



CyberRiskConnect

Privacy, Security and Technology Insurance

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CyberRiskConnect

Privacy, Security and Technology Insurance

POLICY FORM

SECTION I.A. OF THIS POLICY IS A THIRD PARTY LIABILITY COVERAGE SECTION AND APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED IN ACCORDANCE WITH THE POLICY. CLAIM EXPENSES ARE WITHIN AND REDUCE THE LIMIT OF LIABILITY. PLEASE REVIEW THE POLICY CAREFULLY.

Words and phrases in blue are defined in Section IV. [Definitions](#).

In consideration of the premium paid by the [Named Insured](#), in reliance upon the [application](#), and subject to the Declarations, limitations, conditions, provisions and other terms of this Policy, the [Insurer](#) and the [Insured](#) agree, with respect to the Insuring Agreements purchased, as stated on the Declarations page, as follows:

I. Insuring Agreements

A. Third Party Liability Coverages

The [Insurer](#) will pay on behalf of an [Insured claim expenses](#) and [damages](#) in excess of the applicable retention that the [Insured](#) is legally obligated to pay as the result of a [claim](#) first made against the [Insured](#) during the [policy period](#) or Extended Reporting Period (if applicable) alleging a:

1. Technology Products and Services
[technology wrongful act](#);
2. Professional Services
[professional services wrongful act](#);
3. Media
[media wrongful act](#);
4. Privacy and Cyber Security
[privacy and security wrongful act](#),

committed by the [Insured](#), a [rogue employee](#), an [outsourced provider](#), or by a third party for whose [third party wrongful act](#) an [Insured](#) is legally responsible.

5. Privacy Regulatory Defense, Awards and Fines

The [Insurer](#) will pay on behalf of an [Insured claim expenses](#) and [regulatory damages](#) in excess of the applicable retention that the [Insured](#) is legally obligated to pay as the result of a [privacy regulatory action](#) first made against the [Insured](#) during the [policy period](#) or Extended Reporting Period (if applicable) alleging a [privacy and security wrongful act](#) committed by the [Insured](#), a [rogue employee](#), an [outsourced provider](#), or by a third party for whose [privacy and security wrongful act](#) the [Insured](#) is legally responsible.

B. First Party Coverages

1. Business Interruption and Extra Expenses

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

- (a) **loss of business income** after the **waiting period**; and
- (b) **extra expenses** in excess of the applicable retention,

during the **period of restoration** that the **Insured** incurs resulting from a **cyber security breach** directly causing a total or partial interruption or deterioration in the **Insured's** business operations.

2. Data Recovery

The **Insurer** will pay or reimburse the **Insured** for **data recovery expenses** in excess of the applicable retention that the **Insured** incurs directly resulting from a **cyber security breach**.

3. Cyber-Extortion and Ransomware

The **Insurer** will pay or reimburse the **Insured** for **cyber-extortion expenses** in excess of the applicable retention that the **Insured** incurs directly resulting from and in response to a **cyber-extortion threat**.

C. Data Breach Response and Crisis Management Coverage

The **Insurer** will pay or reimburse the **Insured** for **data breach response and crisis management costs** in excess of the applicable retention that the **Insured** incurs for a continuous eighteen (18) month period resulting from a **data breach** or **cyber security breach**. The payment period begins when the **data breach** or **cyber security breach** is reported to the **Insurer** in accordance with Section VI. Notice.

D. Application of Coverage

1. The coverage provided under Insuring Agreements I.A. Third Party Liability Coverages shall apply if and only if:

- (a) the first **third party wrongful act** or **related matter** occurs on or after the **retroactive date**, as stated in Item 3. on the Declarations Page, and prior to the Policy expiration date, as stated in Item 2. on the Declarations page;
- (b) prior to the effective date of the Policy, as stated in Item 2. on the Declarations Page, or that of the first policy issued and continuously renewed by the **Insurer**, of which this Policy is a renewal, no **executive officer** knew or could have reasonably foreseen that such **third party wrongful act** or **related matter** did or likely would result in a **claim**;
- (c) the **claim** is reported in accordance with Section VI. Notice; and
- (d) notice of such **third party wrongful act** or **related matter** alleged or contained in any **claim** or in any circumstance has not been provided by the **Insured** and accepted by the applicable insurer under any prior policy of which this Policy is a renewal or replacement, or any subsequent policy, irrespective of whether such prior or subsequent policy was issued by the **Insurer** or any other entity.

2. The coverage provided under Insuring Agreement I.B. First Party Coverages and Insuring Agreement I.C. Data Breach Response and Crisis Management Coverage shall apply if and only if:

- (a) an **executive officer** first discovers and/or becomes aware of such **first party incident** or **related matter** during the **policy period**;
- (b) the **first party incident** is reported in accordance with VI. Notice; and

- (c) notice of such **first party incident** or **related matter** has not been provided by an **Insured** and accepted by the applicable insurer under any prior policy of which this Policy is a renewal or replacement, or any subsequent policy, irrespective of whether such prior or subsequent policy was issued by the **Insurer** or any other entity.

II. Defense and Settlement

A. Defense

The **Insurer** has the right and duty to defend any **claim** under insuring agreement I.A. Third Party Liability Coverages made against an **Insured** even if the allegations in the **claim** are groundless, false or fraudulent. The **Insurer** will select and appoint defense counsel.

B. Settlement

The **Insurer** has the right with the prior written consent of the **Insured**, such consent not to be unreasonably withheld, to settle a **claim**. If the **Insured refuses** to consent to any such settlement recommended by the **Insurer** and agreed to by the claimant, then the **Insurer's** duty to defend ends and the **Insurer's** limit of liability for such **claim** will not exceed the amount for which the **Insurer** could have settled such **claim** had the **Insured** consented to settlement, plus **claim expenses** incurred up to the time the **Insurer** made its settlement recommendation, plus an additional seventy percent (70%) of **claim expenses** and **damages** incurred by an **Insured** after the **Insurer** had made its settlement recommendation. All such payments by the **Insurer** are subject to Section III. Limit of Liability and Retention.

III. Limit of Liability and Retention

A. Limit of Liability Option

The **Insured** shall elect the Policy's limits to apply on a Combined Limits or Separate Limits basis, as stated on the Coverage Schedule in Item 3. on the Declaration Page.

1. Combined Limits

- (a) If the **Insured** elects Combined Limits, then the Policy's Combined Policy Aggregate Limit, as stated in Item 3. Coverage Schedule on the Declarations Page, is the **Insurer's** maximum liability for **loss** under all Insuring Agreements combined, regardless of the number of **claims**, or individuals or entities making **claims**. Upon exhaustion of such limit of liability, the **Insurer** will not be liable to pay any further **loss** with respect to this Policy.
- (b) If a **sublimit** with respect to an Insuring Agreement is stated in Item 3. on the Declarations Page, then such **sublimit** will be the **Insurer's** maximum liability for **loss** with respect to such Insuring Agreement. Upon exhaustion of such **sublimit**, the **Insurer** will not be liable to pay any further **loss** with respect to the coverage provided by the subject Insuring Agreement. Each **sublimit** will be part of, and not in addition to, this Policy's Combined Policy Aggregate Limit of Liability and will in no way serve to increase or supplement such limit of liability. All payments made under a **sublimit** will reduce such limit of liability.

2. Separate Limits

If the **Insured** elects Separate Limits, then the Policy's:

- (a) Third and First Party Aggregate Limit, as stated in Item 3. on the Declarations Page, is the **Insurer's** maximum liability for all **damages, claim expenses, regulatory damages, loss of business income, extra expenses, data recovery expenses, and cyber-extortion expenses** for all Third Party Liability Coverages and First Party Coverages, regardless of the number of **Insureds, claims, first party incidents**, or individuals or entities making **claims**. If a **sublimit** with respect to an Insuring Agreement is stated in Item 3. on the Declarations Page, then such **sublimit** will be the **Insurer's** maximum liability for **loss** with respect to such Insuring Agreement. Upon exhaustion of such **sublimit**, the **Insurer** will not be liable to pay any further **loss** with respect to the coverage provided by the subject Insuring Agreement. Each **sublimit** will be part of, and not in addition to, the Policy's Third Party Liability and First Party Aggregate Limit of Liability and will in no way serve to increase or supplement such limit of liability. All payments made under a **sublimit** will reduce such limit of liability.
- (b) Data Breach Response and Crisis Management Aggregate Limit, as stated in Item 3. on the Declarations Page, is the **Insurer's** maximum liability for all **data breach response and crisis management costs** for Data Breach Response and Crisis Management Coverage, regardless of the number of **data breaches**.

3. Exhaustion of Limit

(a) Upon exhaustion of the:

1. Combined Policy Aggregate Limit of Liability under the Combined Limits option; or
2. Third Party and First Party Aggregate Limit of Liability under the Separate Limits option; and
3. Data Breach Response and Crisis Management Aggregate Limit of Liability under the Separate Limits option; or

- (b) after the **Insurer** has deposited or escrowed any amounts remaining in the Policy's applicable aggregate limit of liability with a court of competent jurisdiction, the **Insurer** will not be liable to pay for any further **loss** under the Policy.

B. Retentions

1. Combined Limits

- (a) The **Insurer** is liable only for that portion of **damages, claim expenses, regulatory damages, and first party costs** (not including **loss of business income**) in excess of the applicable Insuring Agreement's retention amount, as stated in Item 3. on the Declarations page. If more than a single retention applies to a **claim** and/or **first party incident**, then the **Insured** is responsible for paying the highest applicable retention. The retention will be borne entirely by the **Insured** alone and not by the **Insurer**.
- (b) Solely with respect to insuring agreement I.B.1.(a) Business Interruption and Extra Expenses, the **Insurer** is liable only for **loss of business income** in excess of the **waiting period**.

2. Separate Limits

- (a) The **Insurer** is liable only for that portion of **damages, claim expenses, regulatory damages, extra expenses, data recovery expenses and cyber-extortion expenses** that is in excess of the applicable Insuring Agreement's retention amount, as stated in Item 3. on the Declarations page. If more than a single retention applies to a **claim** and/or **first party incident**, then the **Insured** is responsible for paying the highest applicable retention. The retention will be borne entirely by the **Insured** alone and not by the **Insurer**.
- (b) With respect to insuring agreement I.C. Data Breach Response and Crisis Management Coverage a separate retention will apply and the **Insurer** is liable only for that portion of any **data breach response and crisis management costs** directly resulting from a **data breach** or **cyber security breach**.
- (c) Solely with respect to insuring agreement I.B.1.(a) Business Interruption and Extra Expenses, the **Insurer** is liable only for **loss of business income** in excess of the **waiting period**.

C. Related Matters and Related Losses

1. Related Third Party Wrongful Acts

A **claim** resulting from a **related matter** will be treated as a single **claim** first made against the **Insured** at the time the first such **related matter** occurred, irrespective of whether such **related matter** occurred prior to or during the **policy period**, and irrespective of the number of **related matters**, and the identity or number of **Insureds** involved.

2. Related First Party Incidents

- (a) A **related matter** involving a **first party incident** (other than a **cyber-extortion threat**) will be considered a single **first party incident** which shall be deemed to have been discovered on the date on which the earliest such **first party incident** was discovered by an **executive officer**.
- (b) All **related matters** involving **cyber-extortion threats** will be considered a single **cyber-extortion threat** first occurring on the date the first such **cyber-extortion threat** occurred.

3. Related Loss

All **loss** will be considered a single **loss** occurring at the time the first **related matter** giving rise to such **loss** first occurred or was first discovered, irrespective of the number of **related losses**, and the identity or number of **Insureds** involved.

IV. Definitions

A. Application

The signed application, information, statements, representations, attachments, exhibits, and other material submitted to the [Insurer](#) in connection with the underwriting of this Policy.

B. Breach Response Providers

The [Insurer's](#) pre-approved panel of breach response vendors.

C. Claim

1. A written demand for monetary damages, services, or injunctive or other non-monetary relief;
2. A civil proceeding for monetary damages, services, or injunctive or other non-monetary relief that is commenced by service of a complaint or similar pleading, including any appeal thereof;
3. A mandatory arbitration or other mandatory alternative dispute resolution proceeding for monetary damages, services, or injunctive or other non-monetary relief commenced by a written demand, including any appeal thereof, or a non-mandatory arbitration or other non-mandatory alternative dispute resolution proceeding to which the [Insurer](#) has consented in writing;
4. Solely with respect to insuring agreement I.A.5. Privacy Regulatory Defense, Awards and Fines, a [privacy regulatory action](#); or
5. A request to toll or waive any applicable statute of limitations.

D. Claim Expenses

1. Reasonable and necessary fees for the defense of a [claim](#) defended by an attorney in accordance with Section II. Defense and Settlement, as well as other reasonable and necessary fees, costs and expenses that result from the investigation, adjustment, negotiation, arbitration, defense or appeal of a [claim](#); and
2. Premiums on appeal bonds, attachment bonds or similar bonds. Provided, however, the [Insurer](#) is not obligated to apply for or furnish any such bond.

E. Confidential Business Information

Third party information, whether printed or digital, encrypted or unencrypted, in the care, custody or control of an [Insured](#) or [outsourced provider](#), including a trade secret, formula, pattern, compilation, program, device, method, technique, or process, that derives independent economic value, actual or potential, from not being generally known or readily ascertainable through appropriate means by other persons and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

F. Consumer Redress Amount

That sum of money that the [Insured](#) is legally obligated to deposit in a fund for the payment of consumer claims as the result of a [privacy regulatory action](#).

G. Coverage Sections

Insuring agreements: I.A. Third Party Liability Coverages, I.B. First Party Coverages, and I.C. Data Breach Response and Crisis Management Coverage.

H. Cyber-extortion Expenses

1. Reasonable and necessary money, digital currency, property, or other consideration surrendered as payment by or on behalf of the **Insured Company**, to which the **Insurer** has consented, such consent not to be unreasonably withheld, in order to prevent, limit or respond to a **cyber-extortion threat**; and
2. Reasonable and necessary costs charged by:
 - (a) **breach response providers**; or
 - (b) qualified third parties with the prior consent of the **Insurer**, to conduct an investigation and advise the **Insured** how to respond to and resolve a **cyber-extortion threat**.

I. Cyber-extortion Threat

A threat made by a third party or **rogue employee** demanding payment in consideration for the elimination, mitigation or removal of the threat intended to:

1. Disrupt the **network** to impair business operations of the **Insured Company**;
2. Alter, damage, or destroy data stored on the **network**;
3. Use the **network** to generate and transmit malware to third parties;
4. Deface the **Insured Company's** website;
5. Access or release data, including **personally identifiable information**, **protected health information**; **confidential business information**, stored or previously stored on the **network**;
6. Refuse to return data stolen from the **network**; or
7. Prevent access to the **network** or data by using encryption and withholding the decryption key.

J. Cyber Security Breach

Any unauthorized: access to, use or misuse of, modification to the **network**, and/or denial of **network** resources by cyber-attacks perpetrated by a third party or **rogue employee** through any electronic means, including malware, viruses, worms, and Trojan horses, spyware and adware, zero-day attacks, hacker attacks and denial of service attacks.

K. Damages

Compensatory damages resulting from a judgment, award or settlement agreement, including pre-judgment and post-judgment interest, which the **Insured** becomes legally obligated to pay as a result of a **claim**, and punitive, exemplary damages, and multiple damages, if the insuring of such damages is permitted under the laws and public policy of the jurisdiction under which this Policy is construed, which the **Insured** becomes legally obligated to pay as a result of a **claim**. Enforceability of punitive, exemplary damages and multiple damages will be governed by the applicable law that most favors affirmative coverage for such damages.

Damages do not include:

1. The return of any fees paid to an **Insured** or the offset of any future fees to be charged by or owed to an **Insured**;
2. Lost investment income;
3. Costs incurred by an **Insured** to withdraw or recall **technology products**, including products that incorporate an **Insured's technology products**, **technology services**, or **professional services**;
4. Costs incurred by an **Insured** to correct, re-perform or complete any **technology services** or **professional services**;

5. Costs incurred by an **Insured** or by a third party at the direction of the **Insured** to remediate, repair, replace, restore, modify, update, upgrade, supplement, correct, or otherwise improve a **network** to a level of functionality beyond that which existed prior to a **cyber security breach**;
6. Civil or criminal fines or penalties or compliance violation remedies imposed on an **Insured**; provided, however, civil fines or penalties shall constitute damages under insuring agreement I.A.5. Privacy Regulatory Defense, Awards and Fines;
7. Liquidated damages in excess of an **Insured's** liability that otherwise results from a **third party wrongful act**;
8. The monetary value of an electronic fund transfer or transaction that is lost or diminished;
9. Any amounts incurred prior to the **Insured** providing notice of a **claim** pursuant to the terms of this Policy;
10. The value of non-monetary relief, including any amount attributable to or arising therefrom; or
11. Royalty or licensing fees or payments.

L. Data Breach

Any actual or reasonably suspected theft, **loss**, or unauthorized acquisition, access to, or disclosure of data or hardware containing data that has or may compromise the security, confidentiality and/or integrity of **personally identifiable information**, **protected health information**, or **confidential business information**.

M. Data Breach Reporting Requirement

Any provision in a law, statute or regulation, domestic or foreign, that requires the **Insured** to provide notification to affected persons of a suspected breach of such person's **personally identifiable information** or **protected health information**.

N. Data Breach Response and Crisis Management Costs

1. Reasonable and necessary costs charged by **breach response providers** to:
 - (a) determine the legal applicability of and actions necessary to respond to a **data breach reporting requirement**;
 - (b) perform computer forensics to determine the existence, cause and scope of a **data breach** or **cyber security breach**;
 - (c) notify individuals of a **data breach**, either those who are required to be notified pursuant to a **data breach reporting requirement** or on a voluntary basis;
 - (d) operate a call center to manage **data breach** inquiries;
 - (e) provide credit or identity monitoring and identity protection and restoration services or any similar service for those individuals whose **personally identifiable information** was or may have been breached;
 - (f) provide medical identity restoration for those individuals whose **protected health information** was or may have been breached; or
 - (g) minimize reputational harm to the **Insured Company** by hiring a public relations or crisis communications firm;

2. Reasonable and necessary costs charged by any qualified provider that is not a [breach response providers](#) so long as the qualified provider:
 - (a) is pre-approved in writing by the [Insurer](#); or
 - (b) provides comparable services to those enumerated in 1.(a) through 1.(g) above and whose rate shall not exceed the rate the [Insurer](#) has pre-negotiated with the [breach response providers](#); and
3. Costs charged by a PCI Forensics Investigator to perform forensics to determine the existence, cause and scope of a breach or suspected breach of cardholder data.

O. Data Recovery Expenses

Reasonable and necessary costs incurred by the [Insured Company](#) with the prior written consent of the [Insurer](#), such consent not to be unreasonably withheld, to:

1. Determine whether damaged or destroyed computer programs, software or electronic data can be replaced, recreated, restored or repaired; and
2. Replace, recreate, restore or repair such damaged or destroyed computer programs, software or electronic data residing on the [network](#) to substantially the form in which it existed immediately prior to a [cyber security breach](#).

P. Domestic Partner

Any spouse or any person qualifying as a domestic partner under federal, state, foreign, or other law (including common law), statute, or regulation, or under the [Insured Company's](#) employee benefit plan.

Q. Executive Officer

Any duly elected or appointed Chief Executive Officer, Chief Financial Officer, Chief Information Officer, Chief Privacy Officer, Chief Security Officer, Chief Information Security Officer, Chief Technology Officer, Risk Manager, General Counsel and in-house attorney designated to be in charge of litigation, or the functional equivalent of any of the foregoing, of the [Insured](#).

R. Extra Expenses

Reasonable and necessary expenses, including payroll, in excess of the [Insured's](#) normal operating expenses which are incurred to reduce or avoid [loss of business income](#) and/or restore business operations.

S. First Party Costs

Any [loss of business income](#), [extra expenses](#), [data recovery expenses](#), [cyber-extortion expenses](#), and [data breach response and crisis management costs](#).

First Party Costs do not include any amounts incurred prior to the [Insured](#) providing notice of the [first party incident](#).

T. First Party Incident

A [cyber security breach](#), [cyber-extortion threat](#), or [data breach](#).

U. Insured

The [Insured Company](#); and

1. Any past or present employee, director, officer, member, principal, partner, trustee, leased, temporary, seasonal employee/worker and volunteer of the [Insured Company](#) acting in their capacity and in accordance with their authority as such;

2. Any independent contractor performing services for the **Insured Company** under a written contract but solely with respect to such independent contractor's duties on behalf and for the benefit of the **Insured Company**; and
3. With respect to insuring agreement I.A.3. Media, any person or entity that disseminates **matter** on behalf and for the benefit of an Insured where, prior to such dissemination, an Insured has agreed in writing to include such person or entity as an Insured under the Policy.
4. Any entity that an **Insured Company** is required by written contract to be insured under the Policy, but only for a **third party wrongful act** committed by the **Insured Company** or any persons under Definition IV.U. Insured paragraph 1. and Definition IV.U. Insured paragraph 2.;

Provided, however a **rogue employee** is not an Insured pursuant to this definition.

V. Insured Company

The **Named Insured** and any **subsidiary**.

W. Insurer

The insurance company stated on the Declarations Page.

X. Loss

All **damages**, **claim expenses**, **regulatory damages**, and **first party costs**.

Y. Loss of Business Income

Net income (net profit or net loss before income taxes) that could have reasonably been earned or net loss that could have reasonably been avoided, including the costs of retaining a forensic accountant to determine such amount. Such forensic accountant will be selected by the **Insurer**.

A loss of business income calculation is based upon the amount of actual loss of business income the **Insured Company** sustains per hour during the **period of restoration**.

Z. Management Control

1. Ownership interests representing more than fifty percent (50%) of the voting, appointment or designation power of a company for the selection of a majority of (i) the board of directors of a corporation, (ii) the management committee members of a joint venture or partnership, or (iii) the members of the management board of a limited liability company; or
2. The right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an entity, to select, appoint or designate a majority of (i) the board of directors of a corporation, (ii) the management committee members of a joint venture or partnership, or (iii) the members of the management board of a limited liability company.

AA. Matter

The content of communication, including language, data, facts, fiction, music, photographs, images, artistic expression, or visual or graphical materials. Provided, however, matter does not include **technology products** or products or services described, illustrated or displayed in matter.

BB. Media Wrongful Act

Any of the following resulting from the **Insured** acquiring, blogging, broadcasting, collecting, disseminating, distributing, editing, exhibiting, gathering, obtaining, posting, producing, publishing, releasing, researching, recording, tweeting or uttering, **matter** through traditional and/or digital methods, including, cable television, radio, movie and music studios, public speaking, newspapers, magazines, books and print publications, website, apps, CD-ROMs and DVDs:

1. Libel, slander, or any other form of defamation or harm to the character or reputation of any person or entity, including product disparagement or trade libel;
2. Copyright infringement or misappropriation of property rights, information or ideas or dilution or infringement of title, slogan, trademark, trade dress, logo, trade name, service mark or service name;
3. Common law unfair competition or unfair trade practices alleged as a direct result of Definition IV.BB. Media Wrongful Act paragraph 1. and Definition IV.BB. Media Wrongful Act paragraph 2.;
4. Invasion or infringement of the right of privacy or publicity, including the torts of intrusion upon seclusion, publication of private facts, false light, and misappropriation of name or likeness;
5. Infliction of emotional distress or mental anguish;
6. False arrest, detention or imprisonment, harassment, trespass, wrongful entry or eviction, eavesdropping, or other invasion of the right of private occupancy; or
7. Plagiarism, piracy, or misappropriation of ideas under implied contract.

CC. Named Insured

The entity stated in Item 1. on the Declarations Page.

DD. Network

A connected system of computing hardware, software, firmware and associated electronic components and mobile devices, including industrial control systems and SCADA systems (Supervisory control and data acquisition systems) or other industrial IT, under the ownership, operation or control of, or leased by, an **Insured Company**.

EE. Outsourced Provider

Any third party, including a cloud service provider, to which an **Insured** has contracted to provide a business process on behalf and for the benefit of an **Insured**.

FF. Period of Restoration

1. Solely with respect to **loss of business income**, that period of time that begins at the end of the **waiting period** and continues until the **Insured Company's** operations are restored to the condition that existed immediately prior to the **cyber security breach**; and
2. Solely with respect to **extra expenses**, that period of time that begins after a **cyber security breach** has directly caused a total or partial interruption or deterioration in the **Insured's** business operations and continues until the **Insured Company's** operations are restored to the condition that existed immediately prior to the **cyber security breach**.

GG. Personally Identifiable Information

Information, whether printed or digital, encrypted or unencrypted, in the care, custody or control of an **Insured** or **outsourced provider**, that alone or in conjunction can be used to uniquely identify an individual.

HH. Policy Period

The period of time stated in Item 2. on the Declarations Page, beginning on the effective date and expiring on the date of termination, expiration or cancellation of this Policy, whichever is earliest.

II. Pollutants

Any substance exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances include but are not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, nuclear materials, nuclear waste, asbestos, including materials to be recycled, reconditioned, or reclaimed. Pollutants shall also mean any air emission, odor, waste water, oil or oil products, lead or lead products, latex infectious or medical waste, noise, dust, fibers, germs, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi) and electric or magnetic or electromagnetic field.

JJ. Privacy and Security Wrongful Act

Any:

1. Loss, theft or failure to protect, or unauthorized acquisition of [personally identifiable information](#), [protected health information](#), or [confidential business information](#);
2. Violation of any law, statute or regulation governing the authenticity, availability, confidentiality, storage, control, disclosure, integrity, or use of [personally identifiable information](#) or [protected health information](#);
3. Violation of a [data breach reporting requirement](#);
4. Failure to reasonably implement privacy or security practices required by law or regulations;
5. Failure to prevent a [cyber security breach](#) that results in:
 - (a) the inability of an authorized user to gain access to the [network](#);
 - (b) the malicious addition, alteration, copy, destruction, deletion, disclosure, damage, removal or theft of data residing on the [network](#); or
 - (c) the transmission of malware from the [network](#) to third parties; or
6. Failure to comply with the [Insured Company's](#) privacy policy and/or privacy notice.

KK. Privacy Regulatory Action

A written request for information, civil investigative demand or civil proceeding brought by or on behalf of a governmental or regulatory authority.

LL. Privacy Regulatory Fine

A civil monetary fine or penalty imposed on an [Insured Company](#) by a governmental or regulatory authority.

MM. Professional Services

The services stated in Item 5. on the Declarations Page.

NN. Professional Services Wrongful Act

1. Any of the following in rendering or failing to render [professional services](#):
 - (a) act, error, omission, neglect, negligent misrepresentation, or breach of duty;

- (b) injury to a person arising out of defamation, including libel, slander, or other defamatory or disparaging statements or materials; or
 - (c) infringement of an intellectual property right except as otherwise excluded in Exclusion V.L. Patent and Exclusion V.M. Trade Secrets; or
2. Failure of [professional services](#) to meet any applicable legal or industry standard concerning quality, safety, or fitness for a particular purpose.

OO. Protected Health Information

All protected and individually identifiable health information, whether printed or digital, encrypted or unencrypted, held or transmitted by an [Insured](#) or its business associate, as those terms are defined by HITECH, the Health Insurance Portability and Accountability Act of 1996 Privacy Rule or any amendment thereto, including the Health Information Technology for Economic and Clinical Health Act and final Omnibus Rule issued on January 17, 2013 or any equivalent foreign regulation.

PP. Regulatory Damages

Any [consumer redress amount](#) or [privacy regulatory fine](#).

QQ. Related Loss

A [loss](#) that results or arises from the same, similar, or continuous [claim](#) or [first party incident](#).

RR. Related Matter

1. A [third party wrongful act](#) that is the same, similar or arises from a continuous nexus of facts, circumstances, acts, errors or omissions, whether or not such [third party wrongful act](#) is logically or causally related or connected; or
2. A [first party incident](#) that is the same, similar, or arises from a continuous nexus of facts or circumstances, whether or not such [first party incident](#) is logically or causally related or connected.

SS. Retroactive Date

The applicable date, if any, stated in Item 3. on the Declarations Page for each Insuring Agreement in Section I.A. Third Party Liability Coverages.

TT. Rogue Employee

An employee of the [Insured Company](#) who deliberately acts outside the course and scope of employment and whose intentional conduct results in a [claim](#) or [first party incident](#); provided, however, rogue employee does not include an [executive officer](#).

UU. Sublimit

The applicable amount, if any, stated in Item 3. on the Declarations page for each Insuring Agreement within each [Coverage Section](#).

VV. Subsidiary

1. Any entity over which the [Named Insured](#), directly or indirectly, has or had [management control](#) through or by way of one or more subsidiaries on or before the effective date of the [policy period](#);

2. Any entity in which the **Named Insured** acquires **management control** during the **policy period**, either directly or indirectly, whose gross revenue does not exceed fifteen percent (15%) of the gross revenue of the **Insured Company**; and
3. Any entity of which the **Named Insured** acquires **management control** during the **policy period**, either directly or indirectly, whose gross revenue exceeds fifteen percent (15%) of the gross revenue of the **Insured Company**:
 - (a) however, only for a period of sixty (60) days following the **Named Insured's** direct or indirect ability to exert **management control**; and
 - (b) after such sixty (60) day period if and only if the **Named Insured**: (1) provides the **Insurer** with full particulars of such entity; (2) agrees to remit any additional premium; (3) agrees to any amendments to the Policy relating to such entity and; (4) the **Insurer** agrees to add such entity as a subsidiary by a written agreement and/or endorsement to the Policy;

For purposes of this definition, revenue is measured by the most recent fiscal year prior to the effective date of the Policy.

Notwithstanding the foregoing, coverage afforded by this Policy will apply only to a **third party wrongful act** and a **first party incident** occurring on or after the effective date that the **Insured Company** has obtained **management control** of such subsidiary and prior to the time that such **Insured Company** ceased to have **management control** of such subsidiary unless: (1) The **Insurer** is notified in writing of such change in circumstances prior to the effective date thereof and agrees in writing to provide coverage for **third party wrongful acts** and **first party incidents** occurring on or after such effective date; and (2) The **Insured Company** accepts any special terms, conditions and exclusions and pays any additional premium charge required by the **Insurer**.

WW. Technology Wrongful Act

1. Any of the following in rendering or failing to render **technology services**:
 - (a) act, error, omission, neglect, negligent misrepresentation or breach of duty;
 - (b) injury to a person arising out of defamation, including libel, slander, or other defamatory or disparaging statements or materials;
 - (c) infringement of an intellectual property right except as otherwise excluded in Exclusion V.L. Patent and Exclusion V.M. Trade Secrets; or
2. Failure of **technology products** to perform the intended function or serve their intended purpose; or
3. Failure of **technology services** or **technology products** to meet any applicable legal or industry standard concerning quality, safety or fitness for a particular purpose.

XX. Technology Products

Computer or telecommunications hardware or software products, components or peripherals or electronic products or components, including software updates, service packs and other maintenance releases provided for such products:

1. Created, designed, distributed, manufactured, or sold by or on behalf and for the benefit of an **Insured**; or
2. Leased or licensed by an **Insured** to third parties.

YY. Technology Services

Any computer, cloud computing, information technology, telecommunication, electronic services and any related consulting and staffing services, including data processing, data and application hosting, the provision of managed services, software as a service (SaaS), platform as a service (PaaS), infrastructure as a service (IaaS), network as a service (NaaS), computer systems analysis, computer consulting and training, programming, computer systems installation, management, repair, and maintenance, network design and Internet service.

ZZ. Third Party Wrongful Act

A [technology wrongful act](#), [professional services wrongful act](#), [media wrongful act](#), or [privacy and security wrongful act](#).

AAA. Waiting Period

The number of hours stated in Item 3. on the Declarations page that must elapse prior to commencement of the [period of restoration](#).

V. Exclusions

The Policy does not apply to any **claim** or **first party incident** alleging, arising out of, based upon, or attributable to:

A. Deliberate Acts / Personal Profit

1. dishonest, intentional or knowing wrongful, fraudulent, criminal, or malicious acts, errors, or omissions or willful violations of law, including privacy laws or regulations, by an **Insured**, other than a **rogue employee**;
2. the gaining of any profit, remuneration, or financial or non-financial advantage to which the **Insured** is not entitled,

provided, however, the **Insurer** will provide the **Insured** with a defense of any otherwise covered **claim** and pay any otherwise covered **claim expenses** until there is a final, non-appealable judgment or adjudication in the underlying action or proceeding or a related declaratory judgment, as to such conduct, at which time the **Insured** shall reimburse the **Insurer** for all **claim expenses**. Notwithstanding the foregoing, criminal proceedings are not covered under the Policy regardless of the allegations made against an **Insured**.

For the purposes of determining the applicability of this exclusion, the knowledge or conduct of: (1) A natural person **Insured** will not be imputed to any other natural person **Insured**; and (2) An **executive officer** will be imputed to the **Insured Company**.

B. Bodily Injury and Property Damage

bodily injury, sickness, disease, emotional distress, mental injury, mental tension, mental anguish, pain and suffering, humiliation or shock sustained by any person, including death that results from any of these, or damage to or destruction of any tangible property, including **loss** of use thereof whether or not damaged or destroyed; provided, however, this exclusion will not apply to any otherwise covered **claim** for emotional distress, mental injury, mental tension or mental anguish, pain and suffering, humiliation or shock that directly results from a **third party wrongful act**. For the purposes of this exclusion, "tangible property" shall not include electronic data.

C. Owned Entity

claims made against the **Insured** if, at the time the **third party wrongful act** giving rise to such **claim** was committed:

1. The **Insured** controlled, owned, operated or managed the claimant; or
2. The **Insured** was an owner, partner, director or officer of the claimant;

For the purpose of this exclusion, a ten percent (10%) or more owner of the voting stock of a publicly held corporation, or a forty percent (40%) or more owner of the voting stock of a privately held corporation shall be deemed to control, own, operate or manage any such corporation making such **claim**.

D. Insured v. Insured

claims made against an **Insured** and brought by, or on behalf of an **Insured** or parent company, successor or assignee of an **Insured**; provided, however this exclusion shall not apply to:

1. An **Insured** under Definition IV.U. Insured paragraph 4.; and
2. An otherwise covered **claim** made by any past or present officer, director, member, principal, partner, trustee, employee or leased worker or temporary employee of the **Insured Company**:
 - (a) when the **claim** is made outside of their capacity and pursuant to their authority as such; or
 - (b) against an **Insured** alleging a **privacy and security wrongful act**.

E. Employment Practices

employment practices; provided, however, this exclusion shall not apply to an otherwise covered [claim](#) under insuring agreement I.A.4. Privacy and Cyber Security.

F. ERISA

breach of fiduciary duty, responsibility, or obligation in connection with any employee benefit or pension plan, including violations of the responsibilities, obligations or duties imposed upon fiduciaries by ERISA (Employee Retirement Income Security Act of 1974) or any analogous federal, state or local statutory or common law; provided, however, this exclusion shall not apply to an otherwise covered [claim](#) under insuring agreement I.A.4. Privacy and Cyber Security.

G. Securities

the purchase, sale, or offer or solicitation of an offer to purchase, sell or solicit securities or any violation of a securities law, including the Securities Act of 1933, the Securities Exchange Act of 1934, and any regulation promulgated under or pursuant to the foregoing, or any federal, state or local laws analogous to the foregoing (including "Blue Sky" laws), whether such law is statutory, regulatory, or common law.

H. RICO

violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organizations Act, or "RICO") and any regulation promulgated under or pursuant to the foregoing or any federal, state or local law analogous to the foregoing, whether such law is statutory, regulatory, or common law.

I. Antitrust and Unfair Competition

antitrust violations, restraint of trade, price fixing, or unfair competition, including, but not limited to violations of The Sherman Antitrust Act, The Clayton Act, The Federal Trade Commission Act, the Robinson-Patman Act as amended, or any federal, state or local laws analogous to the foregoing; provided, however, this exclusion shall not apply to an otherwise covered [claim](#) under Insuring Agreement I.A.4. Privacy and Cyber Security or Insuring Agreement I.A.5. Privacy Regulatory Defense, Awards and Fines, or a [claim](#) under Definition IV.BB. Media Wrongful Act paragraph 3.

J. Consumer Protection and Deceptive Business Practices

1. unfair, deceptive or fraudulent business practices, including, but not limited to, violations consumer protection statutes and consumer fraud statutes; provided, however, this exclusion shall not apply to an otherwise covered [claim](#) under Insuring Agreement I.A.4. Privacy and Cyber Security or Insuring Agreement I.A.5. Privacy Regulatory Defense, Awards and Fines; and
2. any action brought under the Fair Credit Reporting Act or other analogous federal, state or local statute, law, regulation or common law.

K. Unsolicited Communications

unsolicited communications by or on behalf of an **Insured** to actual or prospective customers of an **Insured** or any other third party, including actions brought under the Telephone Consumer Protection Act, the CAN-SPAM Act of 2003 or other analogous federal, state or local statute, law, regulation or common law; provided, however, this exclusion shall not apply to an otherwise covered **claim** directly resulting from a **cyber security breach** under insuring agreement I.A.4. Privacy and Cyber Security or any **loss of business income** otherwise covered under insuring agreement I.B.1. Business Interruption and Extra Expenses.

L. Patent

actual or alleged infringement, misappropriation, dilution, misuse or inducement to infringe, misappropriate, dilute or misuse any patent or patent right.

M. Trade Secrets

actual or alleged misappropriation of trade secrets; provided, however, this exclusion shall not apply to an otherwise covered **claim** directly resulting from a **cyber security breach** under insuring agreement I.A.4. Privacy and Cyber Security.

N. Pollution

actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of **pollutants** or testing for, monitoring, removal, containment, treatment, detoxification, neutralization or cleanup of any **pollutants**.

O. Contractual

any obligation an **Insured** has under written contract; provided, however, this exclusion shall not apply to liability an **Insured** would have in the absence of a contract or an **Insured's**:

1. breach of an exclusivity or confidentiality provision contained in a written agreement;
2. violation of an intellectual property right except a violation of a patent right;
3. negligent performance of **technology services** or **professional services** for a client or customer;
4. provision of **technology products** to a client or customer which contain a material defect; or
5. breach of the **Insured's** privacy policy and/or privacy notice.

P. Force Majeure

fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, or act of God, however caused.

Q. War

strikes or similar labor action, war, whether declared or not, invasion, act of foreign enemy, civil war, mutiny, coup d'état, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions; provided, however, this exclusion shall not apply to any actual, alleged or threatened attack against the **network**, with the intention to cause harm to further social, ideological, religious or political objectives or to intimidate any person or entity in furtherance of such objectives.

R. Infrastructure Failure

electrical, mechanical, Internet, telecommunication, cable or satellite failure, fluctuation or outage not under the operational control of the [Insured](#), however caused, including any electrical power interruption, short-circuit, surge, brownout or blackout.

S. Governmental Orders

any court order or demand requiring the [Insured](#) to provide law enforcement, any administrative, regulatory or judicial body or any other governmental authority access to [personally identifiable information](#), [protected health information](#), or [confidential business information](#).

T. Over-Redemption

price discounts, prizes, awards, coupons, or any other valuable consideration given in excess of the contracted or expected amount.

U. Unauthorized Collection and Use

the unauthorized or unlawful collection, acquisition or use of [personally identifiable information](#) or [protected health information](#) by the [Insured](#); provided, however, this exclusion shall not apply to a [claim](#) directly resulting from the acts of a [rogue employee](#).

VI. Notice

A. Notice of Circumstance

Solely with respect to Insuring Agreement I.A. Third Party Liability Coverages, if during the **policy period** or Extended Reporting Period (if applicable) as defined in Section VIII. Extended Reporting Period, an **Insured** first becomes aware of any circumstance that may reasonably be expected to be the basis of a **claim** being made against an **Insured**, and if during the **policy period**, the **Insured** elects to provide the **Insurer** written notice of such circumstance along with any **third party wrongful act**, and the reasons for anticipating such **claim**, with full particulars as to the dates, persons and entities involved, then any resulting **claim** which is subsequently made against an **Insured** and reported to the **Insurer** that arises out of such circumstance or **related matter** will be considered made at the time such notice of circumstance was provided. Notice of such circumstance should be reported to the **Insurer** as stated in Item 6. on the Declarations Page.

B. Notice of Claim and First Party Incident

As a condition precedent to the obligations of the **Insurer** under this Policy, the **Insured** must provide written notice to the **Insurer** as soon as reasonably practicable, but in no event, later than the end of the **policy period** or any applicable Extended Reporting Period of a:

1. **claim** first made against an **Insured** after an **executive officer** becomes aware of such **claim**; and
2. **first party incident** after an **executive officer** first discovers and/or becomes aware of such **first party incident**.

C. Notice to Whom

1. Notice of a **claim** and/or **first party incident** must be provided to the **Insurer** as stated in Item 6. on the Declarations Page.
2. In addition to the notice requirement above, notice of a **first party incident** may also be provided to the **Insurer** via the AXA XL Breach Hotline as stated in Item 7. on the Declarations Page. Notice to the AXA XL Breach Hotline alone will not serve as proper notice under this Policy.
3. The email/certified post mail shall be deemed effective when received by the **Insurer**.

D. When a Claim is Deemed Made

A **claim** will be deemed made pursuant to Definition IV.C. Claim paragraph 1. and Definition IV.C. Claim paragraph 3., on the earliest date an **executive officer** receives the first written demand; Definition IV.C. Claim paragraph 2., on the date of service; and Definition IV.C. Claim paragraph 4., on the date an **executive officer** receives written notice of such action.

E. Insured's Claim and First Party Incident Obligations

1. In connection with a:
 - (a) **claim**, the **Insured** will, as a condition precedent to the obligations of the **Insurer** under the Policy, provide the **Insurer** with all information that the **Insurer** reasonably requires, including full particulars as to the dates, persons and entities involved in the **claim** and the manner in which the **Insured** first became aware of the **claim**;

- (b) **first party incident**, the **Insured** will, as a condition precedent to the obligations of the **Insurer** under the Policy, provide the **Insurer** with all information that the **Insurer** reasonably requires, including full particulars as to the dates, persons and entities involved in the **first party incident** and the manner in which the **Insured** first became aware of the **first party incident**. Additionally, as a condition precedent to the obligations of the **Insurer** under the Policy, the **Insured Company** will provide the **Insurer** proof of **loss** with full particulars within three (3) months: after the first discovery by an **executive officer** of the **first party incident** (other than a **cyber-extortion threat**); or first occurrence of the **cyber-extortion threat**.

F. Assistance and Cooperation

1. The **Insured** will reasonably cooperate with the **Insurer** and upon request of the **Insurer**:
 - (a) assist the **Insurer** in the investigation of any **third party wrongful act** and **first party incident**;
 - (b) attend hearings, depositions and trials;
 - (c) assist the **Insurer** in defending and effecting settlements of **claims**;
 - (d) secure and provide evidence which includes, but is not limited to, obtaining the attendance of witnesses;
 - (e) allow the **Insurer** to participate in the handling and management of any suit or proceeding;
 - (f) assist the **Insurer** in enforcing any right, contribution or indemnity against a third party which may be liable to the **Insured**; and
 - (g) allow a computer forensics expert access to systems, files and information.
2. The **Insured** will take all reasonable steps to limit and mitigate any **loss** arising from any **third party wrongful act** or **first party incident** for which coverage may be or is sought under the Policy. The **Insured** will do nothing which in any way increases the **Insurer's** exposure under the Policy or in any way prejudices the **Insurer's** potential or actual rights of recovery. The **Insured** will not, except at the **Insured's** own cost, voluntarily make any payment, assume or admit any liability or incur any expense without the prior written consent of the **Insurer**.

VII. Cancellation and Non-Renewal

A. Cancellation by the Named Insured

Except for nonpayment of premium, as set forth below, the **Named Insured** has the exclusive right to cancel the Policy. Cancellation may be effected by mailing to the **Insurer** written notice stating when such cancellation will be effective. In such event, the **Insurer** will retain the pro-rata portion of earned premium.

B. Cancellation by the Insurer

The **Insurer** may only cancel this Policy for nonpayment of premium. The **Insurer** will provide not less than fifteen (15) days written notice stating the reason for cancellation and when the Policy will be canceled. Notice of cancellation will be sent to the **Named Insured**.

C. Non-Renewal of Coverage

The **Insurer** is under no obligation to renew the Policy upon its expiration. If the **Insurer** elects to non-renew the Policy, the **Insurer** will deliver or mail to the **Named Insured** written notice stating such at least ninety (90) days prior to the Policy's expiration date, as stated in Item 2. on the Declarations page. The offering of terms and conditions different from the expiring terms and conditions, including limits of liability, retention or premium, will not constitute a refusal to renew or a cancellation of the Policy.

VIII. Extended Reporting Period

A. Automatic Extended Reporting Period

The Automatic Extended Reporting Period applies solely to Insuring Agreements I.A. Third Party Liability Coverages. Effective upon the date of termination or cancellation of the Policy for any reason other than nonpayment of premium, the **Named Insured** will automatically be provided a period of sixty (60) days in which to give written notice to the **Insurer** of **claims** first made against the **Insured** during the **policy period** or the Automatic Extended Reporting Period for **third party wrongful acts** committed by an **Insured** after the **retroactive date** and prior to the end of the **policy period**.

B. Optional Extended Reporting Period

The Optional Extended Reporting Period applies solely to Insuring Agreements I.A. Third Party Liability Coverages. Effective upon the date of termination or cancellation of the Policy for any reason other than nonpayment of premium, the **Named Insured** will have the right to purchase an Optional Extended Reporting Period of one (1), two (2), three (3), or six (6) years. Such right must be exercised by the **Named Insured** within sixty (60) days of the date of termination or cancellation of the Policy by providing written notice to the **Insurer** and remitting the amount of additional premium described below in which to provide written notice to the **Insurer** of a **claim** first made against the **Insured** during the Optional Extended Reporting Period for a **third party wrongful act** committed by an **Insured** after the **retroactive date** and prior to the end of the **policy period**.

The additional premium for the Optional Extended Reporting Period will be for:

1. One (1) year, one hundred percent (100%) of the policy annual premium;
2. Two (2) years, one hundred fifty percent (150%) of the policy annual premium;
3. Three (3) years, one hundred seventy-five percent (175%) of the policy annual premium; or
4. Six (6) years, two hundred fifty percent (250%) of the policy annual premium.

C. Application of Extended Reporting Period

1. The Automatic Extended Reporting Period and the Optional Extended Reporting Period cannot be canceled and any additional premium charged for the Optional Extended Reporting Period will be fully earned at inception.
2. The first sixty (60) days of the Optional Extended Reporting Period, if purchased, will run concurrently with the Automatic Extended Reporting Period.
3. The limit of liability of the **Insurer** under the Automatic Extended Reporting Period and the Optional Extended Reported Period will be part of and not in addition to the limits of liability for the Policy.

IX. Conditions

A. Change in Control

If, during the **policy period**, the **Named Insured** consolidates with, merges into, or sells all or substantially all of its assets to another entity, or if any entity acquires **management control** of the **Named Insured**, then the Policy will remain in full force but only with respect to a **third party wrongful act** and **first party incident** (other than a **cyber-extortion threat**) involving the **Named Insured** that occurred prior to the date of the consolidation, merger, sale or acquisition of **management control**; provided, however, coverage will remain in force for a **third party wrongful act** and **first party incident** (other than a **cyber-extortion threat**) first discovered and for a **cyber-extortion threat** first occurring subsequent to the date of the consolidation, merger, sale or acquisition of **management control**, if within thirty (30) days of the takeover effective date (1) the **Insurer** receives written notice containing full details of the transaction, (2) the **Named Insured** accepts all Policy amendments required by the **Insurer**, including the addition of special terms, conditions and exclusions, and (3) the **Named Insured** pays any additional premium charge.

The above provision may be waived in writing by the **Insurer**.

B. Action Against the Insurer

No action may be brought against the **Insurer** unless, as a condition precedent thereto, (1) the **Insured** has fully complied with all of the terms, conditions and other provisions of the Policy, and (2) the amount of the **Insured's** obligation to pay has been finally determined, either by judgment against the **Insured** after a trial and appeal or by written agreement by the claimant, **Insured**, and **Insurer**.

No person or entity will have the right under the Policy to (1) join the **Insurer** or its agents and representatives as a defendant, co-defendant or other party in any action against the **Insured** to determine the **Insured's** liability or (2) implead the **Insurer** or its agents and representatives in any such action.

C. Bankruptcy

Bankruptcy or insolvency of the **Named Insured** will not relieve the **Insurer** of any of its obligations hereunder.

D. Other Insurance

This Policy is excess over any other valid and collectible insurance, whether prior or contemporaneous, unless such other insurance is expressly written to be excess of this Policy.

E. Subrogation

In the event of payment of **loss** by the **Insurer** under the Policy, the **Insurer** is subrogated to all of the **Insured's** rights of recovery against any person or entity to the extent of such payment. The **Insured** warrants and agrees to execute and deliver instruments and papers and do whatever else is required by the **Insurer** to secure, prosecute and collect on such rights. The **Insured** further warrants and agrees not to prejudice such rights.

If, prior to a **claim** being made, the **Insured Company** has waived its rights to recovery against a person or entity in any written contract or agreement, then the **Insurer** will waive its rights to subrogation against such person or entity to the same extent as the **Insured Company's** waiver.

F. Territory

The Policy applies to a **third party wrongful act** and **first party incident** occurring and **claim** made anywhere in the world other than any country barred by the Office of Foreign Assets Control (OFAC).

G. Representation Clause

In issuing the Policy, the Insurer has relied upon the application. The Insured warrants that the content of the materials provided to the Insurer are true, accurate and complete and are material to the Insurer's acceptance of the risk to which the Policy applies. Any material misrepresentation, concealment or misstatement by the Insured will render the Policy null and void with respect to any natural person Insured who knew of such material misrepresentation, concealment or misstatement, and with respect to the Insured Company if an executive officer knew of such material misrepresentation, concealment or misstatement, and will relieve the Insurer from all obligations and liability herein with regard to said Insured parties.

H. Named Insured Sole Agent

The Named Insured will be the sole agent and will act on behalf of any Insured for the purpose of:

1. Providing and/or receiving notices, amendments to or cancelling of the Policy;
2. Completing the application;
3. Making statements, representations and warranties;
4. Remitting premium and receiving the return premium that may become due;
5. Paying the retention; and
6. Exercising or declining to exercise any right under the Policy.

I. Policy Changes

Notice to any agent of the Insurer or knowledge possessed by any such agent or by any other person will not affect a waiver or a change in any part of the Policy, and will not prevent or preclude the Insurer from asserting or invoking any right under or provision of the Policy. None of the provisions of the Policy will be waived, changed or modified except by a written agreement and/or endorsement issued by the Insurer to form a part of the Policy.

J. Assignment

The Insured may not assign any rights, remedies, privileges or protections under the Policy. Notwithstanding the foregoing, any such assignment shall be invalid unless the Insurer's written consent is endorsed thereon.

K. Alternative Dispute Resolution

Any dispute arising out of or relating to the Policy, including its construction, application and validity, or any breach thereof, will first be submitted to non-binding mediation administered by a mediation facility to which the Insurer and the Insured mutually agree. The Insured and the Insurer will attempt in good faith to settle the dispute in accordance with the commercial mediation rules of the American Arbitration Association ('AAA') in effect at the time of the dispute. No award of punitive damages will be made in any such mediation. Each party will bear its own fees and costs in connection with any such mediation. However, the costs incurred through the mediation facility, including the fees and expenses of the mediator, will be shared equally by the parties unless the mediation award provides otherwise. All mediation proceedings will be held in a state in the United States where either the Named Insured or the Insurer has its principal place of business, at the election of the party commencing mediation.

In the event such non-binding mediation does not result in a settlement of the dispute, either party has the right:

1. To commence a judicial proceeding; or
2. With consent of the other party, to commence an arbitration proceeding in accordance with the commercial arbitration rules of AAA in effect at the time of dispute. The decision of the arbitrator(s) will be final and binding and any award may be confirmed and enforced in a court of competent jurisdiction.

L. Estates, Heirs, Legal Representatives and Domestic Partners

The estate, heir, legal representative and any **domestic partner** of a natural person **Insured** shall be considered insured under this Policy; provided, however, coverage is afforded to such estate, heir, legal representative and **domestic partner** only for a **claim** arising solely out of their status as such and, in the case of a **domestic partner**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such **Insured** to the **domestic partner**. No coverage is provided for any act, error or omission of an estate, heir, legal representative or **domestic partner**. All terms and conditions of this Policy, including the retention applicable to **damages** or **claim expenses** incurred by the **Insured**, shall also apply to **damages** and **claim expenses** incurred by such estate, heir, legal representative, and **domestic partner**.