

# Cyber Solution Policy



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# Data protection statement

Zurich takes the privacy and security of your personal information seriously. We collect, use and share your personal information so that we can provide policies and services that meet your insurance needs, in accordance with applicable data protection laws.

The type of personal information we will collect includes: basic personal information (i.e. name, address and date of birth), occupation and financial details, health and family information, claims and convictions information and where you have requested other individuals be included in the arrangement, personal information about those individuals.

We and our selected third parties will only collect and use personal information (i) where the processing is necessary in connection with providing a quotation and/or contract of insurance; (ii) to meet our legal or regulatory obligations; (iii) where you have provided the appropriate consent; (iv) for our 'legitimate interests'.

It is in our legitimate interests to collect personal information as it provides us with the information that we need to provide our services more effectively including providing information about our products and services. We will always ensure that we keep the amount of information collected and the extent of any processing to the absolute minimum to meet this legitimate interest.

A full copy of our data protection statement can be viewed via [www.zurich.co.uk/dataprotection](http://www.zurich.co.uk/dataprotection)

## **How you can contact us**

If you have any questions or queries about how we use your data, or require a paper copy of the statement, you can contact us via [gbz.general.data.protection@uk.zurich.com](mailto:gbz.general.data.protection@uk.zurich.com) or alternatively contact our Data Protection Officer at Zurich Insurance, Unity Place, 1 Carfax Close, Swindon, SN1 1AP.

# Important notes

## **Fraud prevention and detection**

In order to prevent and detect fraud we may at any time:

- check your personal data against counter fraud systems
- use your information to search against various publicly available and third party resources
- use industry fraud tools including undertaking credit searches and to review your claims history
- share information about you with other organisations including but not limited to the police, the Insurance Fraud Bureau (IFB), other insurers and other interested parties.

If you provide false or inaccurate information and fraud is identified, the matter will be investigated and appropriate action taken. This may result in your case being referred to the Insurance Fraud Enforcement Department (IFED) or other police forces and fraud prevention agencies. You may face fines or criminal prosecution. In addition, Zurich may register your name on the Insurance Fraud Register, an industry-wide fraud database.

## **Claims history**

We may pass information relating to claims or potential claims to any relevant database.

We and other insurers may search these databases when you apply for insurance, when claims or potential claims are notified to us or at time of renewal to validate your claims history or that of any other person or property likely to be involved in the policy or claim.

This helps to check information provided and prevent fraudulent claims.

# Our complaints procedure

## **Our commitment to customer service**

We are committed to providing a high level of customer service. If you feel we have not delivered this, we would welcome the opportunity to put things right for you.

## **Who to contact in the first instance**

Many concerns can be resolved straight away. Therefore in the first instance, please get in touch with your usual contact at Zurich or your broker or insurance intermediary, as they will generally be able to provide you with a prompt response to your satisfaction.

Contact details will be provided on correspondence that we or our representatives have sent you.

## **Many complaints can be resolved within a few days of receipt**

If we can resolve your complaint to your satisfaction within the first few days of receipt, we will do so. Otherwise, we will keep you updated with progress and will provide you with our decision as quickly as possible.

## **Next steps if you are still unhappy**

If you are not happy with the outcome of your complaint, you may be able to ask the Financial Ombudsman Service to review your case.

We will let you know if we believe the ombudsman service can consider your complaint when we provide you with our decision. The service they provide is free and impartial, but you would need to contact them within 6 months of the date of our decision.

More information about the ombudsman and the type of complaints they can review is available via their website [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk).

You can also contact them as follows:

**Post:** Financial Ombudsman Service, Exchange Tower, London, E14 9SR  
**Telephone:** 08000 234567 (free on mobile phones and landlines)  
**Email:** [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)

If the Financial Ombudsman Service is unable to consider your complaint, you may wish to obtain advice from the Citizens Advice Bureau or seek legal advice.

# The Financial Services Compensation Scheme (FSCS)

We are covered by the Financial Services Compensation Scheme (FSCS) which means that you may be entitled to compensation if we are unable to meet our obligations to you. Further information is available on [www.fscs.org.uk](http://www.fscs.org.uk) or by contacting the FSCS directly on 0800 678 1100.

# 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.

## 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** or **Security Event** first discovered by the **Insured** during the **Policy Period** and first occurred after the **Retroactive Date**.

### 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** or **Security Event**.

## First Party Covers

### 3. Business Interruption Loss and Dependent Business Interruption Loss

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

- a) **Business Interruption Loss, Dependent Business Interruption Loss**; and
- b) **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** and first occurred after the **Retroactive Date**.

### 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** and first occurred after the **Retroactive Date**.

### 5. Cyber Extortion Threat

The **Insurer** will pay for:

- a) **Extortion Expenses**; and
- b) **Extortion Payments**

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

Provided always that one of the **Insured's** directors consents to the payment of such **Extortion Expenses** and/or **Extortion Payments**.

## 6. System Failure

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

- a) **Business Interruption Loss, Dependent Business Interruption Loss;** and
- b) **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**.

## Third Party Covers

### 7. Security and Privacy Liability

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

- a) **Loss** which the **Insured** becomes legally liable to pay including claimants' costs and expenses; and
- b) **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**:

- a) **Civil Fines and Penalties** which the **Insured** becomes legally liable to pay; and
- b) **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**:

- a) **Civil Fines and Penalties** which the **Insured** becomes legally liable to pay; and
- b) **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**:

- a) **PCI-DSS Payments** which the **Insured** becomes legally liable to pay; and
- b) **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**:

- a) **Loss** which the **Insured** becomes legally liable to pay including claimants' costs and expenses; and
- b) **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 of America, the 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 organisation designated as a terrorist organisation by governments of the United States of America, the United Kingdom, European Union members, or the North Atlantic Treaty Organisation or any of its members.

## 2.2 Administrative Error

**Administrative Error** means an accidental, unintentional, 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 unavoidable costs incurred with the prior written consent of the **Insurer** for standard technological advancements included within any newer **Software** of the **Insured** or **Computer System** of the **Insured**, such as increased memory capacity or processing speed.

Provided always that **Betterment** does not include costs to upgrade **Software** 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** or **Security 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** or **Security 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** or **Security 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** or **Security Event**
- d) notify any individual(s) or applicable regulatory agency(ies) of the breach of any **Personal Information** arising from any **Privacy Event** or **Security 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)
- e) 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** or **Security Event** to protect or restore the **Insured's** business reputation in response to negative publicity following such event
- f) 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
- g) 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
- 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 of 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
- c) calculated in accordance with the provisions of clause 5.4 (Valuation of **Business Interruption Loss**).

Provided always that **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**, cryptocurrency, 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:

- i) 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
- ii) any government, quasi-government or government agency (including the International Monetary Fund), other regulatory agency, body or funding entity or financial stability fund:
  - 1) assuming the voting control of a shareholders' meeting of the **Policyholder**
  - 2) dismissing the Board of Directors of the **Policyholder**; or
  - 3) appointing a management committee of the **Policyholder**

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 Circumstances

**Circumstances** means an incident, occurrence, fact, matter, act or omission that may give rise to a **Claim, Security Event, Privacy 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 Agreements 6. Regulatory Proceeding, 7. General Data Protection Regulatory Proceeding and 8. 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 backup 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 Computer 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, email, 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 utilise any **Personal Information** taken as a result of the **Unauthorised 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 Agreements 5. Security and Privacy Liability and 9. Internet Media Liability
- b) a **Regulatory Proceeding** in respect of Insuring Agreement 6. Regulatory Proceeding
- c) a **GDPR Proceeding** in respect of Insuring Agreement 7. General Data Protection Regulation Proceeding; or
- d) a **PCI-DSS Claim** in respect of Insuring Agreement 8. 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 Dependant Business Interruption Loss

**Dependent 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** of a **Computer System** operated by a **Service Provider**; 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 **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**
- 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**.

## 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** to:

- a) restore, replace or reconstitute **Digital Assets**, including from written records or audio recordings; or
- b) 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 Wrongful Act

**Electronic Publishing Wrongful Act** 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, and committed in the course of **Electronic Publishing Activity** of the **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 Activities** on the **Insured's** behalf.

### 2.37 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**.

### 2.38 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.

### 2.39 Event

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

### 2.40 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) of the **Schedule.**

### 2.41 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.**

### 2.42 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.**

### 2.43 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.**

### 2.44 Financial Market Infrastructure

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

### 2.45 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.**

### 2.46 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.

### 2.47 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.

### 2.48 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**.

## 2.49 Insured

**Insured** means:

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

## 2.50 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**.

## 2.51 Insurer

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

## 2.52 Internet Services

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

## 2.53 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.

## 2.54 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.

## 2.55 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 minimise, avoid or mitigate a **Security Event**; or
- c) 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
- d) an actual and measurable interruption, suspension, failure, degradation or delay in the performance of a **Computer System** of a **Service Provider**; or
- e) a voluntary shutdown of a **Computer System** of a **Service Provider** when such action is taken to minimise, avoid or mitigate a **Security Event**.

## 2.56 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**.

## 2.57 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 Agreements 6. Regulatory Proceedings and 7. 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**.

## 2.58 Malware

**Malware** means any unauthorised, 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.

## 2.59 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.

## 2.60 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.

## 2.61 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.

## 2.62 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.

## 2.63 Nuclear Reaction

**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.

## 2.64 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**.

## 2.65 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.

## 2.66 Period of Restoration

**Period of Restoration** means the period from the date and time that the **Insured** is first impacted after its **Computer System** (or with respect to **Dependent Business Income Loss**, that the **Insured** is first impacted after the **Computer System** operated by a **Service Provider**) 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 (1) if the **Schedule** provides for a **Waiting Period**, the **Period of Restoration** will commence only once the **Waiting Period** has expired and (2) in no event will the **Period of Restoration** exceed 180 days.

## 2.67 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**.

## 2.68 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.

## 2.69 Policyholder

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

## 2.70 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 of America 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.

## 2.71 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 the **Insured's Service Provider**; or
  - ii) corporate information in the **Insured's** care, custody or control or 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**.

## 2.72 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**.

## 2.73 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**.

## 2.74 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.

## 2.75 Property

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

## 2.76 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.

## 2.77 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**.

## 2.78 Retroactive Date

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

## 2.79 Schedule

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

## 2.80 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**.

## 2.81 Security Event

**Security Event** means:

- a) the **Unauthorised Access** to
- b) introduction of **Malware** into; or
- c) **Denial of Service Attack** upon

the **Computer System** of the **Insured** or **Service Provider**.

## 2.82 Security Wrongful Act

**Security 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 **Security Event**.

### 2.83 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**.

**Service Provider** does 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.

### 2.84 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**.

### 2.85 Subcontractor

**Subcontractor** means any independent consultant or subcontractor other than an **Employee** who provides the **Insured** with services under a written or electronic contract.

**Subcontractor** does not mean **Service Provider**.

### 2.86 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.

### 2.87 System Failure

**System Failure** means the measurable, material, unintentional and unplanned outage, suspension or failure of the **Computer System** of the **Insured** or, with respect to **Dependent Business Interruption Loss**, the **Computer System** controlled by a **Service Provider**, however caused.

**System Failure** does not include:

- a) **Administrative Error**
- b) **Security Events**
- c) **Privacy Events**
- d) voluntary shutdown.

### 2.88 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**.

### 2.89 Territorial Limits

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

## 2.90 Title

**Title** means the name of an intangible artistic work, including, but not limited to, a book, play or white paper.

## 2.91 Unauthorised Access

**Unauthorised Access** means access to or a use of a **Computer System** by an unauthorised person or persons or by an authorised person or persons in an unauthorised 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 pre-emptive 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 pre-emptive 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, monopolisation, 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 of America 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 (1) within the jurisdiction of or (2) 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 authorisation 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 authorisation 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 Insured's 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
- 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**.

Provided also that this exclusion does not apply to any claim or loss arising out of a violation of **GDPR**

### 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 2.35 a) or a covered **Claim** for false light invasion of privacy under Subsection 2.35 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
- d) any covered **Claim** for misappropriation of ideas under implied contract under Subsection 2.36 b)

### 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 - 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 organisation
- 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 2.35 g).

### 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:

- i) any act, error or omission or **Wrongful Act** or **Circumstance**:
    - 1) 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**
    - 2) that was notified by the **Insured** under any other insurance policy prior to inception of this Policy
    - 3) that was disclosed or ought reasonably to have been disclosed on the **Insured's** latest proposal for this coverage; or
  - ii) 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**
- 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 and 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**.

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**

### 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 infringes 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.

# 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 Person's** from the date of such acquisition or formation provided that:

- a) such **Subsidiary Company** is domiciled within the European Economic Area or the United Kingdom
- b) such **Subsidiary Company** 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) pays any additional premium when due.

Any cover provided for any **Subsidiary Company** formed or acquired during the **Policy Period** and its **Insured Person's** 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 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

### 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**, the **Insured** will:
  - i) as soon as reasonably possible, but in no event later than 60 days after the end of the **Policy Period**, notify the **Insurer** or the **Breach Response Service** emergency number set out in Section 6 of the **Schedule** and provide the **Insurer** with written notice as soon as reasonably possible
  - 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** or the **Breach Response Service** emergency number set out in Section 6 and give the **Insurer** written notice as soon as reasonably possible
  - 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** or the **Breach Response Service** emergency number set out 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.

## 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.

If the **Insurer** recommends a settlement of any **Claim** acceptable to the claimant and the **Insured** refuses to consent to such settlement, then, subject to the applicable **Limit of Liability**, the **Insurer's** liability for such **Claim** shall not exceed:

- i) the amount for which such **Claim** could have been settled by us plus **Defence Costs** up to the date the **Insured** refused to settle such **Claim**; and
- ii) 70% of any:
  - 1) **Loss**; and
  - 2) **Defence Costs**, in excess of Subparagraph i) above incurred in such **Claim**. The remaining **Loss** and **Defence Costs** shall be borne by, or on behalf of, the **Insured** at its own risk.

## 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.

## 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:

- a) makes a fraudulent or exaggerated claim under this Policy; or
- b) uses fraudulent means or devices including the submission of false or forged documents in support of a claim whether or not the claim is itself genuine; or
- c) makes a false statement in support of a claim whether or not the claim is itself genuine; or
- d) submits a claim under this Policy for loss or damage which the **Insured** or anyone acting on the **Insured's** behalf or in connivance with the **Insured** deliberately caused; or
- e) realises after submitting what the **Insured** reasonably believed was a genuine claim under this Policy and then fails to tell the **Insurer** that the **Insured** has not suffered any loss or damage; or
- f) suppresses information which the **Insured** knows would otherwise enable the **Insurer** to refuse to pay a claim under this Policy

the **Insurer** will be entitled to refuse to pay the whole of the claim and recover any sums that the **Insurer** has already paid in respect of the claim.

The **Insurer** may also notify the **Insured** that the **Insurer** will be treating this Policy as having terminated with effect from the date of any of the acts or omissions set out in clauses a) to f) of this condition.

If the **Insurer** terminates this Policy under this condition the **Insured** will have no cover under this Policy from the date of termination and not be entitled to any refund of premium.

If any fraud is perpetrated by or on behalf of an insured person and not on behalf of the **Insured** this condition should be read as if it applies only to that insured person's claim and references to this Policy should be read as if they were references to the cover effected for that person alone and not to the Policy as a whole.

### 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 **Insured's** 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 cooperation 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 and 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 Application of Exclusions

The following exclusions under 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:

- a) Terrorism
- b) **War, Cyber Operation** and **Cyberwarfare**
- c) Critical Infrastructure Failure.

## 6.2 Arbitration

The **Insured** and the **Insurer** shall submit any dispute arising out of or relating to this Policy to a binding arbitration proceeding as described in this Section (hereinafter "arbitration"). The seat of the arbitration tribunal shall be in London. Either the **Insured's** or the **Insurer** may initiate the arbitration process by sending written notice to the other party.

Unless otherwise agreed by the parties, any such binding arbitration shall be governed by ICC arbitration rules. In any such arbitration, the **Insured** collectively and the **Insurer** shall each select an independent arbitrator and those two arbitrators shall select a third independent arbitrator. A decision by a majority of the three arbitrators shall be final and binding upon all **Insured's** and the **Insurer**. The parties to the arbitration process shall share equally the fees and expenses of the third appointed arbitrator as well as other common expenses of the arbitration process, although each party shall pay the fees and expenses of such party's appointed arbitrator.

## 6.3 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 organisation, made by the governments of the United States of America, the 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.

## 6.4 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 **Financial 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**.

## 6.5 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.

## 6.6 Cancellation and Non-Renewal

### Cancellation

In case of non-payment of premium this Policy may be cancelled by the **Insurer** by giving the **Policyholder** thirty (30) days written notice of cancellation. This Policy will be cancelled retroactively at the date the premium was due. The **Policyholder** will be entitled to a return of premium in respect of the unexpired portion of the **Policy Period**.

This Policy may be cancelled by the **Policyholder** by giving the **Insurer** thirty (30) days written notice of cancellation starting from the date and time from which the policy will cease to be effective. The **Policyholder** will be entitled to a return of premium calculated on a pro rata basis in respect of the remaining portion of the **Policy Period** unless a **Claim** or **Loss** has been notified to the **Policyholder** before the date and time of cancellation.

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

### Non-Renewal

This Policy lapses automatically on the date of expiration.

### 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 Person's** 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**.

## 6.7 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.

## 6.8 Currency

All premiums, sub-limits, **Deductibles**, **First Party Loss** or **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 Zurich or, in the currency specified in the **Schedule**, at the rate of exchange published by Bloomberg at the date the **First Party Loss** or **Loss** is to be paid (or if not published on such date the next publication date).

## 6.9 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 5.6) 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.

## 6.10 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, **Insured's** 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 **Insured's**.
- 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, applies to all **Insured's** 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 specified 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 specified 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 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 and the non-disclosure or misrepresentation by the **Insured** is proven by the **Insurer** to be deliberate or reckless the **Insurer** may from the relevant date specified in clause d):
  - i) treat this Policy as if it had not existed; and
  - ii) not return the premium paid by the **Insured**.

- c) If the **Insured** does not comply with clause a) of this condition and the non-disclosure or misrepresentation is not deliberate or reckless the cover, meaning this Policy or the changes made to it, may be affected from the relevant date in clause d) 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 the cover the **Insurer** will have the option to treat the cover as if it had not existed and repay the premium paid for such cover; or
  - 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; and/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.
- d) Clauses b) and c) apply with effect from inception, renewal or the date of the changes, depending on when the non-compliance occurred. The **Insurer** may also recover any claims payments which have already been made to the extent that the cover under which such payments were made is being treated as if it did not exist or as if it had been subject to different terms under which the claim would not have been payable.

## 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.

## 6.15 Territorial

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.

**Zurich Insurance Company Ltd**

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