

## The Insurers

Effected with certain subscribing insurance companies (hereinafter called “the Insurers”) through Boxx Insurance LLC as shown in the Declarations.

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### Insurer’s promise to the Insured

In consideration of **Insured Organization’s** payment of the premium and in reliance upon the **Insured Organization’s** presentation of the risk, including the **application**, and subject to the aggregate limit of indemnity, applicable sub-limits and **retention**, together with the exclusions, conditions, and terms of this **policy**, the **Insurer** agrees to insure the **Insured** in accordance with this **policy**.

### Hilario Itriago

President of Boxx Insurance LLC

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### Conditions precedent

**THIS POLICY IS WRITTEN ON A CLAIMS-MADE AND REPORTED BASIS. EXCEPT AS OTHERWISE PROVIDED, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED AND INCIDENTS OR LOSSES FIRST DISCOVERED BY THE INSURED DURING THE POLICY PERIOD, OR ANY APPLICABLE EXTENDED REPORTING PERIOD, AND NOTIFIED TO THE INSURER PURSUANT TO THE INSURED’S OBLIGATIONS.**

Please read this **policy**, together with any **endorsements** and the Declarations, very carefully. If anything is not correct, please notify the **Insurer** immediately.

In return for the premium the **Named Insured** has paid, the **Insurer** agrees to insure the **Insured** in accordance with the terms and conditions of the **policy**.

The liability insuring agreements of this **policy** provide claims-made coverage which applies only to **claims** first made during the **policy period**, or any applicable extended reporting period.

The titles of the various sections, paragraphs, and clauses of this **policy** and any **endorsements** attached to this **policy** are inserted solely for convenience or reference and are not to be deemed in any way to limit or affect the provisions to which they relate.

## I. INSURING AGREEMENTS

**COVERAGE UNDER THIS POLICY IS PROVIDED ONLY FOR THOSE INSURING AGREEMENTS FOR WHICH A LIMIT APPEARS IN THE DECLARATIONS. IF NO LIMIT IS SHOWN FOR AN INSURING AGREEMENT, SUCH INSURING AGREEMENT IS NOT PROVIDED BY THIS POLICY. THE AGGREGATE POLICY LIMIT SHOWN IN ITEM 3 OF THE DECLARATIONS IS THE MOST THE INSURER WILL PAY UNDER THIS POLICY REGARDLESS OF THE NUMBER OF INSURING AGREEMENTS PURCHASED, OTHERWISE STATED.**

### A. THIRD PARTY INSURING AGREEMENTS

#### A.1 INFORMATION PRIVACY LIABILITY

If during the **policy period**, any party brings a **claim** against the **Insured**, the **Insurer** will pay **claim expenses** for any actual or alleged:

- a) breach, violation, or infringement of any right to privacy, consumer data protection law, or other legal protection for **personal data**;
- b) breach of duty to maintain the security or confidentiality of **personal data**;
- c) breach of any duty of confidence, including in respect of any commercial information; or
- d) breach of any contractual duty to maintain the security or confidentiality of **personal data**, including under a payment card processing agreement with any bank or payment processor or under the **Insured Organization's** public-facing privacy policy.

#### A.2 REGULATORY DEFENSE AND AWARDS

If during the **policy period**, any party brings a **regulatory claim** against the **Insured**, the **Insurer** will pay **claim expenses**, including **regulatory awards**, and **privacy investigation costs** for any actual or alleged **privacy breach**.

#### A.3 PCI-DSS LIABILITY

If during the **policy period**, any party brings a **claim** against the **Insured** for any actual or alleged breach of **PCI DSS** the **Insurer** will pay **claim expenses**.

#### A.4 MEDIA LIABILITY

If during the **policy period**, any party brings a **claim** against the **Insured** for a **Media Incident** the **Insurer's** will pay **claim expenses**.

## A.5 NETWORK SECURITY LIABILITY

If during the **policy period**, any party brings a **claim** against the **Insured**, the **Insurer** will pay the **Insured Organization's claim expenses** for any actual or alleged:

- a) transmission of a **malicious code**;
- b) denial of service attack against a third party;
- c) unauthorized acquisition, access, use, or disclosure of **personal data** or confidential corporate information that is held or transmitted in any form; or
- d) prevention of authorized electronic access to any **computer system, personal data**, or confidential corporate information.

## B. FIRST PARTY INSURING AGREEMENTS

### B.1 INCIDENT RESPONSE

The limit for insuring agreements in **B.1. INCIDENT RESPONSE** is in addition to the aggregate limit of indemnity for this **policy** shown in the Declarations.

#### B.1.1 Legal Privacy Breach Costs

If during the **policy period** the **Insured** discovers or reasonably suspects any **privacy breach**, the **Insurer** agrees to pay on the **Insured's** behalf the reasonable and necessary costs incurred by the **Insured Organization** to:

- a) Provide legal advice to the **Insured** in connection with the **Insured Organization's** investigation of a **privacy breach**;
- b) assist with the preparation of legally required notifications to any regulator and **data subjects** affected by a **privacy breach** that is covered under this **policy**; and
- c) determine and pursue any indemnity owed by a third party to the **Insured Organization** under a written agreement.

#### B.1.2 Incident Forensic Costs

If during the **policy period** the **Insured** discovers or reasonably suspects any **privacy breach, security failure; illegal threat; or cyber attack** against the **Insured Organization**, the **Insurer** agrees to pay on the **Insured Organization's** behalf the reasonable and necessary costs incurred by the **Insured** for:

- a) computer forensic analysis conducted by third party forensic experts to:
  - confirm whether or not a **privacy breach, security failure; illegal threat; or cyber attack** against the **Insured** has occurred, or is occurring;
  - identify any **data subjects** affected by a **privacy breach** that is covered under this **policy**; and

- stop or contain the **privacy breach, security failure; illegal threat; or cyber attack** against the **Insured Organization**; and

b) legal fees necessary for the preservation of the attorney-client privilege afforded to forensic reports and findings due to a **privacy breach**.

### **B.1.3 Notification Costs**

The **Insurer** agrees to pay on the **Insured Organization's** behalf the reasonable and necessary costs incurred by the **Insured Organization** to notify each **data subject** affected by a **privacy breach** that is covered under this **policy**; and any regulatory body, of the **privacy breach** where the **Insured Organization** is required by any applicable law or regulation to do so, and for up to 24 months.

Any costs covered in this insuring agreement related to a voluntary notification require our prior written agreement.

### **B.1.4 Call Center Costs**

The **Insurer** agrees to pay on **Insured Organization's** behalf the reasonable and necessary costs incurred by the **Insured Organization** to retain a third party to provide the service of call center to answer inquiries from **data subjects** following notification of the **privacy breach to data subjects**, including those affected in compliance with the Health Information Technology for Economic and Clinical Health Act (HITECH) (U.S.) requirements.

Any costs covered in this insuring agreement related to a voluntary notification require our prior written agreement.

### **B.1.5 Credit Monitoring Costs**

The **Insurer** agrees to pay on **Insured Organization's** behalf the reasonable and necessary costs incurred by the **Insured Organization** to provide credit monitoring services or other credit protection services to each **data subject** affected by a **privacy breach** that is covered under this **policy**, and for up to 24 months.

Any costs covered in this insuring agreement related to a voluntary notification require our prior written agreement.

### **B.1.6 Identity Monitoring**

The **Insurer** agrees to pay on **your** behalf the reasonable and necessary costs incurred by the **Insured Organization**, the costs to monitor the dark web for the appearance of any information accessed during a **privacy breach**, but not including any overhead costs, general business expenses, salaries, or wages incurred by the **Insured Organization**, or any other person or entity entitled to coverage under this **policy**.

Any costs covered in this insuring agreement related to a voluntary notification require our prior written agreement.

## B.2 CYBER EXTORTION LOSSES

If during the **policy period** and following an **illegal threat**, the **Insurer** agrees to pay on **Insured Organization's** behalf the reasonable and necessary costs incurred by the **Insured** for:

- a) a consultant appointed by the **Insurer**, or incurred by the **Insured Organization** for advising the **Insured** on the handling and negotiation of the ransom demand;
- b) the payment of any third party's ransom demand, or if the demand is for goods or services, their market value at the time of their surrender, to the third party making the demand.

## B.3 DATA RECOVERY COSTS

If during the **policy period** the **Insured** discovers or reasonably suspects any **privacy breach, security failure; illegal threat; or cyber attack** against the **Insured Organization**, the **Insurer** agrees to pay on the **Insured Organization's** behalf **data recovery costs**.

**Data recovery costs** does not include:

- a) costs incurred after it has been established that **Insured's data asset** cannot be replaced, restored, or repaired, or access to it cannot be regained;
- b) the economic value of **Insured's data asset**, including the value of any trade secrets;
- c) costs to restore, update, or replace **Insured's data asset** to a level beyond that which existed prior to the event, unless **Insured's data asset** can only be replaced, restored or repaired by purchasing a newer equivalent; or
- d) costs to research or develop **Insured's data asset** or to recreate, gather or assemble facts, concepts, or information needed to reproduce **Insured's data asset**.

## B.4 BRICKING COSTS

The **Insurer** agrees to pay on **Insured Organization's** behalf the reasonable and necessary costs incurred by the **Insured Organization** rectifying or replacing any part of the **computer system**, where such part has not been physically damaged or destroyed but is completely and permanently functionless for its intended purpose as a direct result of a **security failure** or a **cyber attack**.

It shall be at the **Insurer's** option whether to rectify or replace such part or to pay for a functionally equivalent part where replacement with a similar part is not possible.

## B.5 BUSINESS INTERRUPTION

The **Insurer** agrees to pay **Insured Organization's loss of income, increased costs of working, public relations costs** and the costs to retain a third party forensic accounting firm to determine the **loss** described in this Insuring Agreement; resulting solely and directly from a partial or total interruption to the **Insured Organization's business** or from a **voluntary shutdown** commencing during the **policy period** and lasting longer than the **waiting period**, as a direct result of a **security failure**.

For the purposes of this section, **waiting period** shall be the period shown on the **Declaration** page under section **B.5 BUSINESS INTERRUPTION**.

## B.6 REPUTATION PROTECTION

The **Insurer** agrees to pay a) **public relations costs**, b) the damage to the **Insured Organization's reputation**, and c) the costs to retain a third party forensic accounting firm to determine the **loss** described in this Insuring Agreement, resulting solely and directly from an **adverse publication** first published during the **policy period** and lasting longer than the **waiting period**, as a direct result of an **incident**.

For the purposes of this section, **waiting period** shall be the period shown on the **Declaration** page under section **B.6 REPUTATION PROTECTION**.

## II. WHAT IS NOT COVERED – EXCLUSIONS

This **policy** does not apply, and the **Insurer** will not make any payment for any **claim, loss**, or any other liability under this **policy** directly or indirectly caused by, arising out of, resulting from, based upon, or relating to:

### A. EXCLUSIONS APPLICABLE TO A. THIRD PARTY INSURING AGREEMENTS

#### A.1 BREACH OF PROFESSIONAL SERVICES

any **claim** under Insuring agreements **A. Third Party Insuring Agreements** arising solely as a direct result of any negligent advice or professional services provided to a **client** for a fee, other than where the **claim** arises directly from a **cyber attack** or a **privacy breach**.

#### A.2 BREACH OF CONTRACT

any contractual liability, whether oral or written. However, this exclusion shall not apply to the **Insured Organization's** contractual obligation to maintain the security of **personal data** or confidential corporate information, or to the extent the **Insured** would have been liable in the absence of a contract or agreement.

#### A.3 CLAIMS BROUGHT BY A RELATED PARTY

any **claim** brought by any person or entity within the definition of the **Insured** or any party with a financial, executive, or managerial interest in the **Insured Organization**, including any parent company or any party in which the **Insured Organization** has a financial, executive, or managerial interest.

However, this exclusion does not apply to a **claim** based on liability to an independent third party directly arising out of **Insured Organization's business**.

#### A.4 INTELLECTUAL PROPERTY

any **claim** arising from the actual or alleged infringement of third party intellectual property rights with respect to the manufacture, import, design, package or trade dress of goods or services sold by, or on behalf of, any individual or entity of the **Insured**.

#### A.5 MEDIA LIABILITY

Solely with respect of Insuring Agreement **A.4 Media Liability**:

- a) any **claim** made by any person or entity that the **Insured** currently employs or engages, or was formerly employed or engaged, including but not limited to any individual within the definition of **Insured**.

- b) any **claim** based upon or arising out of song writing, music composition, music publishing, music recording, or music production activities or music contained in any content in any form.
- c) any **claim** based upon or arising out of, or attributable to false or deceptive advertising or promotion, any unfair or deceptive trade practices with respect to the sale of any goods, products, or services, any inaccurate, inadequate or incomplete description of the price of goods, products, or services, disclosure of fees, representations with the respect to authenticity of any product, or the failure of any goods, products or services to conform with the advertised quality or performance.
- d) any **claim** alleging, based upon, arising out of, or attributable to any gambling, contest, game of chance or skill, lottery, or promotional game, including tickets or coupons or over-redemption related thereto.
- e) any **claim** based upon, arising out of, or attributable to any actual or alleged error, omission, or misstatement in any labeling, packaging, or instructional content, including but not limited to any failure to warn or instruct as to any goods, products, or services.

#### A.6 INSURED VS INSURED

- a) any **claim** made by or on behalf of the **Insured Organization** against another member of the **Insured Organization**. This exclusion shall not apply to any **claim** brought by an **employee** outside of the **Control Group** as a result of a **privacy breach** or **security failure**.

For the purposes of this exclusion, **Control Group** means the CEO, CFO, CISO, CIO, CTO, general counsel, director of risk management or any individual in a functionally equivalent position of the **Insured Organization**.

- b) any **claim** brought by the **Insured** or any of **Insured's employees** or shareholders due to the personal liability incurred by a **senior executive** when acting in that capacity or managing **Insured Organization's business**.

#### A.7 EMPLOYMENT PRACTICES

employment practices. However, this exclusion shall not apply to claims related to the **privacy breach** of an **employee's personal data** that the **Insured Organization** is responsible for safeguarding.

#### A.8 UNLAWFUL COLLECTION OF DATA

The actual or alleged failure to comply with any statute, law, decree, regulation or rule with respect to the unlawful collection, use, handling, storage, retention, processing or destruction of biometric data, biometric information and/or biometric identifiers.



#### A.9 DISCRIMINATION

Any actual or alleged discrimination of any kind.

#### A.10 SECURITIES

Any purchase, sale, or offer, or solicitation of an offer, to purchase or sell securities, or the violation of any federal, state or local securities law, and any amendments thereto; however, this exclusion does not apply to a **privacy breach**.

#### A.11 PRIOR ACTS

Any **incident**, act, error or omission that took place prior to the retroactive date as stated in the Declarations.

### B. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

#### B.1 INFRASTRUCTURE FAILURE

any failure or interruption of service provided by an internet service provider, telecommunications provider, utilities supplier or other infrastructure provider. However, this exclusion does not apply where the **Insured Organization** provide such services to a third party for a fee as part of **Insured Organization's business**.

#### B.2 INTELLECTUAL PROPERTY

any actual or alleged infringement, use or misappropriation of any intellectual property, including but not limited to patent, trade secret, copyright, trademark, trade dress, service mark, service name, title or slogan, or any publicity rights violations, cybersquatting violations, moral rights violations, or any act of passing-off.

However, this exclusion does not apply to:

- a) any otherwise covered **claim**:
  - i. directly arising from a **privacy breach** by a third party;
  - ii. directly arising from a **security failure**;
  - iii. falling under Insuring Agreement **A.4 Media liability**.

#### B.3 PROPERTY DAMAGE

any loss, theft, damage, destruction, or loss of use of any property. However, this does not apply to:

- a) loss, damage or destruction of data;

- b) any **privacy breach** you experience that involves the loss or theft of **personal data** or confidential corporate information that is maintained in tangible form and is readable without the use of any electronic device; or
- c) otherwise covered **bricking costs** under Insuring Agreement **B.4 Bricking Costs**.

#### **B.4 BODILY INJURY**

any death, bodily injury, sickness, mental anguish, emotional distress, or disease suffered or alleged to be suffered by anyone.

However, this exclusion shall not apply to:

- a) solely with respect to Insuring Agreement **A.1 Information Privacy Liability**, emotional distress, mental anguish, humiliation, or loss of reputation resulting from a **Media Incident**; or
- b) solely with respect to Insuring Agreement **A.1 Information Privacy Liability** emotional distress, mental anguish, or mental injury resulting from a **privacy breach**.

#### **B.5 SYSTEM DEGRADATION OR PERFORMANCE**

- a) any degradation, deterioration, or reduction in the performance of **Insured Organization's computer system** caused gradually or as a result of the recommended use or **Insured Organization's** ordinary use of the **computer system**; or
- b) loss of, reduction in or loss of use of internet bandwidth, unless caused by an identifiable malicious act that gives rise to a **claim** or **loss** otherwise covered under this **policy**;

including where caused by increased use of the **computer system** or by steps taken by the **Insured** to upgrade the system. However, this exclusion does not apply to any covered **loss** under Insuring Agreements.

#### **B.6 SEIZURE AND CONFISCATION**

any confiscation, requisition, expropriation, nationalization, appropriation, seizure, or destruction of property by or under the order of any government or public or local authority, or any order by such authority to take down, deactivate or block access to **Insured Organization's computer system**.

#### **B.7 NUCLEAR RISKS**

- a) any sort of nuclear material, nuclear reaction, nuclear radiation, or radioactive contamination;
- b) any products or services which include, involve, or relate in any way to anything in a). above, or the storage, handling, or disposal of anything in a). above;
- c) all operations carried out on any site or premises on which anything in a). or b). above is located.

**B.8 POLLUTION RISKS**

Any actual, alleged, or threatened discharge, dispersal, release, or escape of a **pollutant**, including any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize a **pollutant**. For the purpose of this exclusion, **pollutant** means any solid, liquid, gaseous, biological, radiological, or thermal irritant or contaminant, including smoke, vapor, asbestos, silica, dust, nanoparticles, fibers, soot, fumes, acids, alkalis, chemicals, germs, and waste, including but not limited to materials to be recycled, reconditioned, or reclaimed.

**B.9 INSOLVENCY**

The **Insured Organization's** insolvency or the insolvency of **Insured Organization's** suppliers, sub-contractors, and outsourcers, However, the **Insured Organization's** insolvency will not relieve the **Insurer** of any of the **Insurer's** legal obligations under this **policy**.

**B.10 PRE-EXISTING PROBLEMS**

- a) anything likely to lead to a **claim, loss**, or other liability under this **policy**, which the **Insured** knew or ought reasonably to have known about before the **Insurer** agreed to insure the **Insured**.
- b) any demand, suit, or other pending proceeding, or order, decree or judgment entered against the **Insured** on or prior to the **pending or prior litigation date**, or the same or substantially the same facts underlying or alleged therein;
- c) any circumstance which has been the subject of any written notice given and accepted under any policy of which this **policy** is a renewal or replacement.

**B.11 DISHONEST AND CRIMINAL ACTS**

- a) any fraudulent, dishonest, malicious, or criminal conduct intended to cause harm to another person or business, or any knowing or willful violation of a law, whether committed by the **Insured** or committed by another whose conduct or violation of the law the **Insured** has ratified or actively condoned; or
- b) any act the **Insured** knew, or reasonably ought to have known at the time the **Insured** performed it, would give rise to a **claim, loss**, or any other liability under this **policy**. This includes any statement the **Insured** knew, or ought reasonably to have known, was defamatory at the time of publication.

However, this exclusion will not apply unless:

- i. such conduct, violation of the law or act has been established by a final adjudication in any judicial, administrative, or alternative dispute resolution proceeding; or
- ii. such conduct, violation of the law, or act has been established by the **Insured's** admission in a proceeding or otherwise.

at which time the **Insured** shall reimburse the **Insurer** for all payments made by the

**Insurer** in connection with such conduct, violation of the law, or act and all of the **Insurer's** duties in respect of that **claim, loss**, or other liability under this **policy** shall cease.

#### **B.12 FRAUDULENT USE OF ELECTRONIC IDENTITY**

The fraudulent or dishonest use of the electronic identity of the **Insured Organization's business**. However, this exclusion does not apply to any **claim** under Insuring agreements **A. Third Party Insuring Agreements** arising solely as a direct result of an unauthorized access to or unauthorized use of the **Insured's computer system**.

#### **B.13 UNSOLICITED COMMUNICATIONS**

any unsolicited communications arising directly or indirectly from any actual or alleged violation of:

- a) the CAN-SPAM Act of 2003 or any subsequent amendments to that Act; or
- b) the Telephone Consumer Protection Act (TCPA) of 1991 or any subsequent amendments to that Act.

#### **B.14 WIRETAPPING**

Any actual or alleged violation of any other law, regulation or statute relating to unsolicited communication, distribution, wiretapping, surreptitious recording, failure to obtain consent to record, sending or transmitting of any communication via telephone or any other electronic or telecommunications device including but not limited to tracking technologies, including Google Analytics, Google DoubleClick, Meta (f/k/a Facebook), and Pixel.

#### **B.15 NATURAL PERILS**

fire, flood, storm, lightning, frost, explosion or extremes of weather or temperature. However, this exclusion does not apply to any **claim, loss**, or any other liability arising directly from a **privacy breach** the **Insured** suffers, which is itself caused by such natural peril.

#### **B.16 FINES, PENALTIES AND SANCTIONS**

criminal, civil or regulatory sanctions, fines, penalties, disgorgement of profits, punitive damages, exemplary damages, treble damages or multiple damages which the **Insured** is legally obliged to pay, including but not limited to those imposed by any national, federal, state, or local governmental body or any licensing organization.

However, this exclusion does not apply to: **PCI charges**; or **regulatory awards**.

**B.17 ILL-GOTTEN GAINS**

any profit, remuneration, or advantage to which the **Insured** is not legally entitled.

**B.18 RECALL AND DISPOSAL**

any loss, cost, or expense incurred by the **Insured** or others for the withdrawal, recall, inspection, adjustment, removal, or disposal of any tangible property or intangible property.

**B.19 USE OF ILLEGAL OR UNLICENSED PROGRAMS**

Knowing use of illegal or unlicensed **programs** or software.

SAMPLE

### III. DEFINITIONS

Words shown in **bold** type have the same meaning wherever they appear in this **policy** and **endorsements**, unless otherwise indicated. The words defined below are used throughout this **policy**.

1. **Adverse Publication:** means any report or communication to the public through any media channel including, but not limited to television, print media, radio, the internet, or electronic mail, of information that was previously unavailable to the public, specifically concerning a **security failure**, **cyber attack** against the **Insured**, **privacy breach**, or **illegal threat** that affects any of **Insured's** customers or clients.
2. **Application:** means all applications, including any attachment thereto, and supplemental information, submitted by or on behalf of the **Named Insured** to the **Insured** in connection with the request for or underwriting of this **policy**, or any prior policy issued by the **Insurer** of which this **policy** is a renewal.
3. **Bricking costs:** The costs, different than **data recovery costs**, of rectifying or replacing any part of the **computer system**, where such part has not been physically damaged or destroyed but is completely and permanently functionless for its intended purpose as a direct result of a **security failure**.
4. **Business:** **Insured's** business or profession identified in **Insured's application** for this insurance.
5. **Claim:** Any written demand or civil, criminal, regulatory or arbitration proceeding or any assertion of liability or any written demand for financial compensation or injunctive relief first made against the **Insured** within a court of competent jurisdiction or arbitration tribunal.

All **claims** with a common nexus of fact, circumstance, situation, transaction, or cause, or a series of related facts, circumstances, situations, transactions, or causes will be considered as a single **claim**.

6. **Claim expenses:** means any of the following:
  - a) any of the amounts an **Insured** becomes legally obligated to pay including:
    - i. Compensatory damages, settlements, and judgments;
    - ii. prejudgment interest, post judgment interests, judgments or settlements;
    - iii. Punitive, exemplary, or multiplied damages, however only to the extent such damages are insurable under the applicable law of any jurisdiction which most favorable to insure such damages;
    - iv. money to be deposited into a consumer compensation fund as a form of equitable relief to pay for consumer **claim** arising from an adverse judgment or settlement.
  - b) any **regulatory award**;
  - c) **PCI charges**;
  - d) costs covered under **B.1 Incident Response Insuring Agreements** and **privacy investigation costs**; and

e) **defense costs;**

but the **Insurer** will not pay costs for any part of a **claim** or **privacy investigation** not covered by this **policy**.

7. **Client:** means any third party with whom the **Insured Organization** has a contract in place for the supply of **Insured Organization's** services or products in return for a fee, or where a fee would normally be expected to be paid.
8. **Computer system:** Means any interconnected computers and related peripheral devices or components, **programs**, systems and application software, storage and backup devices, mobile devices (including **employee** devices as part of a formal Bring Your Own Device policy), software, or communications system, including any email system, intranet, extranet or website, by which data is collected, transmitted, processed, stored, backed up, retrieved, and owned, under the control of, operated or leased by the **Insured**, or someone on **Insured's** behalf under a written contract. **Computer System** does not include any **Outsourced Service Provider's computer system**.
9. **Cyber attack:** Any digital attack designed to disrupt access to or the operation of the **computer system** including a denial of service attack or distributed denial of service attack.
10. **Cyber terrorism:** Any act or series of acts, or the threat of such act or acts, of any person or group of persons, whether acting alone or on behalf of or in connection with any organization, through the use of computer systems to destruct, disrupt or subvert any computer system, computer network, infrastructure, the Internet, an intranet, telecommunications and/or its content, with the intention to cause harm or committed for political, religious or ideological purposes, including but not limited to the influencing of any government and/or to put the public or a section of the public in fear.
11. **Data asset:** Any electronic data or software.
12. **Data recovery costs:** The reasonable and necessary costs and expenses incurred to regain access to **Insured's data asset** stored on the **Insured Organization's computer system**, or to replace, restore, or repair **Insured's data asset** stored on the **Insured Organization's computer system** from back-ups, originals, or other sources.
13. **Data subject:** Any natural person who is the subject of **personal data**.
14. **Defense costs:** The reasonable and necessary lawyers' and experts' fees and legal costs incurred in investigating, settling, defending, appealing, or defending an appeal against a covered **claim**.
15. **Employee:** Any individual hired by the **Insured** to perform employment duties solely on **Insured's** behalf in the ordinary course of **Insured Organization's business**. This does not include the **Insured Organization's** subcontractors or outsourcers.
16. **Endorsement:** A change or an addition to the terms of the **policy**.

**17. Incident:** means **adverse publication, privacy breach, security failure, illegal threat, and a cyber attack.**

All **incidents** with a common nexus of fact, circumstance, situation, transaction, or cause, or a series of related facts, circumstances, situations, transactions, or causes will be considered as a single **incident** and will be deemed to have occurred at the time the first **incident** occurred.

**18. Illegal threat:** Any reasonable threat or connected series of threats from a third party to:

- a) introduce **malicious code** into a **computer system**;
- b) commence a **cyber attack**;
- c) disseminate, divulge, or improperly utilize any of the **Insured's data assets** taken as a result of the unauthorized use of or the unauthorized access of the **Insured's computer system**; or
- d) encrypt or otherwise make unavailable the **Insured's data assets**,

unless:

- i. a payment is received from the **Insured Organization** or on the **Insured Organization's** behalf in return for the elimination, mitigation, or removal of such threat; and
- ii. a threat or connected series of threats related to any of the acts mentioned above that have already commenced.

**19. Income:** means:

- a) the total net income (net profit or loss before income taxes) of **Insured Organization's business**, less any savings resulting from the reduced costs and expenses; and
- b) The continuing normal operating expenses incurred, including payroll.

**20. Increased costs of working:** The reasonable and necessary costs and expenses incurred by the **Insured** for the sole purpose of minimizing the reduction in **income** during the **indemnity period**, but not exceeding the reduction in **income**.

**21. Indemnity period:** The period, in months, beginning on the date the interruption to **Insured's business** or **voluntary shutdown** commences and lasting for the period during which **Insured's income** is affected as a result of such interruption or **voluntary shutdown**, but for no longer than the number of months shown in the Declarations.

**22. Insured Organization:** The **Named Insured** and any **Subsidiary**.

**23. Insured:** The **Insured Organization** and a **senior executive, employee** but only when acting on the **Insured Organization's** behalf, or any independent contractor when performing work for the **Insured Organization** under the **Insured Organization's** direction and supervision, based on a written contract.



- 24. Insurer:** The entities named in the Declarations.
- 25. Loss:** Any financial harm caused to **Insured Organization's business**.
- 26. Malicious Code: Programs** that are secretly introduced without the **Insured Organization's** permission or knowledge including, but not limited to, malware, worms, trojans, rootkits, spyware, dishonest adware, crimeware, and other malicious unwanted software.
- 27. Media Incident:** means any actual or alleged:
- a) infringement of copyright, trademark, trade name, trade dress, title, slogan, service mark or service name;
  - b) defamation, libel, or slander;
  - c) trade libel, product disparagement, or malicious falsehood; or
  - d) Plagiarism, piracy or misappropriation of ideas under an implied contract;
- which directly arises from the **Insured Organization's** business, in the course of gathering, communicating, reproducing, publishing, disseminating, displaying, releasing, transmitting, or disclosing **Insured Organization's** information.
- 28. Money:** Cash, coin, bank and currency notes, bullion, funds, cheques, registered cheques, travelers' cheques, postal orders, bank drafts, or money orders. Money does not include any electronic, digital, online, virtual currency, or any cryptocurrency.
- 29. Named Insured:** the legal entity stated in Item 1. of the Declarations.
- 30. Outsourced Service Provider:** means a business not owned, operated or control by the **Insured Organization**, but that the **Insured Organization** hires for a fee pursuant to a written contract to perform services related to the conduct of the **Insured Organization's** business, including but not limited to:
- a) maintaining, managing, or controlling **computer systems**;
  - b) hosting or facilitating your Internet website, or
  - c) providing administrative functions, human relations, marketing or other outsourced service to the **Insured Organization**.
- 31. PCI charges:** Any charges, fines, penalties, levies, costs, recertification costs, expenses, assessments, contractual damages, or imposition of liabilities of any nature arising as a direct result of **Insured's** failure to comply with **PCI DSS** due to a **privacy breach**, including any sums in relation to card reissuance or fraudulent transactions.
- 32. PCI DSS:** Payment Card Industry Data Security Standard or any equivalent or successor standard or regime.
- 33. Pending or prior litigation date:** The date stated as the pending and prior litigation date in the Declarations.
- 34. Policy period:** The time for which this **policy** is in force as shown in the Declarations.

- 35. Personal data:** Any non-public individually identifiable information that constitutes personal information under any applicable right to privacy, consumer data protection law, or other legal protection.
- 36. Policy:** This insurance document and the Declarations, including any **endorsements** and the **Insured's application**.
- 37. Privacy breach:** The unauthorized acquisition, access, use, or disclosure of, or the loss or theft of, **personal data**, or confidential corporate information stored on the **Insured Organization's computer system** that is identified as such in an agreement between the **Insured** and the third party claiming that such corporate information is confidential.
- 38. Privacy investigation:** Any official examination, formal inquiry, or formal investigation based on the same circumstances as any **privacy breach** or **claim** covered under Insuring Agreement **A.1 Information Privacy Liability** a), b), or d), conducted by any regulator, government department, or other legally empowered body.
- 39. Privacy investigation costs:** The reasonable and necessary lawyers' and experts' fees and legal costs incurred in investigating, settling, defending, appealing, or defending an appeal against a **privacy investigation** or an investigation for any actual or alleged breach of any right to privacy, consumer data protection law, or other legal protection for **personal data**.
- 40. Program:** A set of instructions written in a computer language that tells a computer how to process data or interact with ancillary equipment.
- 41. Public relations costs:** The reasonable costs incurred:
- for a public relations or crisis management consultant to assist the **Insured Organization** in re-establishing **Insured Organization's reputation** and responding to media reports, including the development and communication of a strategy to repair **Insured's reputation**;
  - to issue statements via email or **Insured's** website and social media accounts, including managing and monitoring **Insured's** social media sites; and
  - for any other reasonable and proportionate measures taken to protect or re-establish **Insured Organization's reputation**.
- The **Insurer** shall only reimburse the **Insured Organization** for such costs a) where the **Insurer** has provided prior written consent; and b) where costs incurred by the **Insured Organization** for services performed by themselves are over and above **Insured Organization's** normal operating expenses.
- 42. Regulatory award:** Following a **privacy investigation**, any civil or regulatory sanctions, fines, penalties, disgorgement of profits, treble damages, or multiple damages, including but not limited to those imposed by any national, federal, state or local governmental body or any licensing organization, if insurable in the jurisdiction where such award was first ordered, but not including **PCI charges**.
- 43. Regulatory Claim:** Any claim brought by, or on behalf of, a federal, state or foreign governmental entity in such entity's regulatory or official capacity due to a **privacy breach**.

**44. Reputation:** means:

- a) the termination of the **Insured Organization's** business written contract with one or more of the **Insured Organization's clients**; and / or
- b) the reduction in the **Insured's Organization's** book value.

**45. Retention:** The amount the **Insured** must bear as the first part of each covered **claim** or **loss**.**46. Securities:** Negotiable and non-negotiable financial instruments or contracts, in physical or electronic form, which represent **money** or tangible property.**47. Security failure:** Any failure by the **Insured Organization** or by others on **Insured's** behalf in securing **Insured's computer system** against unauthorized electronic access or use.**48. Senior Executive:** Any person who was, is, or during the **policy period** becomes the **Insured Organization's** director, officer, trustee, in-house counsel, chief information security officer, risk manager, or chief privacy officer in actual control of the **Insured Organization's** operations.**49. Subsidiary:**

- a) Any entity that has been identified in the presentation of the risk, or **application**, for this **policy** and which their revenues have been recognized in the **application**, and has at least the same security standards shown in the presentation of the risk; or
- b) Any entity which the **Insured Organization** owns more than 50% of the book value of the assets or of the outstanding voting rights on the first day of the **policy period**; or
- c) Any entity which the **Insured Organization** creates or acquires during the **policy period**:
  - where its consolidated revenues at the date of creation or acquisition are less than 20% of **Insured Organization's** existing consolidated revenues;
  - where the acquired entity's business activities are similar to **yours**; and
  - which has not suffered any loss or been subject to any claim with a value greater than the **retention**, which would have been covered under this **policy**.

If **Insured Organization's** new subsidiary does not qualify for automatic coverage as provided above, the **Insurer** will insure it for 30 days after the acquisition or its creation while the **Insurer** underwrite the new subsidiary. The **Insurer** will only provide coverage beyond the 30-day period by the **Insurer's** written agreement.

**50. Terrorism:** An act, or the threat of an act, by any person or group of persons, whether acting alone or on behalf of or in connection with any organization or government, that:

- a) is committed for political, religious, ideological, or similar purposes; and
- b) is intended to influence any government or to put the public, or any section of the public, in fear; and
  - involves violence against one or more persons; or
  - involves damage to property; or
  - endangers life other than that of the person committing the action; or

- creates a risk to health or safety of the public or a section of the public.

**Terrorism** does not include any of the elements described under **cyber terrorism**.

- 51. Voluntary shutdown:** Voluntary shutdown means a shut-down by the **Insured Organization** of all or part of **Insured Organization's computer system** to attempt to prevent or mitigate any interruption or degradation of **Insured's computer system** resulting from an **incident**.
- 52. Waiting period:** means the period of time set forth in the Declarations for the corresponding coverage.

SAMPLE

## IV. GENERAL TERMS AND CONDITIONS

### 1. LIMITS AND RETENTION

#### 1.1 AGGREGATE LIMIT AND SUBLIMITS

The aggregate policy limit shown in item 3 of the Declarations is the most the **Insurer** will pay under this **policy** regardless of the number of insuring agreements purchased, or otherwise stated.

The amount the **Insurer** pays for a particular type of **claim, incident** or **loss** may be further limited in the Declarations.

#### 1.2 PAYING OUT THE LIMIT OF INDEMNITY

At any stage of a **claim, loss**, or other liability under this **policy**, the **Insurer** can pay the **Insured** the applicable limit of indemnity or what remains after any earlier payment from that limit. The **Insurer** will pay covered costs and expenses already incurred at the date of the **Insurer's** payment. The **Insurer** will then have no further liability for that **claim, loss**, or liability, including any costs or expenses.

#### 1.3 RETENTION

The **Insured Organization** must:

- a) pay the applicable **retention** shown in the Declarations; and
- b) bear any loss or expense suffered during the **waiting period** in respect of each covered:
  - i. partial or total interruption to **Insured's business** or **voluntary shutdown**;
  - ii. **loss** under Insuring Agreements **B.5 BUSINESS INTERRUPTION**, or **B.6 REPUTATION PROTECTION**.

Any **loss** or expense the **Insured Organization** incurs during the **waiting period** shall not be applied to satisfy any applicable **retention** shown in the Declarations.

The **retention** shown in the Declarations is not payable in respect of any **loss** regarding of which the **Insured** has borne the **waiting period**.

If more than one insuring agreement applies, only the single highest **retention** will apply to any **loss** or expense.

## 1.4 RETENTION WAIVER

If the **Insured** notifies the **Insurer** within 24 hours of **Insured**'s first awareness of any actual or reasonably suspected **incident**, the **Insurer** will waive the retention, as shown in the Declarations, for any **losses** suffered. The **Insurer** will only waive retentions up to a total of the amount shown in the Declarations for all claims and losses combined. This limited waiver does not apply to any **waiting period**.

## 2. INSURED'S OBLIGATIONS

### 2.1 NOTICE TO INSURER & ADMISSIONS

If a **claim** or **incident** arises the **Insurer** will not make any payment under this **policy** unless the **Insured**:

- a) Notifies the **Insurer** as soon as practicable and in no event later than 90 days after the **policy period**, or during the extended reporting period (if applicable), of **Insured**'s first awareness within the **policy period** of any **incident, claim, privacy investigation, loss, interruption or voluntary shutdown**, or any other liability for which the **Insured** may seek indemnification, reimbursement, or payment under this **policy**.
- b) Give the **Insurer**, at **Insured Organization**'s expense, any information which the **Insurer** may reasonably require and co-operate fully in the investigation of any **claim** under this **policy**.
- c) When dealing with any client or third party, the **Insured** must not admit that the **Insured** is liable for what has happened or make any offer, deal, or payment, unless the **Insured** has the **Insurer**'s prior written agreement.

### 2.2 NOTICE OF CIRCUMSTANCE

If, during the **policy period**, the **Insured** becomes aware of any **claim** or event that may reasonably be covered under this **policy**, the **Insured** must not incur any costs or expenses without the **Insurer**'s prior written agreement which will not be unreasonably withheld.

All such notices described in this clause must include the following details related to the applicable **claim**:

- a) Details of the **Insured Organization**'s circumstances that could give rise to a **claim**.
- b) A detailed description of the act or circumstances that could reasonably be expected to give rise to the future **claims**, including dates, persons and entities involved.
- c) The identity of the potential claimants;
- d) The details of how the **Insured** first became aware of the act or other circumstances; and
- e) The nature of the potential **claim expenses**.

## 2.3 CLAIM PROCESS

- a) The **Insurer** has the right, but not the obligation, to take control of and conduct in the **Insured's** name, the investigation, settlement, or defense of any **claim, privacy investigation, investigation, or loss**. If the **Insurer** thinks it necessary, the **Insurer** will appoint an adjuster, attorney, or any other appropriate person to handle the **claim, privacy investigation, investigation, or loss**.
- b) Proceedings will only be defended if there is a reasonable prospect of success and taking into account the commercial considerations of the costs of defense versus settling the proceedings.
- c) The **Insurer** will not pay any costs or expenses for any part of any **claim, loss, or any other liability not covered by this policy**.
- d) The **Insured** has the right to select defense counsel from our vendor panel list you can find at [boxxinsurance.com/vendor-panel-list/](https://boxxinsurance.com/vendor-panel-list/).
- e) If a dispute arises between the **Insured** and the **Insurer** in connection with this **policy** that cannot be resolved through informal negotiation, the parties will attempt to resolve the dispute through mediation before a mutually agreeable mediator. The mediator's expenses and fees will be split equally between the **Insured** and the **Insurer**. If the **Insurer's** dispute has not been resolved upon conclusion of the mediation process, then either party may file suit in any court having jurisdiction over the parties and the subject matter of the dispute or disagreement.

## 2.4 LOSS MINIMIZATION

The **Insured Organization** must make every reasonable effort to minimize any **loss** or liability and take appropriate emergency measures immediately if they are required to reduce any **claim**; and give the **Insurer** all assistance which the **Insurer** may reasonably require to pursue recovery of amounts the **Insurer** may become legally liable to pay under this **policy**, in **Insured Organization's** name but at the **Insurer's** expense.

## 2.5 POTENTIAL LOSSES AND CLAIMS

- a) The **Insured** may notify the **Insurer** of facts, matters, or circumstances which the **Insured** first become aware of within the **policy period**, or extended reporting period if applicable, and which the **Insured** believes are reasonably likely to give rise to a **privacy breach, security failure, illegal threat, cyber attack, claim, privacy investigation, loss, business interruption, voluntary shutdown, or any other liability under this policy**.
- b) If the **Insurer** accepts **Insured's** notification, the **Insurer** will regard any subsequent **privacy breach, security failure, illegal threat, cyber attack, claim, privacy investigation, loss, or any other liability as notified to this policy**.

## 2.6 PROOF OF LOSS

- a) With respect of requests for payment or reimbursement of **losses, claim expenses** or any other costs or expenses covered incurred by the **Insured Organization** will be accompanied by a proof of such losses, costs or expenses. Such proof of loss must include, in detail, how the costs were calculated, what assumptions have been made and will include any applicable reports, books of accounts, bills, invoices and other vouchers or proofs of payment made by the Insured in relation to such **losses or claim expenses**. Furthermore, the **Insured Organization** will cooperate with, and provide any additional information reasonably requested by, the **Insurer**.
- b) Solely with respect to verification of Insuring Agreements **B.5 Business Interruption, or B.6 Reputation Protection b)**, the **Insured Organization** agrees to allow the **Insurer** to examine and audit the **Insured Organization's** books and records that relate to this **policy** at any time during the **policy period** and up to 12 months following the **Insurer's** receipt of any proof of loss in accordance with this section.
- c) Any requests for payment or reimbursement of **losses or claim expenses** shall not include or be calculated based on any of **Insured Organization's** overhead expenses, **Insured's** liability for debt, taxes, lost costs or profits, salaries or wages ordinarily incurred in the performance of **Insured Organization's business**, or any future cost of doing business, including but not limited to the cost of any future license or royalty, or costs of improving **Insured Organization's** security or performing audits.
- d) Following a covered interruption or **voluntary shutdown**, or a covered **loss** under Insuring Agreements **B.5 Business Interruption, or B.6 Reputation Protection b)**., the **Insurer** will determined the losses taking full account and due consideration of an **Insured's** proof of loss, and by considering the difference between **Insured Organization's** actual **income** during the **indemnity period** and the **income** it is estimated the **Insured** would have earned during that period or, if this is **Insured Organization's** first year of business, the difference between **Insured's income** during the **indemnity period** and during the period immediately prior to the interruption, **voluntary shutdown or loss**, less any savings resulting from the reduced costs and expenses the **Insured** pay out of **Insured's income** during the **indemnity period**. The **Insurer** will also pay for **increased costs of working**.

## 2.7 CANCELLATION AND EXTENDED REPORTING PERIOD

- a) Automatic Extended Reporting Period

If this **policy** is cancelled (other than for non-payment of premium) or non-renewed by the **Insured** or the **Insurer**, then the **Insured** will have an automatic Extended Reporting Period for a period of sixty (60 days) after the end of the **Policy Period**.

- b) Additional Extended Reporting Period
  - i. If this **policy** is cancelled (other than for non-payment of premium) or non-renewed by the **Insured** or the **Insurer**, then the **Insured** has the right to purchase an extended reporting period within sixty (60 days) after the end of the



**Policy Period.**

- ii. Such Additional Extended Reported Period will be for a period of 12 months after the end of the Automatic Extended Reporting Period and will be subject to an additional premium of 100% of the annualized premium to provide notice to the **Insurer** of any discovered **loss**; or any **claim** or **privacy investigation** first brought against the **Insured** during the **policy period** or extended reporting period alleging acts, incidents or circumstances occurring prior to the expiry of the **policy period**.
  - iii. This extended reporting period is only available if the **Insurer** receives written notice of purchase from the **Insured** and the additional premium is paid to the **Insurer** within 30 days following the end of the **policy period**.
  - iv. The extended reporting period shall be non-cancellable and the entire additional premium is considered fully earned at the beginning of the extended reporting period.
  - v. The election of this extended reporting period shall not increase the aggregate limit of indemnity provided by this **policy** or any sub-limits.
- c) Cancellation and Non-Renewal
- i. The **Named Insured** may be cancelled or elect not to renew this **policy** by giving a written notice at the address shown in the Declaration.
  - ii. The **Insurer** will refund to the **Named Insured** the unearned pro-rata proportion of the premium for the remaining portion of the **policy period** after the effective date of cancellation for which the **Insured** has already paid.
  - iii. If the **Insurer** has agreed that the **Insured** can pay the **Insurer** the premium by installments and the **Insurer** has not received an installment 14 days after the due date, the **Insurer** may cancel the **policy**. In this event, the **policy period** will equate to the period for which premium installments have been paid to the **Insurer**. The **Insurer** will confirm the cancellation and amended **policy period** to the **Insured** in writing.
  - iv. The **Insurer** will not cancel this **policy** except for failure to pay premium when due, in which event, the **Insurer** will provide the **Insured** with written notice of cancellation at the address stated in the Declarations. The **Insurer's** notice will be mailed to the **Insured** at least 10 days prior to the effective cancellation date with a copy sent to **Insured's** agent of record.
  - v. This **policy** may be cancelled by fraud or material misrepresentation by the **Insured** in the **application** or other information provided to induce the **Insurer** to issue this **policy**; or for fraud by the **Insured** in connection with the submission of any **claim** or incident for coverage under this **policy**.

## 2.8 CHANGE OF OWNERSHIP

If during this **policy**, the **Insured Organization** is purchased, acquired or merged into another entity such that the **Insured Organization** no longer holds or controls the voting rights of the **Insured Organization**, the **Insurer** will continue to insure the **Insured** for the remainder of the **policy period**, but only for activities or incidents that occurred prior to the acquisition or merger.

## 2.9 NOTICE OF TERRORISM INSURANCE COVERAGE

Coverage for acts of terrorism is included in your policy. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act: The term “act of terrorism” means any act that is certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020 of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Terrorism Risk Insurance Act, as amended, contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers’ liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of your annual premium that is attributable to coverage for acts of terrorism is shown in the Declarations and does not include any charges for the portion of losses covered by the United States government under the Act.

**BY RECEIPT OF THIS NOTICE YOU HAVE BEEN NOTIFIED, UNDER THE TERRORISM RISK INSURANCE ACT, AS AMENDED, THAT COVERAGE UNDER THIS POLICY FOR ANY LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT AND MAY BE SUBJECT TO A \$100 BILLION CAP THAT MAY**

**REDUCE YOUR COVERAGE. YOU HAVE ALSO BEEN NOTIFIED OF THE PORTION OF YOUR PREMIUM ATTRIBUTABLE TO SUCH COVERAGE.**

### 3. OTHER PROVISIONS

#### 3.1 PREMIUM PAYMENT

The **Insurer** will not make any payment under this **policy** until the **Insured** has paid the premium.

#### 3.2 MULTIPLE INSUREDS

- a) The most the **Insurer** will pay is the relevant amount shown in the Declarations.
- b) If more than one **Insured** is named in the Declarations, the total amount the **Insurer** will pay will not exceed the amount the **Insurer** would be liable to pay to any one of the **Insured**.
- c) The **Insured** agrees that the **Named Insured**, or if there is more than one **Insured** named in the Declarations the first of them, is authorized to receive all notices and agrees any amendments to the **policy**.

#### 3.3 SERVICE OF SUIT PROVISION

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the **Insurer** hereby designate the Superintendent, Commissioner, or Director of Insurance or other officer specified for that purpose in the statute, or his/her successor in office, as the **Insurer's** true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this **Policy**. The **Insurer** agrees that service of process effected in this manner is of the same legal force and validity as personal service of process in this state upon the **Insurer**.

#### 3.4 CHOICE OF LAW

It is understood and agreed that in the event of a dispute concerning the payment of any amount claimed by the **Insured** to be due hereunder, the **Insurer**, at **Insured's** request, will submit to the jurisdiction of a court of competent jurisdiction within the United States of America. The foregoing shall not constitute a waiver of the right by the **Insurer** to remove, remand, or transfer such suit to any other court of competent jurisdiction in accordance with the applicable statutes of the state of United States pertinent hereto.

#### 3.5 NO CHANGES OR ASSIGNMENT

No change in, modification of, or assignment of interest under this **policy** shall be effective except when made by **endorsement** signed by the **Insurer**.

### 3.6 SUBROGATION

If any payment is made under this **policy** and there is the ability to recover against any third party, it is agreed that the **Insured Organization** tenders all rights of recovery to the **Insurer**. The **Insured Organization** further agrees to assist the **Insurer** in exercising the **Insurer's** subrogation rights. Any recovery from the **Insurer's** subrogation efforts will first be paid to the **Insurer** for any incurred subrogation expenses, then to the payment the **Insurer** made that gave rise to the **Insurer's** subrogation rights, then to reimburse the **Insured** for the **retention** paid, with any remainder to the **Insurer**. This obligation does not apply to the extent that the right to subrogate is waived by the **Insured Organization** under a written contract with a third party prior to any **incident** discovered giving rise to any coverage provided.

### 3.7 SEVERABILITY OF INSUREDS

The **Insurer** will not impute any conduct or knowledge of any of those included in the definition of the **Insured** to any individual **Insured** under this **policy**. However, the **Insurer** will impute the conduct or knowledge of any of those included in the definition of the **Insured Organization**.

### 3.8 OTHER INSURANCE

Any payment due under this **policy** with respect to **B. First Party Insuring Agreements** shall be applied as primary insurance. Any other payment due under this **policy** shall be specifically excess of and will not contribute with any other valid and collectible insurance available to the **Insured**, unless such other insurance is written as excess insurance over the limit of indemnity of this **policy**.

### 3.9 ALLOCATION OF COSTS

If a **claim** is only partially covered by the **Insurer**, either because of uncovered matters or because it includes uncovered parties, the **Insurer** will use the **Insurer's** best efforts to agree a fair and proper allocation based upon the relative legal exposure to such covered and uncovered parties and/or matters. The allocation will ultimately be the **Insurer's** decision however.

### 3.10 SANCTIONS

The **Insurer** will not be liable to pay any claim or provide any benefit under this **policy** that would expose the **Insurer** to any sanction, prohibition, or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Switzerland, Canada or the United States of America.

In the event of the above, the **Insurer** will treat this **policy** as if it had never existed.

### 3.11 TERRITORY

The coverage provided under this **policy** applies worldwide.

### 3.12 ENTIRE AGREEMENT

The **Insured** agrees that this **policy** constitutes the entire agreement between the **Insured** and the **Insurer** relating to this insurance.

SAMPLE

801 Brickell Avenue, 8<sup>th</sup> Floor, Suite 800, Miami, FL 33131

**Endorsement: WAR, CYBER WAR & CYBER OPERATION ENDORSEMENT**

**Policy No:** [Policy Number]

**Insured:** [Insured Name]

**Effective:** [Effective Date]

Notwithstanding any other provision in the **policy**, it is hereby agreed to by the **Insured** and the **Insurer** that the **policy** is hereby amended, as follows:

The following is added to **II. WHAT IS NOT COVERED - EXCLUSIONS**

War, Cyber War  
and Cyber  
Operation

Notwithstanding any provision to the contrary in this insurance, this insurance does not cover any loss, damage, liability, cost or expense of any kind (together "loss" for the purpose of this exclusion only) directly or indirectly occasioned by, happening through or in consequence of:

- a) **war** or a **cyber operation** that is carried out in the course of **war**; and/or
- b) retaliatory **cyber operations** between any **specified states** leading to two or more **specified states** becoming **impacted states**; and/or
- c) a **cyber operation** that has a major detrimental impact on:
  - i. the functioning of a **state** due to the direct or indirect effect of the **cyber operation** on the availability, integrity or delivery of an **essential service** in that **state**; and/or
  - ii. the security or defense of a **state**.

Paragraph c) shall not apply to the direct or indirect effect of a **cyber operation** on a **bystanding cyber asset**.

The **Insurer** shall have the burden of proving that this exclusion applies.

Attribution of a **cyber operation** to a **state**

- a) The primary but not exclusive factor in determining attribution of a **cyber operation** shall be whether the government of the **state** (including its intelligence and security services) in which the **computer system** affected by the **cyber operation** is physically located attributes the **cyber operation** to another **state** or those acting on its behalf.
- b) Pending attribution by the government of the **state** (including its intelligence and security services) in which the **computer system** affected by the **cyber operation** is physically located, the **Insurer** may rely upon an inference which is objectively

- reasonable as to attribution of the **cyber operation** to another **state** or those acting on its behalf. It is agreed that during this period no loss shall be paid.
- c) In the event that the government of the **state** (including its intelligence and security services) in which the **computer system** affected by the **cyber operation** is physically located either:
- i. takes an unreasonable length of time to, or
  - ii. does not, or
  - iii. declares it is unable to

attribute the **cyber operation** to another **state** or those acting on its behalf, it shall be for the **Insurer** to prove attribution by reference to such other evidence as is available.

Definitions applicable only to this exclusion:

1. **Bystanding cyber asset** means a **computer system** used by the insured or its third party service providers that is not physically located in an **impacted state** but is affected by a **cyber operation**.
2. **Computer system** means any computer, hardware, software, communications system, electronic device (including but not limited to, smart phone, laptop, tablet, wearable device), server, cloud infrastructure or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.
3. **Cyber operation** means the use of a **computer system** by or on behalf of a **state** to disrupt, deny, degrade, manipulate or destroy information in a **computer system** of or in another **state**.
4. **Essential service**, for the purposes of this exclusion, means a service that is essential for the maintenance of vital functions of a **state** including without limitation: financial institutions and associated financial market infrastructure, health services or utility services.
5. **Impacted state** means any **state** where a **cyber operation** has had a major detrimental impact on:
  - i. the functioning of that **state** due to the direct or indirect effect of the **cyber operation** on the availability, integrity or delivery of an **essential service** in that **state**; and/or
  - ii. the security or defense of that **state**.

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6. **Specified states** means China, France, Germany, Japan, Russia, UK or USA.
7. **State** means sovereign state.
8. **War** means:
  - i. the use of physical force by a **state** against another **state** or as part of a civil war, rebellion, revolution, insurrection, and/or
  - ii. military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority,

whether war be declared or not.

This endorsement should be read in conjunction with the Definitions listed above as items in bold are defined with the Policy and Definitions Endorsement.

All other terms and conditions of this **Policy** remain unchanged.

This endorsement forms a part of the **Policy** to which attached, effective on the inception date of the **Policy** unless otherwise stated herein.

Signed for and on behalf of Lloyd's:



Hilario Itriago

Dated: [Date of Issuance]



801 Brickell Avenue, 8<sup>th</sup> Floor, Suite 800, Miami, FL 33131

**Endorsement: OFAC EXCLUSION ENDORSEMENT**

**Policy No:** [Policy Number]

**Insured:** [Insured Name]

**Effective:** [Effective Date]

Notwithstanding any other provision in the **policy**, it is hereby agreed to by the **Insured** and the **Insurer** that the **policy** is hereby amended, as follows:

The following is added to **II. WHAT IS NOT COVERED - EXCLUSIONS**

OFAC                      any violation of, or the exposure of any **Insured**, the **Insurer** or any person or entity claiming the benefits of this **policy** to, any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws, regulations of the United States Treasury Department's Office of Foreign Assets Control ("OFAC").

This endorsement should be read in conjunction with the Definitions listed above as items in bold are defined with the Policy and Definitions Endorsement.

All other terms and conditions of this **Policy** remain unchanged.

This endorsement forms a part of the **Policy** to which attached, effective on the inception date of the **Policy** unless otherwise stated herein.

Signed for and on behalf of Lloyd's:



Hilario Itriago

Dated: [Date of Issuance]