.8 Business Interruption Loss

Business Interruption Loss means:

- (a) Net profit before income and corporation taxes that the **Insured** is prevented from earning during the **Period of Restoration** solely in consequence of an **Interruption of Service**; and
- (b) Normal operating expenses (including payroll) incurred by the **Insured**, but solely to the extent that such operating expenses must necessarily continue during the **Period of Restoration** and would have been incurred if there had been no **Interruption of Service**; and

calculated in accordance with the provisions of clause 5.4 (Valuation of Business Interruption Loss).

Provided always that **Business Interruption Loss**, or **Dependent Business Interruption Loss** will be calculated net of any savings the **Insured** makes or service credits the **Insured** receives as a result of the **Interruption of Service** and does not include:

- (i) contractual penalties;
- (ii) costs or expenses incurred to correct any deficiencies or problems with any **Computer System** or to update, restore, replace or improve a **Computer System** to a level beyond that which existed immediately before the **Interruption of Service**, other than **Betterment**;
- (iii) costs or expenses incurred to identify or remediate **Software** program errors or vulnerabilities;
- (iv) legal costs or expenses;
- (v) loss arising out of any liability to a **Third Party**;
- (vi) any consequential loss or damage;
- (vii) **Increased Cost of Working**
- (viii) **Extortion Expenses** or **Extortion Payments**; or
- (ix) The transfer (or multiple transfers based upon the same instruction) of **Money** or **Securities** by an employee of

the **Insured** based upon fraudulent transfer instructions.

2.9 Business Partner

Business Partner means any person in business with the **Insured** under the terms of a partnership agreement whether express or implied under legislation.

2.10 Business Process Outsourcing Services

Business Process Outsourcing Services means the contracting of non-primary business activities and functions to a third-party provider.

2.11 Card Association

Card Association means an issuer of credit cards, debit cards, stored value cards or prefunded cards.

2.12 Change of Control

Change of Control means an event wherein any person, entity or group:

- (a) acquires more than 50% of the **Policyholder's** share capital;
- (b) acquires the majority of the voting rights in the **Policyholder**;
- (c) assumes the right to appoint or remove the majority of the **Policyholder's** board of directors or equivalent positions;
- (d) assumes control pursuant to written agreement with other shareholders over the majority of the voting rights in the **Policyholder**;
- (e) merges with the **Policyholder** such that the **Policyholder** is not the surviving entity; or
- (f) is appointed as a trustee in bankruptcy, receiver, liquidator, conservator, rehabilitator or administrator (or equivalent official or person in the applicable jurisdiction) for the **Policyholder**, or the **Policyholder** becomes a debtor-in-possession (or the equivalent status in the applicable jurisdiction).

Change of Control also means:

- (g) the nationalisation of the **Policyholder** by the taking of the **Insured's** assets directly or indirectly, in whole or in substantial part, into state or government ownership;
- (h) any government, quasi-government or government agency (including the International Monetary Fund), other regulatory agency, body or funding entity or financial stability fund:
 - (i) assuming the voting control of a shareholders' meeting of the **Policyholder**;
 - (ii) dismissing the Board of Directors of the **Policyholder**;
 - (iii) appointing a management committee of the **Policyholder**; or

taking over the operations of the **Policyholder** either in part or in whole, or disposing of such an undertaking, either in part or in whole.

2.13 Circumstance

Circumstance means an incident, occurrence, fact, matter, act or omission that may give rise to a **Claim, Security Event, Privacy Event, Electronic Publishing Event, Administrative Error, System Failure, or Cyber Extortion Threat**.

2.14 Civil Fines and Penalties

Civil Fines and Penalties means civil, administrative or regulatory money fines or penalties directly assessed against the **Insured** for a violation of any law, regulation or statute not including punitive, exemplary or multiple damages, but only where:

- (a) such violations are not knowing, wilful or criminal; and
- (b) such fines or penalties are insurable under the internal laws of the jurisdiction in which such fines or penalties were assessed or levied.

2.15 Claim

Claim means:

- (a) a written demand against the **Insured** for monetary damages, non-monetary or injunctive relief or other legal remedy;
- (b) a civil proceeding against the **Insured** for monetary damages, non-monetary or injunctive relief or other legal remedy commenced by the service upon the **Insured** of a complaint or similar pleading, including any appeal thereof;
- (c) an arbitration or other alternative dispute resolution proceeding against the **Insured** for monetary damages or non-monetary or injunctive relief, commenced by the **Insured's** receipt of a request or demand for such proceeding, including any appeal thereof; or
- (d) solely with respect to the Insuring Agreement 8. Regulatory Proceeding, Insuring Agreement 9. General Data Protection Regulatory Proceeding and Insuring Agreement 10, PCI-DSS Payments, a **Regulatory Proceeding**, a **GDPR Proceeding**, or a **PCI-DSS Claim**.

2.16 Computer System

Computer System means computer hardware and **Software** and the **Electronic Data** stored thereon, including associated input and output devices, data storage devices, networking equipment, components, firmware and electronic back up facilities including systems available through the internet, intranets, extranets or virtual private networks.

Computer System also means any of the foregoing that are part of an industrial control system.

2.17 Consumer Redress Fund

Consumer Redress Fund means any sum of money the **Insured** is legally required to deposit in a fund for the payment of consumer claims due to a settlement of, or an adverse judgment in, a **Regulatory Proceeding** or a **GDPR Proceeding**.

2.18 Content

Content means the substance of the **Insured's** digital communications to the public, including its subscribers, **Customers**, or prospective **Customers**, for distribution through any first- or third-party medium or platform; provided always that, **Content** does not include:

- (a) **Software**, hardware, or other technology used to deliver, display or process such **Content**;
- (b) one-on-one communications, including but not limited to internal or external text, e-mail, video, or images;
- (c) material created and/or disseminated for a **Third Party**, unless so endorsed to this Policy; or
- (d) **Electronic Data**.

2.19 Control Group

Control Group means the **Policyholder's** Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Information Security Officer, Chief Information Officer, Data Protection Officer, Chief Technology Officer, Risk Manager, Insurance Manager, Head of Legal, or any other officer with a Technology, Legal or Data based remit.

2.20 Customer

Customer means an entity or individual to whom the **Insured** sells goods or provides services under a written contract.

2.21 Cyber Extortion Threat

Cyber Extortion Threat means:

- (a) a reasonably credible threat or connected series of threats directed to the **Insured** without the cooperation of an **Insured's** executive officer to:
 - (i) introduce **Malware** into the **Computer System** of the **Insured**;
 - (ii) commence a **Denial of Service Attack**;
 - (iii) disseminate, divulge, or improperly utilize any **Personal Information** taken as a result of the **Unauthorized Access** to the **Computer System** of the **Insured**; or
 - (iv) encrypt or otherwise make unavailable **Electronic Data**;

unless an **Extortion Payment** is received from the **Insured** or on the **Insured's** behalf in return for the elimination, mitigation, or removal of such threat or series of threats; and

- (b) a threat or connected series of threats related to any of the acts in Subsection (a) above that have already commenced.

2.22 Cyber Operation

Cyber Operation means the use of information technology by, at the direction of, or under the control of a **Nation-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**.

2.23 Cyberterrorism

Cyberterrorism means the use of information technology by an individual or group to execute, or threaten to execute a **Security Event** against a **Computer System** that may intimidate or coerce an ordinary reasonable person, or harms or damages, or has the potential to harm or damage, any person, company, business, government, or entity.

2.24 Cyberwarfare

Cyberwarfare means the use of information technology by a **Nation-State** that has a major detrimental impact on the functioning of an impacted sovereign state, its security and/or defence by impacting the availability or integrity of, or the ability to deliver, one or more **Essential Services** of an impacted sovereign state.

2.25 Deductible

Deductible means the monetary amount specified as such in this Policy, the **Schedule**, or any endorsement in respect of each and every **Claim, Loss** or **First Party Loss** for which the **Insured** will be responsible.

2.26 Defence Costs

Defence Costs means reasonable and necessary fees (including but not limited to attorneys' fees and experts' fees), costs, charges and expenses (other than regular or overtime wages, salaries, remuneration or fees of the directors or officers of the **Insured** or an **Employee**), incurred by or on behalf of the **Insured**, with the **Insurer's** prior written consent, in the investigation, defence, discharge, dismissal, adjustment, settlement of:

- (a) a **Claim** in respect of the Insuring Agreement 7. Security and Privacy Liability, and 11. Internet Media Liability;
- (b) a **Regulatory Proceeding** in respect of Insuring Agreement 8. Regulatory Proceeding;
- (c) a **GDPR Proceeding** in respect of Insuring Agreement 9. General Data Protection Regulation Proceeding; or
- (d) a **PCI-DSS Claim** in respect of Insuring Agreement 10. PCI-DSS Payments.

Defence Costs will always form part of and not be in addition to the applicable **Limits of Liability** and will be subject to any **Deductible**.

2.27 Denial of Service Attack

Denial of Service Attack means a malicious attack that is designed to slow or completely interrupt access to a **Computer System** or website.

2.28 Dependent Business Interruption Loss

Dependent Business Interruption Loss means **Business Interruption Loss** (not including any liability to the **Service Provider** itself) incurred by the **Insured** as a direct result of an **Interruption of Service** affecting a **Computer System** of a **Service Provider**, provided always that such **Interruption of Service** would have been covered under this Policy if the **Service Provider** had been the **Insured**.

2.29 Digital Assets

Digital Assets means **Electronic Data, Software**, audio files and image files stored on the **Computer System** of the **Insured**. Provided always that **Digital Assets** do not include accounts, bills, evidences of debt, **Money**, cryptographic key material allowing access to digital currencies, valuable papers, records, abstracts, deeds manuscripts or other documents unless they have been converted to **Electronic Data** and then only in that form.

2.30 Digital Asset Replacement Costs

Digital Asset Replacement Costs means reasonable and necessary costs and expenses incurred by the **Insured** with the

Insurer's prior written consent to:

- (a) restore or reconstitute **Digital Assets** from written records or audio recordings; or
- (b) partially or fully match **Electronic Data**; or
- (c) determine that **Digital Assets** cannot be restored or reconstituted due to their corruption or destruction.

Provided always that **Digital Asset Replacement Costs** do not include:

- (i) any costs and expenses incurred to update, replace, or otherwise improve **Digital Assets** to a level beyond that which existed prior to the **Security Event** or **Privacy Event**, other than **Betterment**;
- (ii) any costs and expenses incurred to identify or remediate **Software** errors or vulnerabilities;
- (iii) any costs and expenses incurred to research and develop **Digital Assets**, including trade secrets, non-fungible tokens, digital artwork or other digital collectibles;
- (iv) the economic or market value of **Digital Assets**, including trade secrets;
- (v) any consequential loss or damage;
- (vi) **Extortion Expenses**; or
- (vii) **Extortion Payments**.

2.31 Electromagnetic Field

Electromagnetic Field means any field of force that is made up of associated electric and magnetic components.

2.32 Electromagnetic Radiation

Electromagnetic Radiation means any succession of electromagnetic waves.

2.33 Electromagnetism

Electromagnetism means magnetism that is developed by a current of electricity.

2.34 Electronic Data

Electronic Data means information stored or transmitted in a digital format. **Electronic Data** does not include **Content**, **Software** or digital currency and/or cryptographic key material providing access to digital currency systems.

2.35 Electronic Publishing Activity

Electronic Publishing Activity means:

- (a) creating, gathering, producing, licensing, or other acquisition of **Content**;
- (b) publishing, republishing, webcasting, or other distribution of **Content**;
- (c) advertising **Content** with respect to the **Insured's** own goods, products, or services;
- (d) the publication of **Content** on the **Insured's** company website; or
- (e) posting, soliciting, or sharing **Content** on any third-party social media platform.

2.36 Electronic Publishing Event

Electronic Publishing Event means any actual or alleged:

- (a) defamation or other tort relating to the disparagement or harm to the character or reputation of a person or entity, including libel, slander, trade libel, or disparagement of goods, products, or services;
- (b) violation or interference with the right of privacy including the torts of intrusion upon seclusion, publication of private facts, false light, invasion of privacy, right of publicity, or misappropriation of name or likeness;
- (c) infringement of copyright, title, plagiarism, piracy, or misappropriation of ideas under implied contract; or
- (d) infringement or dilution of slogan, trademark, trade name, trade dress, service mark or service name, including infringement of domain name or arising from deep-linking or framing,

arising from **Electronic Publishing Activity** of the **Insured**.

Provided always that **Electronic Publishing Event** does not include:

- (i) the actual or alleged theft of computer or video game points, earnings awards or other intangible property;
- (ii) the uploading or downloading of digitised music, movies, software or video games by persons who allegedly or actually failed to obtain valid licenses with respect to such music, movies, software or video games; or
- (iii) any licensing fees, damages, account of profits or royalties ordered, directed or agreed to be paid by the **Insured** pursuant to a judgment, arbitration award, settlement agreement or similar order or agreement for the continued use of a person or entity's copyright, slogan, trademark, trade name, trade dress, service mark, service name or other protected intellectual property.

2.37 Electronic Publishing Wrongful Act

Electronic Publishing Wrongful Act means any actual or alleged act, error, omission, neglect or breach of duty committed in the course of **Electronic Publishing Activity** by an **Insured**, someone for whom the **Insured** is legally responsible, or a **Service Provider**, but only if such **Service Provider** is providing **Content** and/or **Electronic Publishing Activity** services on the **Insured's** behalf, and that results in an **Electronic Publishing Event**.

2.38 Employee

Employee means any natural person who is:

- (a) under a contract of service or apprenticeship with the **Insured**;
- (b) a labour master or labour only subcontractor or persons supplied by any of them;
- (c) self-employed;
- (d) under a work experience or similar scheme; or
- (e) hired or borrowed by the **Insured** from another employer;

and working for the **Insured** in connection with its business while under the direct control or supervision of the **Insured**.

2.39 Essential Service

Essential Service means a service that is essential for the maintenance of vital functions of a sovereign state, including but not limited to utility services, financial institutions and associated financial market infrastructure, or health services, emergency services (police, emergency medical, and fire) or its military.

2.40 Events

Event means **Security Event, Privacy Event, Electronic Publishing Event, Cyber Extortion Threat, Administrative Error** and **System Failure**.

2.41 Extended Reporting Period

Extended Reporting Period means the period of time immediately following the expiration of the **Policy Period** during which period the **Insured** may notify the **Insurer** of any **Claim, Regulatory Proceeding** and/or **GDPR Proceeding** first made during such **Extended Reporting Period** and arising from a **Wrongful Act** committed on or after the **Retroactive Date** and prior to the expiration date of the **Policy Period**.

The **Extended Reporting Period** is specified in Section 1.4.(b) in the **Schedule**.

2.42 Extortion Expenses

Extortion Expenses means reasonable and necessary expenses incurred by the **Insured** with the **Insurer's** prior written consent, arising directly from a **Cyber Extortion Threat**, but excluding **Extortion Payments**.

2.43 Extortion Payments

Extortion Payments means the reasonable and necessary **Money, cryptocurrency, or other consideration** paid by the **Insured** with the **Insurer's** prior written consent, to a **Third Party** who the **Insured** reasonably believes to be responsible for a **Cyber Extortion Threat** for the purpose of terminating such **Cyber Extortion Threat**. For the avoidance of doubt, any indemnity paid by the **Insurer** to the **Insured** will be in the currency of the **Limits of Liability**.

2.44 Failure of External Networks

Failure of External Networks means failure, interruption, degradation, or outage of **Financial Market Infrastructure**, telecommunications infrastructure (including but not limited to satellite, cable, radio, wired and wireless communications networks and related services), **Internet Services**, or utilities (including but not limited to electricity, gas, or water) and which are not under the direct operational control of the **Insured** or of a **Service Provider**.

2.45 Financial Market Infrastructure

Financial Market Infrastructure means financial exchanges, central counterparty clearing houses, or central securities depositories.

2.46 First Party Loss

First Party Loss means **Breach Costs, Business Interruption Loss, Dependent Business Interruption Loss, Increased Costs of Working, Digital Asset Replacement Costs, Extortion Expenses, and Extortion Payments.**

2.47 GDPR

GDPR means the *General Data Protection Regulation (EU 2016/679)* and any amendment(s) thereto. **GDPR** shall also include any state, provincial, territorial, local, or federal regulations enacted in furtherance of or pursuant to implementation of the General Data Protection Regulation (Regulation (EU) 2016/679) and any amendment(s) thereto.

2.48 GDPR Proceeding

GDPR Proceeding means a formal investigation of or an administrative adjudication proceeding against an **Insured** in respect to an actual or alleged violation of the **GDPR** by an administrative or regulatory agency, including an appeal thereof, commenced by the **Insured's** receipt of a subpoena, investigative demand, complaint or similar document or written communication.

2.49 Increased Costs of Working

Increased Costs of Working means reasonable and necessary expenses incurred by the **Insured** with the **Insurer's** written consent during the **Period of Restoration** to minimise, avoid, or reduce any **Interruption of Service** or **Business Interruption Loss** or **Dependent Business Interruption Loss** and that:

- (a) are over and above the **Insured's** normal operating and payroll expenses; and
- (b) do not exceed the amount of loss that would otherwise be payable as **Business Interruption Loss** or **Dependent Business Interruption Loss.**

Provided always that **Increased Costs of Working** do not include:

- (i) any costs or expenses to correct any deficiencies or problems with any **Computer System** or to identify or remediate **Software** errors or vulnerabilities;
- (ii) any costs or expenses to update, restore, replace or improve any **Computer System** or **Software** to a level beyond that which existed just before the **Interruption of Service**, other than **Betterment**;
- (iii) any contractual penalties loss arising out of any liability to a **Third Party**;
- (iv) any consequential loss or damage;
- (v) any other costs, loss or payments which are specifically defined in this Policy and covered under any Insuring Agreement or endorsement; or
- (vi) **Extortion Expenses** or **Extortion Payments.**

2.50 Insured

Insured means:

- (a) the **Policyholder** as stated in Section 1.2 of the **Schedule**;
- (b) a **Subsidiary Company**; or
- (c) an **Insured Person.**

2.51 Insured Person

Insured Person means:

- (a) any current or former **Business Partner**, director, **Member**, or principal, or any person who becomes a **Business Partner**, director, **Member**, or principal during the **Policy Period**;
- (b) any current or former **Employee** or any person who becomes an **Employee** during the **Policy Period**;
- (c) the personal representative of any **Business Partner**, director, **Member**, principal, or **Employee** in the event of their death, incapacity, insolvency or bankruptcy; but only for a **Claim** arising solely out of their status as such; or
- (d) any retired **Business Partner**, retired director or retired **Member** while acting as a consultant to the **Insured** during the **Policy Period**;

and acting on behalf of the **Policyholder** or a **Subsidiary Company**.

2.52 Insurer

Insurer means the legal entity specified as such in Section 1.5 of the **Schedule**.

2.53 Internet Services

Internet Services means services provided by internet service providers, domain name service providers, network service providers, and internet exchanges.

2.54 Interrelated Events

Interrelated Events means all **Events** that arise out of, are based upon, are in connection with or are otherwise attributable to the same originating cause or source.

2.55 Interrelated Wrongful Acts

Interrelated Wrongful Acts means all **Wrongful Acts** that arise out of, are based upon, are in connection with or are otherwise attributable to the same originating cause or source.

2.56 Interruption of Service

Interruption of Service means an actual and measurable interruption, suspension, failure, degradation or delay in the performance of the **Computer System** of the **Insured**. **Interruption of Service** also means:

- (a) a voluntary shutdown of the **Computer System** of the **Insured** when such action is taken to minimize, avoid or mitigate a **Security Event**; or
- (b) a regulatory shutdown of the **Computer System** of the **Insured** when such action is ordered by a regulatory or governmental body as part of a **Regulatory Proceeding** or **GDPR Proceeding**; or
- (c) an actual and measurable interruption, suspension, failure, degradation or delay in the performance of a **Computer System** of a **Service Provider**; or
- (d) a voluntary shutdown of a **Computer System** of a **Service Provider** when such action is taken to minimize, avoid or mitigate a **Security Event**.

2.57 Limit of Liability

Limit of Liability means the maximum amount after payment of any **Deductible** which the **Insurer** can be liable to pay under each Insuring Agreement in this Policy as specified in Section 3. of the **Schedule**.

2.58 Loss

Loss means:

- (a) any amount, including judgments and settlements, pre- and post-judgment interest, which the **Insured** is legally obligated to pay as the result of a **Claim** against the **Insured**. **Loss** includes punitive, exemplary, or multiple damages to the extent such damages are insurable under the internal laws of any applicable jurisdiction most favourable to the **Insured**, including without limitation, the jurisdiction in which the **Insured**, the **Insurer**, this Policy, or such **Claim** is located; or
- (b) a **Consumer Redress Fund**, solely with respect to coverage afforded under Insuring Agreement 8, Regulatory Proceedings, and Insuring Agreement 9, General Data Protection Regulations Proceedings.

Loss does not include:

- (i) **Defence Costs**;

- (ii) the loss, offset or return of fees, commissions, royalties, bonuses, or profits by the **Insured** or the cost to re-perform any services;
- (iii) the cost to comply with any injunctive or other non-monetary relief;
- (iv) the return, restitution, or offset of fees, expenses or costs paid to the **Insured**;
- (v) liquidated damages to the extent that such liquidated damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages;
- (vi) the cost to design, upgrade, maintain, or improve a **Computer System**, including correcting any deficiencies or problems;
- (vii) principal, interest or other **Money** paid or due as the result of any loan, lease or extension of credit;
- (viii) taxes, fines, sanctions or penalties; or
- (ix) **First Party Loss**.

2.59 Malware

Malware means any unauthorized, corrupting, or harmful **Software**, specifically designed to:

- (a) erase or corrupt **Electronic Data**;
- (b) damage or disrupt any network or **Computer System**; or
- (c) circumvent any network security product or service.

Including, but not limited to, computer viruses, Trojan horses, keystroke loggers, cookies, spyware, adware, worms, ransomware and logic bombs.

2.60 Member

Member means a member of the **Insured's** limited liability partnership as defined in the Limited Liability Partnerships Act 2000 or equivalent applicable legislation.

2.61 Money

Money means currency, coins or bank notes in current use and having a face value, or travellers cheques, registered checks and money orders held for sale to the public. **Money** does not include cryptocurrencies.

2.62 Nation-State

Nation-State means a nation, state-like entity, sovereign state, or agent, and any subdivision, department, person, entity, or other government authority acting on behalf of any of the foregoing.

2.63 Nuclear Installation

Nuclear Installation means any installation of such class or description as may be prescribed by regulations made by the relevant governmental authority from time to time by statutory instrument being an installation designed or adapted for:

- (a) the production or use of atomic energy;
- (b) the carrying out of any process which is preparatory or ancillary to the production or use of atomic energy and which involves or is capable of causing the emission of ionising radiation; or
- (c) the storage, processing or disposal of nuclear fuel or of bulk quantities of other radioactive matter being matter which has been produced or irradiated in the production or use of nuclear fuel.

2.64 Nuclear Reactor

Nuclear Reactor means any plant including any machinery, equipment or appliance whether affixed to land or not designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons.

2.65 PCI-DSS Claim

PCI-DSS Claim means a written demand from either the Payment Card Industry Security Standards Council, **Card Association**, issuing bank, or acquiring bank alleging non-compliance with or violations of:

- (a) the Payment Card Industry Data Security Standard; or

(b) a merchant services agreement in connection with the Payment Card Industry Data Security Standard; following a **Privacy Wrongful Act** or **Security Wrongful Act**.

2.66 PCI-DSS Payments

PCI-DSS Payments means payments which the **Insured** has a contractual liability to make following a **Privacy Wrongful Act** or **Security Wrongful Act** to a **Card Association** or bank as a result of non-compliance by the **Insured** with data security standards published by the payment card industry and which apply to the **Insured** by virtue of the contract.

2.67 Period of Restoration

Period of Restoration means the period from the date and time that the **Insured** is first impacted after its **Computer System** suffers an **Interruption of Service** to the date and time the **Insured** is returned to substantially the level of operation that had existed prior to such **Interruption of Service**.

Provided always that (i) if the **Schedule** provides for a **Waiting Period**, the **Period of Restoration** will commence only once the **Waiting Period** has expired; and (ii) in no event will the **Period of Restoration** exceed 180 days.

2.68 Personal Information

Personal Information means:

- (a) any information from which an individual may be uniquely and reliably identified or contacted, including without limitation an individual's name, telephone number, national insurance number, social security number, medical or healthcare data or other protected health information, driver's licence number or passport number, bank account number, credit card number, debit card number, access code or password that would permit access to that individual's financial account or any other non-public personal information as defined in any **Privacy Regulation** applicable to the individual; or
- (b) "personal data" as defined by the **GDPR** in connection with a **GDPR Proceeding**.

2.69 Policy Period

Policy Period means the period of time specified as such in Section 1.4.(a) of the **Schedule** or any shorter period resulting from a termination of this Policy or other reason as may be endorsed to this Policy.

2.70 Policyholder

Policyholder means the legal entity specified as such in Section 1.2 of the **Schedule**.

2.71 Pollutants

Pollutants means any substance exhibiting any hazardous characteristics as defined by or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or a federal, state, provincial, territorial, county, municipality or locality counterpart thereof or equivalent list in any territories outside of the United States of America.

Pollutants shall also mean any other air emission, odour, wastewater, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mould, mildew and any mycotoxin, spore, scent or by-product produced or released by any fungus, but not any fungus intended by the **Insured** for consumption) and electric or magnetic or **Electromagnetic Field**. Such matters shall include, without limitation, solids, liquids, gaseous, thermal, biological, nuclear or radiological irritants, contaminants or smoke, soot, fumes, acids, alkalis, chemicals, or waste materials.

2.72 Privacy Event

Privacy Event means:

- (a) an actual, alleged or reasonably suspected unauthorised disclosure or loss of:
 - (i) **Personal Information** in the **Insured's** care, custody or control or in the care, custody or control of a **Service Provider**; or
 - (ii) corporate information in the **Insured's** care, custody or control or in the care, custody or control of a **Service Provider** that is not available or known to the general public;
- (b) an actual, alleged or reasonably suspected violation of any **Privacy Regulation** by the **Insured**; or
- (c) failure by the **Insured** to comply with its public declaration of its privacy policy with respect to **Personal Information**.

2.73 Privacy Regulation

Privacy Regulation means any legislation, statutes, regulations, and other laws, including, but not limited to, **GDPR**, enacted to control the use of **Personal Information** within the **Territorial Limits**.

2.74 Privacy Wrongful Act

Privacy Wrongful Act means any actual or alleged act, error, omission, neglect or breach of duty by the **Insured**, someone for whom the **Insured** is legally responsible or the **Service Provider** of the **Insured**, that results in a **Privacy Event**.

2.75 Professional Services

Professional Services means those acts or services requiring specialised knowledge, skill, or professional judgment that the **Insured** renders to others pursuant to a written agreement and for a fee or other consideration, including but not limited to financial analysis, securities valuation and forecasting.

2.76 Property

Property means tangible property of the **Insured** other than **Money** or **Securities**.

2.77 Regulatory Proceeding

Regulatory Proceeding means a formal investigation of, or an administrative adjudicative proceeding against, an **Insured** by an administrative or regulatory agency or similar governmental body, including an appeal thereof, commenced by the **Insured's** receipt of a subpoena, investigative demand, complaint or similar document or written communication. **Regulatory Proceeding** does not include a **GDPR Proceeding**, a **PCI-DSS Claim** or any criminal investigation or proceeding.

2.78 Related Entity

Related Entity means any individual or entity or its **Subcontractors** or assignees:

- (a) which wholly or partially own, operate or manage the **Insured**;
- (b) in which the **Insured** have an ownership interest in excess of 20%; or
- (c) which is controlled, operated or managed by the **Insured**.

2.79 Retroactive Date

Retroactive Date means the date specified as such in Section 1.4.(c) of the **Schedule**.

2.80 Schedule

Schedule means the schedule attached to this Policy or any schedule subsequently substituted during the **Policy Period**.

2.81 Securities

Securities means any bond, debenture, note, share, stock or other equity or security for debt, and will include any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or to purchase, voting trust certificate relating to, or other interest in any of the foregoing items representing **Money** or **Property**. **Securities** shall not include **Money** or cryptocurrency or digital token of any kind, **Digital Assets** functioning or intended to function as a medium of exchange, cryptographic key material providing access to digital currency systems, or **Property**.

2.82 Security Event

Security Event means:

- (a) the **Unauthorized Access** to;
- (b) physical theft by a person other than an executive officer of the **Insured** of;
- (c) introduction of **Malware** into; or
- (d) **Denial of Service Attack** upon;

the **Computer System** of the **Insured**.

2.83 Security Wrongful Act

Security Wrongful Act any actual or alleged act, error, omission, neglect or breach of duty by the **Insured**, someone for whom the **Insured** is legally responsible or the **Service Provider** of the **Insured**, that results in a **Security Event**.

2.84 Service Provider

Service Provider means any **Third Party** that is assigned by the **Policyholder** or any **Subsidiary Company** by written or electronic contract to provide information technology services or **Business Process Outsourcing Services** to the **Insured**; however **Service Provider** shall not mean any supplier of goods (e.g. supplier of raw materials or other products), or **Third Parties** providing telecommunications services (including but not limited to satellite, cable, radio, wired and wireless communications), **Internet Services**, utilities (including but not limited to electricity, gas, or water) or **Financial Market Infrastructure** services.

2.85 Software

Software means operations and applications, codes and programs associated with the operation of a computer by which **Electronic Data** is electronically collected, transmitted, processed, stored or received. Provided always that **Software** does not include **Electronic Data** or **Content**.

2.86 Subcontractor

Subcontractor means any independent consultant or subcontractor other than an **Employee** who provides the **Insured** with services under a written or electronic contract; provided, however, **Subcontractor** does not mean **Service Provider**.

2.87 Subsidiary Company

Subsidiary Company means any entity or organisation, including any partnership, in which on or before the inception date of this Policy, the **Insured**, directly or indirectly through one or more **Subsidiary Company**:

- (a) controls the composition of the board of directors, or has the right to elect or appoint a majority of the board of directors (or equivalent in any other country);
- (b) controls more than 50% of the shareholder or equity voting rights;
- (c) holds more than 50% of the issued share capital or equity; or
- (d) holds an ownership interest of 50% or more in a joint venture and maintains control over management and operations pursuant to written contract.

2.88 System Failure

System Failure means the measurable, material, unintentional, unexpected and unplanned outage, suspension or failure of the **Computer System** of the **Insured**, however caused. **System Failure** does not include:

- (a) **Administrative Error**;
- (b) **Security Events**;
- (c) **Privacy Events**;
- (d) voluntary shutdown;
- (e) a defect in the design or configuration of the **Computer System** of the **Insured** or from the migration of the **Insured's Electronic Data** and/or **Software** from one user environment to another;
- (f) failure to plan or provide for operational demand, including web traffic, for the **Computer System** of the **Insured**; provided, this shall not apply to a **Denial of Service Attack**; or
- (g) wear and tear, gradual degradation, or deterioration of the **Computer System** of the **Insured**.

2.89 Third Party

Third Party means any natural person, firm, individual, partnership, organisation or corporation other than the **Insured**, but not any **Related Entity** or any other person or entity having a financial or executive interest in the **Insured**.

2.90 Territorial Limits

Territorial Limits means worldwide, unless otherwise specified in Section 4 of the **Schedule**.

2.91 Unauthorised Access

Unauthorised Access means access to or a use of a **Computer System** by an unauthorized person or persons, or by an authorized person or persons in an unauthorized manner.

2.92 Waiting Period

Waiting Period means the number of hours specified in Section 3 of the **Schedule**, if any, from the date and time the **Computer System** of the **Insured** first suffers an **Interruption of Service**.

2.93 War

War means

- (a) physical force, armed conflict or invasion by a **Nation-State** against one or more sovereign states, whether war has been declared or not, including any preemptive or defensive action; or
- (b) physical force, armed conflict or invasion relating to civil war, uprising, rebellion, usurped power, or insurrection within a sovereign state by its citizens, military, or other constituents, including any preemptive or defensive action.

2.94 Wrongful Act

Wrongful Act means a **Security Wrongful Act**, **Privacy Wrongful Act**, or an **Electronic Publishing Wrongful Act**.

Section 3 – Exclusions

This Policy does not cover **Loss, Defence Costs, First Party Loss, Civil Fines and Penalties** or other expense, costs, or damages of whatsoever nature, whether specifically defined in this Policy or generally, on account of any **Claim** or **Event**:

3.1. Antitrust or Unfair Trade Practices

based upon, arising out of, or attributable to any actual or alleged unfair competition, price fixing, restraint of trade, monopolization, interference with economic relations (including interference with contractual relations or prospective advantage), consumer fraud, unfair business practices or unfair trade practices or other violation of the Federal Trade Commission Act (U.S.), the Sherman Anti-Trust Act (U.S.), the Clayton Act (U.S.), the Competition Act (Canada), or any other federal, state, provincial, territorial, or local law, statute, rule, directive, regulation, provision, or common law involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade, or otherwise protecting competition, enacted in the United State of America and its territories, or in any jurisdiction outside of the United States, or any amendment, addition, or replacement thereto. Provided, however, and solely with respect to unfair trade practices, this exclusion shall not apply to a covered **Claim** for a **Privacy Wrongful Act** arising from a breach of a **Privacy Regulation**).

3.2. Biometric Information

brought or commenced, in whole or in part: (i) within the jurisdiction of, or (ii) pursuant to the laws of, the United States of America or its territories and/or possessions, and based upon, arising out of, or attributable to, directly or indirectly, the actual or alleged collection, processing, retention, storage, sharing, sale, transferring, disposal, sale, or other use of biometric information by the **Insured**, a **Service Provider**, or other third party on the **Insured's** behalf, that is:

- (a) performed without the consent or other authorization of the individuals whose biometric information has been collected, processed, retained, stored, shared, sold, transferred, or otherwise used;
- (b) retained by the **Insured**, a **Service Provider**, or other third party on the **Insured's** behalf in excess of any regulated destruction schedule for which biometric information, which has been collected, processed, retained, stored, shared, sold, transferred, or used with consent, must be permanently destroyed;
- (c) in violation of the **Insured's** public declaration of its privacy policy with respect to **Personal Information**; or
- (d) in violation of any **Privacy Regulation**, the **GDPR**, or any consumer protection or deceptive trade practices law or any other federal, state, provincial, territorial, local, or foreign statute, rule, directive, ordinance, regulation, provision, or common law governing the collection, confidentiality, access, control, disclosure, retention, processing, modification, handling, or use of biometric information or any amendment, addition, or replacement of such statute, rule, directive, ordinance, regulation, or provision.

Provided, however, this exclusion shall not apply to a **Security Wrongful Act** with respect to biometric information if such biometric information was otherwise collected, processed, retained, stored, shared, transferred, disposed, sold, or used by the **Insured**, a **Service Provider** of the **Insured**, or other third party on the **Insured's** behalf, with consent or authorization as provided under the applicable statute, rule, directive, ordinance, regulation, provision, or common law governing the collection, confidentiality, access, control, disclosure, retention, processing, modification, handling, or use of biometric information.

3.3. Bodily Injury and Mental Anguish

based upon, arising out of, or attributable to, directly or indirectly, death, bodily injury, mental injury, sickness, disease, mental anguish or shock sustained by any person other than emotional distress arising solely from an otherwise covered **Privacy Wrongful Act** or **Electronic Publishing Wrongful Act**.

3.4. Claims by Insureds or Related Entities

based upon, arising out of, or attributable to any **Claim** brought by or on behalf of, or at the behest of, or for the benefit of, any **Insured** or any **Related Entity** against any other **Insured** or **Related Entity**.

Provided always that this exclusion does not apply to any **Claim** brought by the **Insured** in their capacity as:

- (a) a **Customer** or client of the **Insured**; or
- (b) an **Employee** for a **Privacy Wrongful Act** relating to the unauthorised disclosure of such **Employee's Personal Information**.

3.5. Communications Violations

based upon, directly or indirectly arising out of, or attributable to any act or omission that violates or is alleged to violate:

- (a) the Telephone Consumer Protection Act (U.S.) (TCPA);
- (b) the CAN-SPAM Act of 2003 (U.S.);
- (c) Canada's federal anti-spam legislative Act:
 - an Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act; and including, all the rules and regulations promulgated under it, any amendment of or addition to it and any aspects of other federal, provincial, territorial or municipal act, law or statute it amends;
- (d) the Canadian Radio-Television and Telecommunications Commission (CRTC) guidelines;
- (e) the Canadian Marketing Association's do-not-call list;
- (f) the Fair Credit Reporting Act (U.S.) (FCRA) and the Fair and Accurate Credit Transactions Act (U.S.) (FACTA);
- (g) the Video Privacy Protection Act under 18 U.S. Code Sec. 2710; or
- (h) any federal, state, provincial, territorial, or local statute, ordinance, regulation, or directive similar to the items listed in (a) to (g) above, any equivalent statute or common law in any other territory or jurisdiction outside the United States of America or Canada, or any other legal liability, at common law or otherwise, that addresses, prohibits, or limits the printing, dissemination, disposal, monitoring, collecting, recording, use of, sending, transmitting, communicating or distribution of material or information; or
- (i) any amendment, addition, or replacement of any statute, ordinance, regulation, rule, or directive shown in (a) to (h) above.

Provided, however, this exclusion does not apply if such unsolicited electronic dissemination of faxes, electronic mail or other communications to multiple actual or prospective **Customers** by the **Insured** or any other **Third Party** was caused by a **Security Wrongful Act**.

3.6. Conduct

based upon, arising out of, or attributable to, directly or indirectly:

- (a) any criminal, dishonest, fraudulent or malicious act or omission committed or condoned by any **Insured**; provided, however, the reference to a "malicious act" shall not apply with respect to any allegation of "actual malice" raised in a covered **Claim** under Subsection 2.36 (a) or a covered **Claim** for false light invasion of privacy under Subsection 2.36 (b);
- (b) any intentional or knowing violation of law committed or condoned by any **Insured**; or
- (c) any gaining of profit, remuneration, financial or non-financial advantage by the **Insured** to which the Insured was not legally entitled.

Provided always that:

- (i) the **Insurer** will pay **Defence Costs** and defend such **Claim** until there is a judgment, binding arbitration decision or finding of fact against such **Insured** or an adverse admission under oath or plea of no contest by such **Insured** which establishes such criminal, dishonest, fraudulent or malicious **Wrongful Act**, intentional or knowing violation of law or profit, remuneration or advantage. In this event the **Insured** will reimburse the **Insurer** for any **Defence Costs** paid by the **Insurer** on behalf of such **Insured** arising from such **Claim**; and
- (ii) no **Wrongful Act** of or knowledge possessed by such **Insured Person** will be imputed to any other **Insured** except the **Wrongful Act** of or knowledge possessed by the **Insured's** Chief Executive Officer, Chief Financial Officer, Director of Human Resources, General Counsel or risk manager or any other **Insured Person** in a functionally equivalent position.

3.7. Contractual Liability

based upon, arising out of, or attributable to, directly or indirectly, any actual or alleged breach of express warranty, express guarantee, promise, or contractual obligation, including any liability of others assumed by an **Insured**. Provided, this exclusion shall not apply:

- (a) if such liability would have attached to the **Insured** even in the absence such contract, warranty, guarantee or promise, but only for the types of **Wrongful Acts** covered under the Policy;
- (b) to any obligation to maintain the confidentiality or security of **Personal Information** or of corporate information in the **Insured's** care, custody or control or the care, custody or control of a **Service Provider** that is specifically identified as confidential and protected under a non-disclosure agreement or similar contract, but only if such liability arises from a **Security Wrongful Act** or **Privacy Wrongful Act**;

- (c) to any obligation to comply with a Payment Card Industry Data Security Standard or **Card Association** pursuant to a merchant services agreement or similar contract, but only for the types of **Wrongful Acts** covered under the Policy.

3.8. Critical Infrastructure Failure

based upon, arising out of, or attributable to, directly or indirectly, **Failure of External Networks**. However, this exclusion shall not apply to Section 1, Insuring Agreement C (Third Party Covers).

3.9. Electromagnetic Field, Electromagnetic Radiation or Electromagnetism

based upon, arising out of, or attributable to, directly or indirectly, any **Electromagnetic Field, Electromagnetic Radiation** or **Electromagnetism**.

3.10. Employment Related Practices

based upon, arising out of, or attributable to, directly or indirectly, any actual or alleged violation of:

- (a) any obligation owed by the **Insured** as an employer or potential employer to any director or **Employee** or applicant for employment; or
- (b) any express or implied terms of a partnership agreement or membership agreement.

Provided always that this exclusion will not apply to any **Claim** by an **Employee** for a **Privacy Wrongful Act** relating to the unauthorised disclosure of **Personal Information** of such **Employee**.

3.11. Government Seizure

based upon, arising out of, or attributable to, directly or indirectly, any seizure, confiscation, expropriation, nationalisation, or destruction of a **Computer System** by order of any governmental authority, provided however that this exclusion shall not apply to a **Regulatory Proceeding** or **GDPR Proceeding** following a **Privacy Wrongful Act**.

3.12. Insolvency

based upon, arising out of, or attributable to, directly or indirectly, any **Insured's, Related Entity's Service Provider's, or Subcontractor's** insolvency or bankruptcy.

3.13. Licensing, Merchandising, and Advertising

based upon, arising out of, or attributable to:

- (a) any **Claim** made by or on behalf of a music licensing entity or organization;
- (b) licensing fees or royalties ordered, directed, or agreed to be paid by the **Insured** pursuant to a judgment, arbitration award, settlement agreement or similar order or agreement, for the continued or future use of any intellectual property right;
- (c) the **Insured's** goods, products, or services, including any **Claim** arising solely from the branding or other design elements of such goods, products, or services described, depicted, or advertised in **Content** or other material; or
- (d) false, misleading, or deceptive advertising, or any actual or alleged unfair or deceptive trade practice, consumer fraud, or other misrepresentation or omission relating to the **Insured's** goods, products, or services, and unfair competition arising from any of the aforementioned; provided, however, this exclusion does not apply to a covered **Claim** for unfair competition or deceptive trade practices under Subparagraph 2.36 (d).

3.14. Money, Securities, or Cryptoassets

based upon, arising out of, or attributable to, directly or indirectly, any loss of, theft of or fraudulent transfer of, loss of access to, or fall in value of, **Money, Securities**, or cryptoassets including, without limitation, any cryptocurrencies and non-currency cryptoassets such as tokens or digital art, including such **Money, Securities** or cryptoassets in the care, custody, or control of the **Insured**.

3.15. Nuclear Risks

based upon, arising out of, or attributable to, directly or indirectly:

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any **Nuclear Installation, Nuclear**

Reactor or other nuclear assembly or nuclear component thereof; or

- (c) any weapon employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

3.16. Patents and Trade Secrets

based upon, arising out of, or attributable to any actual or alleged misappropriation, infringement, inducement, or violation of, or assertion of any right to or interest in, any patent or trade secret.

Provided always that this exclusion will not apply to the extent any **Claim** alleges an inadvertent disclosure of a trade secret that constitutes a **Privacy Wrongful Act**.

3.17. Physical Events and Natural Perils

based upon, arising out of, or attributable to, directly or indirectly, any fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, storm, subsidence, tidal wave, tornado, landslide, riot, hail, subterranean fire, solar flare, or act of God or any other physical event however caused.

3.18. Pollution or Contamination

based upon, arising out of, or attributable to:

- (a) the actual, alleged or threatened discharge, release, escape, seepage, migration, or disposal of **Pollutants** into or on real or personal property, water, or the atmosphere; or
- (b) any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify, or neutralise **Pollutants**, or any voluntary decision to do so.

3.19. Prior Notice or Knowledge of Circumstances, Events or Claims

(A) based upon, arising out of, or attributable to:

- (a) any act, error or omission, or **Wrongful Act** or **Circumstance**:
 - (i) that was discovered or occurred prior to the inception date or **Retroactive Date** as specified in Section 1.4 of the **Schedule** and that any person in the **Control Group** knew or ought to have reasonably known about prior to inception of this Policy, which may give rise to a **Claim** against the **Insured**;
 - (ii) that was notified by the **Insured** under any other insurance policy prior to inception of this Policy; or
 - (iii) that was disclosed or ought reasonably to have been disclosed on the **Insured's** latest proposal for this coverage; or
- (b) any **Claim** made against any **Insured** prior to inception of this Policy arising from the same or **Interrelated Wrongful Acts** or the same or **Interrelated Events**; or

(B) based upon, arising out of, or attributable to, any **Circumstance** that any person in the **Control Group** knew or ought to have reasonably known about prior to inception of this Policy.

3.20. Products & Professional Services

based upon, arising out of or attributable to any actual or alleged:

- (a) failure of the **Insured's** products, including **Software**, to perform the function, or serve the purpose, intended by any **Third Party** or any **Insured**;
- (b) negligent rendering of or negligent failure to render **Professional Services**; or
- (c) construction, repair, installation, erection, removal or demolition of buildings, building works or physical structures by any **Insured, Subcontractor** or **Related Entity**.

However, this exclusion shall not apply to any **Privacy Wrongful Act**.

3.21. Property Damage

based upon, arising out of, or attributable to, directly or indirectly, physical damage to **Property**, including all resulting loss of use of that **Property**, or loss of use of **Property** that has not been physically injured.

3.22. RICO

based upon, arising out of or attributable to any actual or alleged violations of any responsibilities, obligations or duties imposed by the Racketeer Influenced and Corrupt Organization Act of 1961 or amendments thereto or any similar provisions or statute or common law enacted in the United States of America or in any other territory or jurisdiction outside the United States of America.

3.23. Securities violations and shareholder actions

based upon, arising out of, or attributable to any actual or alleged violation by the **Insured** of the Securities Act of 1933 (U.S.), the Securities Exchange Act of 1934 (U.S.), the Investment Company Act of 1940 (U.S.), the Investment Advisors Act (U.S.), the Canadian Securities Act (Ontario), or any other federal, state, provincial, territorial, or local securities law, statute, rule, directive, regulation, provision, or common law similar to any of the foregoing enacted in the United States of America or in any other territory or jurisdiction outside the United States of America, or for any **Claim** brought by or on behalf of any shareholder in its capacity as such.

3.24. Terrorism

based upon, arising out of, or attributable to, directly or indirectly, any **Act of Terrorism**, provided however, this exclusion shall not apply to **Cyberterrorism**.

3.25. Trading and other monetary losses

based upon, arising out of, or attributable to the monetary value of any transaction or change in value of any account, including but not limited to: electronic funds transfers, trading losses, trading liabilities, awards, prizes, points, coupons, earnings or other intangible property.

3.26. Unlicensed Software

based upon, arising out of, or attributable to, directly or indirectly, any **Insured's** knowing use of illegal or unlicensed **Software** that infringe copyright or otherwise are in violation of software protection laws.

3.27. Violation of Imposed Employment Responsibilities, Obligations, or Duties

based upon, arising out of, or attributable to any actual or alleged violation of or breach of fiduciary responsibilities, obligations or duties imposed with any employee benefit, disability, or pension plan, including responsibilities, obligations and duties under the *Employee Retirement Income Security Act of 1974* (U.S.) (ERISA), the Canadian *Pension Benefits Standards Act*, the Ontario *Pension Benefits Act, 1990*, or any violation of any other similar federal, state, provincial, territorial, local, or foreign statutory law or common law, including any amendment, addition, or replacement of any statute, ordinance, regulation, or directive thereto. Provided, however, this exclusion does not apply to a covered **Claim** brought by a current or former employee for a **Privacy Wrongful Act**. any equivalent statute or common law in any other territory or jurisdiction outside the United States of America or Canada.

3.28. War, Cyber Operation and Cyberwarfare

based upon, arising out of, or attributable to:

- (a) directly or indirectly, **War**;
- (b) a **Cyber Operation** as part of **War** regardless of the timing, staging, deployment, or order of use with other methods of **War**; or
- (c) **Cyberwarfare** independently of **War**, but only with respect to any **Computer System** impacted by **Cyberwarfare** that is physically located, in whole or in part, in the impacted sovereign state.

3.29. Application of Exclusions

The following exclusions under this Section 3 – Exclusions shall apply regardless of any other fact, circumstance, **Wrongful Act**, or **Event** that contributes concurrently or in any sequence with any of the excluded causes of loss set forth in these exclusions:

- Terrorism
- War, Cyber Operation and Cyberwarfare
- Critical Infrastructure Failure

Section 4 – Changes in Risk

4.1 Automatic Acquisition

If during the **Policy Period** the **Insured** acquires or forms a **Subsidiary Company**, this Policy will automatically apply to such **Subsidiary Company** and its **Insured Persons** from the date of such acquisition or formation.

Provided always that:

- (a) such **Subsidiary Company** is domiciled outside the United States of America or Canada;
- (b) it does not have turnover which exceeds 15% of the total consolidated turnover of the **Policyholder** as stated in the last published accounts;
- (c) The **Subsidiary Company** has not, in the preceding three (3) years, suffered claims or loss of a type covered by this Policy (whether insured or not) greater than the amount of the **Deductible**; and
- (d) the **Insured** notifies the **Insurer** in writing within ninety (90) days of the acquisition or formation of such **Subsidiary Company**.

With regard to newly acquired **Subsidiary Companies**, which do not meet the conditions described in (a) to (d) above, the **Insurer** may, at its sole discretion, extend coverage to such **Subsidiary Company** and any **Insured Person** thereof, if the **Policyholder**:

- (i) notifies the **Insurer** in writing of the acquisition of such entity;
- (ii) provides the **Insurer** with full underwriting information, including the completion of an application or proposal, as the **Insurer** may require;
- (iii) agrees to any additional premium and/or amendment of the provisions of this Policy required by the **Insurer** relating to such **Subsidiary Company**; and
- (iv) the **Policyholder's** payment of any additional premium when due.

Any cover provided for any **Subsidiary Company** formed or acquired during the **Policy Period** and its **Insured Persons** will only apply to **Wrongful Acts, Events** or **Circumstances** first occurring after the **Insured's** acquisition or formation of such **Subsidiary Company**.

4.2 Change in Circumstances

The **Insured** must notify the **Insurer** as soon as possible during the **Policy Period** if there is any change in circumstances or to the material facts previously disclosed by the **Insured** to the **Insurer** or stated as material facts by the **Insurer** to the **Insured** which increases the risk of accident, injury, loss, damage, or liability.

Upon notification of any such change the **Insurer** will be entitled to adjust the premium and policy terms for the remainder of the **Policy Period**. If the changes in the **Insured's** circumstances or material facts make the risk unacceptable to the **Insurer**, the **Insurer** is under no obligation to agree to offer additional coverage terms and may not be able to provide the **Insured** with cover.

If the **Insured** does not notify the **Insurer** of any such change in circumstances or material facts the **Insurer** may exercise one or more of the options described in clauses (c) (i), (ii) and (iii) of General Condition 6.9. Fair Presentation of the risk, but only with effect from the date of the change in circumstances or material facts.

4.3 Change of Control

If there is a **Change of Control** during the **Policy Period** then the cover provided under this Policy only applies in respect of any **Wrongful Act** or any **Event** occurring prior to the effective date of that **Change of Control**.

The **Insured** must give written notice to the **Insurer** of the **Change of Control** as soon as reasonably practicable.

Section 5 – Notification, Settlement and Valuation

5.1 Claims Procedures

(A) Responsibilities of the **Insured**

It is agreed that:

- (a) on the discovery of any **Circumstance** or on receiving verbal or written notice of any **Claim** that could reasonably exceed fifty-percent (50%) of the **Deductible**, the **Insured** will:
 - (i) as soon as reasonably possible, but in no event later than sixty (60) days after the end of the **Policy Period**, give notice to the **Insurer**;
 - (ii) as soon as reasonably possible forward to the **Insurer** any **Claim**, writ or summons issued against any **Insured**;
 - (iii) at the **Insured's** own expense and as soon as reasonably possible, supply full details of the **Claim** in writing to the **Insurer** together with any evidence and information that may be reasonably required by the **Insurer** for the purpose of investigating or verifying the **Claim** and to keep the **Insurer** up to date with any future evidence and information received by the **Insured** or reasonably required by the **Insurer**; and
 - (iv) in the case of notification of a **Circumstance**, supply full particulars including all material facts, dates and persons involved and the reasons for anticipating that such **Circumstance** may give rise to a **Claim** or **Event**.
- (b) on the discovery of a **Privacy Event**, as a condition precedent to any liability on the **Insurer's** part to make any payment to the **Insured** under the Policy, the **Insured** will:
 - (i) as soon as reasonably possible notify the **Insurer** using the **Breach Response Service** emergency number set forth in Section 6. of the **Schedule**, and in any event no later than seventy-two (72) hours after the **Insured** first becomes aware of the **Privacy Event** give the **Insurer** written notice during the **Policy Period**;
 - (ii) take all reasonable steps to protect **Computer Systems, Personal Information, Digital Assets**, or confidential corporate information from further loss or damage; and take all reasonable steps and measures to limit or mitigate **Business Interruption Loss**;
 - (iii) co-operate with the **Insurer** in its investigation and with any loss adjusters or other advisers or professionals the **Insurer** engages on its own or the **Insured's** behalf; and
 - (iv) at the **Insured's** own expense, and as soon as reasonably possible, supply full details of any evidence and information that may reasonably be required by the **Insurer** for the purpose of investigating or verifying the **Privacy Event**.
- (c) on the discovery of a **Security Event, Administrative Error, or System Failure** the **Insured** will:
 - (i) as soon as reasonably possible, but in no event later than sixty (60) days after the end of the **Policy Period**, notify the **Insurer** using the **Breach Response Service** emergency number and in any event no later than thirty (30) days after the **Insured** first becomes aware of the **Security Event, Administrative Error, or System Failure** and give the **Insurer** written notice directed to the Claims Contact Details set forth in Section 6. of the **Schedule**;
 - (ii) take all reasonable steps and measures to limit or mitigate **Business Interruption Loss** and **Dependent Business Interruption Loss**; and
 - (iii) provide the **Insurer** with proof of loss within six (6) months of the discovery of any such **Security Event, Administrative Error or System Failure** under this Policy or with the **Insurer's** prior consent within such additional time as the **Insured** may request.

Provided always that no legal proceedings for the recovery of any amount may be brought before the end of the sixty (60) days after the **Insured's** original proof of loss is submitted to the **Insurer** or more than twelve (12) months after the discovery of the **Security Event, Administrative Error, or System Failure**;

- (d) on the occurrence of a **Cyber Extortion Threat**, the **Insured** will notify the **Insurer** using the **Breach Response Service** emergency number set forth in Section 6. of the **Schedule** and provide the **Insurer** with written notice as soon as reasonably possible, but in no event later than sixty (60) days after the end of the **Policy Period**; and
- (e) no settlement, admission of liability, payment or promise of payment will be made to a **Third Party** without the **Insurer's** written consent.

(B) Rights of the **Insurer**.

The **Insurer** will:

- (a) be entitled to conduct the defence or settlement of any **Claim** made against any **Insured** and such **Insured** will give all assistance as may be reasonably required by the **Insurer**;

- (b) be entitled to appoint legal counsel;
- (c) be entitled to take the benefit of any rights of any **Insured** against any other party before or after any **Insured** has received indemnification under this Policy, and such **Insured** will give all assistance as may be reasonably required by the **Insurer**; and
- (d) have the right, but not the duty to defend any **Regulatory Proceeding** and **GDPR Proceeding**. The **Insured** will not incur any **Defence Costs** in any **Regulatory Proceeding** without the **Insurer's** prior written consent.

(C) Prejudice

Where in the **Insurer's** opinion any **Insured** has prejudiced the handling of or the settlement of any **Claim**, the amount payable in respect of such **Claim**, including **Defence Costs**, will be reduced to such an amount as in the **Insurer's** opinion would have been payable in the absence of such prejudice.

(D) Deemed Notification

Any **Claim** which is subsequently made against an **Insured** and reported to the **Insurer** which alleges, arises out of, is based upon or attributable to a **Circumstance** notified during the **Policy Period**, or alleges any **Wrongful Act** which is the same as or related to any **Wrongful Act** anticipated in the reported **Circumstance**, shall be considered made at the time such notice of **Circumstance** was first received by the **Insurer**.

5.2 Fraudulent Claims

If the **Insured** or anyone acting on the **Insured's** behalf shall give notice of any **Claim** and/or **Event**, knowing same to be false or fraudulent, as regards amount or otherwise, such **Claim** and/or **Event** shall be excluded from the Policy for the fraudulent **Insured** and the **Insurer** shall have the right to avoid its obligations under this Policy in relation to that fraudulent **Insured** or in its entirety and in such case, the Policy shall become void and all notifications shall be forfeited.

5.3 Subrogation and Recoveries

Upon any payment on any **Loss** and/or **First Party Loss** the **Insurer** shall be entitled to assume all rights of recovery available to any **Insureds** or the **Policyholder**, including but not limited to trying to recover from the **Policyholder** any **Loss** and/or **First Party Loss** or **Deductible** paid by the **Insurer** pursuant to General Condition 6.11. Other Insurances of this Policy.

The rights and obligations under this clause also apply in respect of any payment of **Loss** and/or **First Party Loss** by the **Insurer** in connection with any act, error or omission, **Wrongful Act**, **Circumstance** or **Claim** which would have been excluded pursuant to Exclusion 3.19. Prior Notice or Knowledge of Circumstances, Events or Claims had a valid notification to another policy existing or expired before or on the inception date of this Policy been accepted.

The **Insurer** shall be entitled to pursue and enforce all rights in the name of any **Insured** who shall provide all reasonable assistance and co-operation to the **Insurer** in the prosecution of such rights. Furthermore, each **Insured** shall take all steps necessary or required by the **Insurer**, whether before or after payment by the **Insurer**, to preserve and secure such rights, including any remedies that the **Insured** may have to recover **Loss** and/or **First Party Loss**, costs or expenses from any third party, or the execution of any documents necessary to enable the **Insurer** effectively to bring suit in the name of the **Insured**, whether such acts shall be or become necessary before or after payment by the **Insurer**.

In the case of recovery by either the **Insured** or the **Insurer** on account of any paid **Loss** and/or **First Party Loss**, the amount recovered, shall be applied in the following order:

- (a) first to recompense the **Insured** and the **Insurer** for the costs incurred in bringing proceedings against the third party, and which payment shall be allocated between the **Insured** and the **Insurer** in the same proportion as they have born those costs;
- (b) then to the **Insured** for the amount, if any, of the covered **Loss** and/or **First Party Loss** which exceeds the applicable **Limit(s) of Liability** and/or **Aggregate Limit of Liability**;
- (c) then, to the **Insurer** up to the amount of **Loss** and/or **First Party Loss** paid by the **Insurer**;
- (d) then, to the **Insured** in respect of any uninsured element of the claim against the third party, including the **Deductible(s)** applicable to the **Loss** and/or **First Party Loss**;
- (e) Interests on amounts recovered from third parties shall be allocated proportionally to the amounts paid according to items (a), (b), (c) and (d) above.

In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured Person** under this Policy except where the **Insurer** has established that Exclusion 3.6. Conduct applies to such **Loss** and/or **First Party Loss** and that **Insured Person**.

Where the **Insurer** recovers any amount following a paid **Loss** and/or **First Party Loss** under this Policy, the recovery, less the reasonable costs of making such recovery, will be applied to reinstate the **Limits of Liability**, always subject to the **Aggregate Limit of Liability**.

5.4 Valuation of Business Interruption Loss

It is agreed that **Business Interruption Loss** and **Dependent Business Interruption Loss** will be calculated on an hourly basis based on the actual such loss the **Insured** incurs during the **Period of Restoration** as the case may be.

In order to determine the amount of such loss payable the **Insurer** will consider the **Insured's** net profit and expenses before the **Interruption of Service** occurred and the **Insured's** probable net profit and expenses if no **Interruption of Service** had occurred. Any such calculation will not include any estimate or projection that assumes that the **Insured** would have earned additional income as a result of favourable business conditions experienced by competitors or other comparable businesses. The **Insured** will provide the **Insurer** with access to all relevant sources of information, including, but not limited to:

- (a) the **Insured's** financial records, tax returns, accounting procedures;
- (b) bills, invoices and other vouchers; and
- (c) deeds, liens and contracts.

5.5 Valuation of Digital Assets Replacement Costs

If the **Insured** cannot restore **Digital Assets** but can only reconstitute such **Digital Assets**, then **Digital Assets Replacement Costs** will be limited to the actual cost the **Insured** incurs to reconstitute such **Digital Assets**. If the **Insured** cannot restore or reconstitute **Digital Assets**, then **Digital Assets Replacement Costs** will be limited to the actual cost the **Insured** reasonably incurs to reach this determination.

Section 6 – General Conditions

6.1. Arbitration

In the event of a dispute arising out of this Policy, the Insurer and Insured (hereafter referred to as the “parties”) may settle the dispute through mediation in good faith in accordance with the relevant Practice Direction on civil mediation issued by the Judiciary of Hong Kong and applicable at the time of dispute. If the parties are unable to settle the dispute through mediation within 90 days, the parties shall refer the dispute to arbitration administered by the Hong Kong International Arbitration Centre (‘HKIAC’) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted. The law of this arbitration clause shall be Hong Kong law and the seat of arbitration shall be Hong Kong. The number of arbitrators shall be one and the arbitration proceedings shall be conducted in English.

It is expressly stated that the obtaining of an arbitral award is a condition precedent to any right of legal action arising out of this Policy. Irrespective of the status or outcome of any form of alternative dispute resolution, if the Insurer denies or rejects liability for any claim under this Policy and the Insured does not commence arbitration in the aforesaid manner within twelve (12) calendar months from the date of the Insurer’s disclaimer, the Insured’s claim shall then for all purposes be deemed to have been withdrawn or abandoned and shall not thereafter be recoverable under this Policy.

This clause remains valid should this Policy be void and shall survive any termination of this Policy.

6.2. Attribution to War, Cyber Operation and Cyberwarfare

Notwithstanding the **Insurer’s** burden of proof, which shall remain unchanged by this clause, in determining **Attribution of Cyber Operation or Cyberwarfare to a Nation-State**, the **Insurer** will consider such objectively reasonable evidence that is available to it. This may include formal or official **Attribution** by the government of the sovereign state in which the **Computer System** affected by the **Cyber Operation or Cyberwarfare** is physically located. The official statements, imposition of sanctions, or criminal indictment(s) of any person or organization, made by the governments of the United States, United Kingdom, European Union members, or the North Atlantic Treaty Organization or any of its members shall be presumed credible, reliable, and deemed admissible in court.

6.3. Authorisation Clause and Assignment

By acceptance of this Policy:

- (a) the **Policyholder** agrees to act on behalf of each **Insured** with respect to giving and receiving notices of **Loss, Claims or Circumstances**, cancellation or other communication to the **Insurer**, paying premiums and receiving any return premiums that may become due under this Policy, agreeing to endorsements, and giving or receiving notices provided for in this Policy, and
- (b) each **Insured** agrees that the **Policyholder** shall act on their behalf.

Neither this Policy nor any rights hereunder may be assigned without the prior written consent of the **Insurer**.

6.4. Bankruptcy

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of its obligations or deprive the **Insurer** of its rights or defences under this Policy.

6.5. Cancellation and Non-Renewal

(a) Cancellation

In case of non-payment of premium after this Policy has been in effect for 90 days, this Policy may be cancelled by the **Insurer** by giving the **Policyholder** written notice of cancellation. This Policy will be cancelled retroactively at the date the premium was due.

The **Policyholder** shall not have the right to cancel this Policy if any **Claim or Circumstances** have been reported under this Policy prior to the effective date of cancellation. In case a notification is made in accordance with Section 5.1 of this Policy, after the written notice of cancellation is made by the **Policyholder**, such notice is deemed to be void and not applicable.

If the **Policyholder** cancels the policy, a refund of premium will be allowed pro rata of 80% of the premium for the unexpired **Policy Period**. Under any other circumstances, the refund shall be computed pro rata.

This Policy may not be cancelled by the **Policyholder** during the **Extended Reporting Period**, once elected.

(b) Non-Renewal

This Policy lapses automatically on the date of expiration.

(c) Cessation of Subsidiary Companies

If during the **Policy Period** a **Subsidiary Company** ceases to be a **Subsidiary Company** no cover will be provided in respect of such **Subsidiary Company** and its **Insured Persons** for any **Wrongful Act, Event** or **Circumstance** involving such company or persons or for any amount claimed under any Coverage incurred or sustained by any such company or persons after the date such company ceased to be a **Subsidiary Company**.

6.6. Consent

Where the **Insurer's** consent is required under this Policy (including for the incurring of any reasonable and necessary fees, costs and expenses) such consent will not be unreasonably withheld or delayed.

6.7. Currency

All premiums, sub-limits, **Deductibles, First Party Loss, Loss**, the **Aggregate Limit of Liability** and other amounts under this Policy are expressed and payable in the currency specified in the Schedule. If judgment is rendered, settlement is denominated or another element of **First Party Loss** or **Loss** under this Policy is stated in a currency other than this currency, payment of covered **First Party Loss** or **Loss** due under this Policy (subject to the terms, conditions, exclusions and limitations of this Policy) will be made either in such other currency at the option of the Insurer or, in the currency specified in the Schedule, at the rate of exchange published in The Wall Street Journal at the date (or if not published on such date the next publication date of The Wall Street Journal) the **First Party Loss** or **Loss** is to be paid.

6.8. Extended Reporting Period

- (a) In the event this Policy is not renewed or replaced, the **Policyholder** will be entitled to an **Extended Reporting Period**:
 - (i) automatically for sixty (60) days at no additional premium; or
 - (ii) for the period of time specified in Section 1.4. (b) of the Schedule, subject to the **Policyholder** making a written request for such **Extended Reporting Period** no later than thirty (30) days after the expiry of the **Policy Period** and paying the applicable required additional premium.

The **Insurer's** offer of renewal cover on terms which differ from the ones contained in the expiring Policy, including but not limited to the **Aggregate Limit of Liability, Limit(s) of Liability** and **Deductible**, does not constitute non-renewal.

- (b) In the event an **Extended Reporting Period** is applicable, such **Extended Reporting Period** applies only in respect of any **Wrongful Act** committed on or after the **Retroactive Date** specified in Section 1.4.(c) of the **Schedule** and prior to the expiration date of the **Policy Period**.

Provided always that:

- (i) Any **Claim** first made during the **Extended Reporting Period**, if applicable, shall be considered made during the **Policy Period**;
 - (ii) The **Extended Reporting Period** does not reinstate or increase the **Limit of Liability**, nor extend the **Policy Period**;
 - (iii) in the event of **Change of Control** (as defined in clause 4.3) the **Extended Reporting Period** will not be available; and
 - (iv) The additional premium for any **Extended Reporting Period** shall be deemed fully earned at the inception of the **Extended Reporting Period**.
- (c) The **Extended Reporting Period** shall terminate immediately upon its expiry or the effective date of either of the following events (whichever occurs first):
 - (i) the renewal of this Policy by the **Insurer**; or
 - (ii) the replacement of this Policy by any other insurance policy, issued by the **Insurer** or any other insurance company, covering wholly or substantially or partially the same risk.

6.9. Fair Presentation of the risk

- (a) At inception and renewal of this Policy and also whenever changes are made to it at the **Insured's** request the **Insured** must:
 - (i) disclose to the **Insurer** all material facts in a clear and accessible manner; and
 - (ii) not misrepresent any material facts.

- (b) If the **Insured** does not comply with clause (a) of this condition the **Insurer** may:
 - (i) avoid this Policy which means that the **Insurer** will treat it as if it had never existed and refuse all **Claims** where any non-disclosure or misrepresentation by the **Insured** is proven by the **Insurer** to be deliberate or reckless in which case the **Insurer** will not return the premium paid by the **Insured**; and
 - (ii) recover from the **Insured** any amount the **Insurer** has already paid for any **Claims** including costs or expenses the **Insurer** has incurred.
- (c) If the **Insured** does not comply with clause (a) of this condition and the non-disclosure or misrepresentation is not deliberate or reckless this Policy may be affected in one or more of the following ways depending on what the **Insurer** would have done if the **Insurer** had known about the facts which the **Insured** failed to disclose or misrepresented:
 - (i) if the **Insurer** would not have provided the **Insured** with any cover the **Insurer** will have the option to:
 1. avoid the Policy which means that the **Insurer** will treat it as if it had never existed and repay the premium paid; and
 2. recover from the **Insured** any amount the **Insurer** has already paid for any **Claims** including costs or expenses the **Insurer** has incurred;
 - (ii) if the **Insurer** would have applied different terms to the cover the **Insurer** will have the option to treat this Policy as if those different terms apply. The **Insurer** may recover any payments made by the **Insurer** on **Claims** which have already been paid to the extent that such **Claims** would not have been payable had such additional terms been applied; or
 - (iii) if the **Insurer** would have charged the **Insured** a higher premium for providing the cover the **Insurer** will charge the **Insured** the additional premium which the **Insured** must pay in full.

6.10. Limits of Liability and Deductibles

- (a) All **Claims** and **Circumstances** arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be considered a single **Claim** and such single **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against any **Insured**, or on the date the **Circumstance** that gives rise to such **Claim** is first discovered or first occurs (if a **Business Interruption Loss**), regardless of whether such date is before or during the **Policy Period** and regardless of whether such **Claim** involves the same or different claimants, **Insureds** or legal causes of action.
- (b) All **First Party Loss** arising out of the same **Event** or **Interrelated Events** shall be considered a single **First Party Loss** and such single **First Party Loss** shall be considered to have been first discovered on the date the earliest of such **Events** is first discovered or first occurs (if a **Business Interruption Loss**), regardless of whether such date is before or during the **Policy Period** and regardless of whether such **Event** involves the same or different **Insureds**.
- (c) The **Aggregate Limit of Liability**, the **Limits of Liability** and the sub-limits will apply only in excess of the applicable **Deductible**. The **Insured** will pay the **Deductible** in respect of each and every covered single **Claim** and/or single **First Party Loss** under this Policy. However, with respect to **Business Interruption Loss** the **Aggregate Limit of Liability**, the **Limits of Liability** and the sub-limits will apply only in excess of either the applicable **Deductible** or the financial amount of otherwise covered **Business Interruption Loss** incurred during the **Waiting Period**, whichever is greater.
- (d) Subject to the **Aggregate Limit of Liability**, the **Limits of Liability** specified in Section 3 of the **Schedule** are the maximum aggregate amounts that the **Insurer** is liable to pay in respect of each Insuring Agreement, except where any **Claim** or **First Party Loss** is subject to any sub-limit as specified in the Section 3 of the **Schedule**. Where any such sub-limit applies then this forms part of, and is not in addition to, the maximum aggregate amount that the **Insurer** is liable to pay in respect of such **Claim** or **First Party Loss**. Where more than one sub-limit applies to any **Claim** or **First Party Loss** payable under the terms of this Policy, only one sub-limit shall apply, being the greater of such sub-limits.
- (e) The **Aggregate Limit of Liability** specified in Section 2 of the **Schedule** is the **Insurer's** maximum aggregate liability in respect to all purchased Insuring Agreements under this Policy and, unless stated otherwise, any extension/endorsement, and applies to all **Insureds** combined.
- (f) In the event any single **Claim** or single **First Party Loss** is covered under more than one Insuring Agreement then:
 - (i) only one **Deductible** shall be applicable to such single **Claim** or single **First Party Loss**, being the highest **Deductible** applicable to any of the relevant Insuring Agreements; and
 - (ii) subject to (d) and (e), only one **Limit of Liability** shall be applicable to such single **Claim** or single **First Party Loss**, being the highest **Limit of Liability** applicable to any of the relevant Insuring Agreements.

6.11. Other Insurances

If any **Loss** and/or **First Party Loss** covered under this Policy is also covered, wholly or partially, by any other valid and collectable

insurance policy, this Policy shall only apply and pay **Loss** and/or **First Party Loss** in excess of the amount paid by such other insurance policy, irrespective of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise. As excess insurance this Policy shall not apply or contribute to the payment of any **Loss** and/or **First Party Loss** until the insured limits and retentions amounts of that other insurance policy have been exhausted.

6.12. Policy Interpretation, Jurisdiction and Governing Law

This Policy is governed by and is construed according to the applicable law as designated in Section 5. of the **Schedule** of this Policy without reference to its rules concerning conflicts of law.

Any reference to any statute or statutory instrument will include any modifications or re-enactment thereto.

In the event that the Arbitration condition would be void, null or inoperative, the **Policyholder** and the **Insurer** agree to submit any dispute arising out of or in connection with this Policy to the exclusive jurisdiction as designated in Section 5 of the **Schedule** of this Policy.

This Policy, its Schedule and any endorsements are one contract in which, unless the context otherwise requires:

- (a) headings are descriptive only, not an aid to interpretation;
- (b) singular includes the plural, and vice versa;
- (c) the male includes the female and neuter;
- (d) all references to specific legislation include amendments to and re-enactments of such legislation; and
- (e) references to positions, offices or titles shall include their equivalents in any jurisdiction in which a claim is made.

In the event that any part of this Policy becomes unenforceable or invalid under any applicable law or becomes so by subsequent court decision, such unenforceability or invalidity shall not render the Policy unenforceable or invalid as a whole.

6.13. Representation

The **Control Group** represent, warrant and acknowledge that the declarations, agreements, representations and warranties in the written proposal for this Policy are true and complete, are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy. This Policy is issued in reliance upon the truth and completeness of such representations.

The statements in the proposal made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the proposal), possessed by any member of the **Control Group** shall be imputed to all **Subsidiary Companies**, and the knowledge of the same officers of any **Subsidiary Company** shall be imputed to that **Subsidiary Company**.

The **Insurer** agrees that it shall not seek to rescind or avoid or apply other legal remedy in relation to this Policy, as a sole consequence of an innocent or negligent non-disclosure or innocent or negligent misrepresentation by any member of the **Control Group** and/or of the same officers of any **Subsidiary Company**.

However, in the event that such written proposal contains misrepresentations or omissions made with the intent to deceive or which materially affect either the acceptance of the risk or the hazard assumed by the **Insurer** under the Policy, or gross negligence, then coverage shall be void ab initio.

6.14. Sanctions

Notwithstanding any other terms of this Policy, the **Insurer** will be deemed not to provide cover nor will make any payment or provide any service or benefit to the **Insured** or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the **Insured** would violate any applicable trade or economic sanctions law or regulation.

The above clause shall also apply for any trade or economic sanction law or regulation that the Insurer deems applicable or if the Insured or other party receiving payment, service or benefit is a sanctioned person.

6.15. Territorial Scope of Cover

Cover under this Policy shall apply to:

- (a) **Loss** and/or **First Party Loss** incurred;
- (b) **Claims** made;
- (c) **Wrongful Acts** committed; and
- (d) **Events** occurring

within the **Territorial Limits**, as permitted by law.

6.16. Third Parties' Rights in Contracts

Other than the **Policyholder** or the **Insured**, or as expressly provided to the contrary, a person who is not a party to this Policy has no right to enforce or to enjoy the benefit of any term of this Policy. Any legislation in relation to third parties' rights in a contract shall not be applicable to this Policy. Notwithstanding any terms of this Policy, the consent of any third party is not required for any variation (including any release or compromise of any liability under) or termination of this Policy.