



## CyberChoice First Response Policy

In consideration of the payment of the premium, in reliance on the **Application**, and subject to all of the terms, conditions, and limitations of, and any endorsements to, this Policy, the Insurer and the **Insured** agree as follows:

### I. INSURING AGREEMENTS

**ONLY THOSE COVERAGES FOR WHICH A LIMIT APPEARS IN ITEM 8 OF THE POLICY DECLARATIONS PAGE ARE INCLUDED UNDER THIS POLICY.**

#### (A) **Data Privacy and Network Security Liability**

The Insurer will pay **Damages**, including **PCI Loss**, and **Defense Expenses** on behalf of the **Insured** which the **Insured** becomes legally obligated to pay as a direct result of a **Claim** first made against the **Insured** during the **Policy Period** and reported to the Insurer pursuant to Section IV(G), for a **Data Privacy Wrongful Act** or a **Network Security Wrongful Act** that first occurs on or after the applicable Retroactive Date and prior to the end of the **Policy Period**.

#### (B) **Privacy Regulatory Matters**

1. The Insurer will pay **Regulatory Fines** and **Defense Expenses** on behalf of the **Organization** which the **Organization** becomes legally obligated to pay as a direct result of a **Regulatory Proceeding** first made against the **Organization** during the **Policy Period** and reported to the Insurer pursuant to Section IV(G), for a **Data Privacy Wrongful Act** or a **Network Security Wrongful Act** that first occurs on or after the applicable Retroactive Date and prior to the end of the **Policy Period**.
2. The Insurer will pay **Regulatory Inquiry Expenses** on behalf of the **Organization** which the **Organization** incurs as a direct result of a **Regulatory Inquiry** first made against the **Organization** during the **Policy Period** and reported to the Insurer pursuant to Section IV(G). If a **Regulatory Inquiry** reveals a **Wrongful Act**, such **Wrongful Act** must have first occurred on or after the applicable Retroactive Date and prior to the end of the **Policy Period** to maintain coverage under this Insuring Agreement.

#### (C) **Digital Media Liability**

The Insurer will pay **Damages** and **Defense Expenses** on behalf of the **Insured** which the **Insured** becomes legally obligated to pay as a direct result of a **Claim** first made against the **Insured** during the **Policy Period** and reported to the Insurer pursuant to Section IV(G), for a **Digital Media Wrongful Act** that first occurs on or after the applicable Retroactive Date and prior to the end of the **Policy Period**.

#### (D) **Incident Response Expenses**

The Insurer will pay **Incident Response Expenses** on behalf of the **Insured** which the **Organization** incurs as a direct result of a **Data Privacy Incident** or **Network Intrusion** first discovered by an **Executive Officer** during the **Policy Period** and reported to the Insurer pursuant to Section IV(G).

#### (E) **Cyber Extortion Loss**

The Insurer will reimburse the **Organization** for **Extortion Payments** which the **Organization** pays as a direct result of a **Cyber Extortion Threat** first made against the **Organization** during the **Policy Period** and reported to the Insurer pursuant to Section IV(G).

(F) **Network Restoration Expenses**

The Insurer will reimburse the **Organization** amounts which the **Organization** incurs as **Network Restoration Expenses** as a direct result of a **Network Intrusion** of an **Organization's Computer System** first discovered by an **Executive Officer** during the **Policy Period** and reported to the Insurer pursuant to Section IV(G).

(G) **Business Interruption**

The Insurer will reimburse the **Organization** amounts which the **Organization** incurs during the **Period of Restoration** as:

1. **Business Interruption Loss** after the expiration of the **Waiting Period**, and **Extra Expense**, directly resulting from a **Network Outage** of an **Organization's Computer System** that first occurs during the **Policy Period** and is reported to the Insurer pursuant to Section IV(G).
2. **Dependent Business Interruption Loss** after the expiration of the **Waiting Period**, and **Extra Expense**, directly resulting from a **Network Outage** of a **Third Party Service Provider's Computer System** that first occurs during the **Policy Period** and is reported to the Insurer pursuant to Section IV(G).

(H) **Pre-Claim Expenses**

If an **Executive Officer** first becomes aware during the **Policy Period** of a circumstance which may reasonably be expected to give rise to a **Claim** under any **Claims-Made Coverage**, and reports it to the Insurer in accordance with Section IV(G)(3), the Insurer will pay on behalf of the **Named Insured, Pre-Claim Expenses** related to the investigation of such circumstance. If a **Wrongful Act** is revealed as a result of such investigation, such **Wrongful Act** must have first occurred on or after the applicable Retroactive Date and prior to the end of the **Policy Period** to maintain coverage under this Insuring Agreement.

(I) **Post-Incident Remediation Expense Fund**

If a **Data Privacy Incident** or **Network Intrusion** reported to the Insurer during the **Policy Period** pursuant to Section IV(G) results in covered **First Party Expenses** under this Policy, then the Insurer will reimburse the **Named Insured** for **Post-Incident Remediation Expense** which the **Organization** incurs within 120 days of the final payment of **First Party Expenses** as a direct result of the **Data Privacy Incident** or **Network Intrusion** noticed under the Policy, as described above.

## II. DEFINITIONS

When used in this Policy, in the singular or plural, the terms in bold below mean as follows:

- **Actual Income Loss** means the net income (net profit or loss before income taxes) that the **Organization** would have earned or incurred during the **Period of Restoration** had there not been a **Network Outage**.
- **Advertising Idea** means any idea for an advertisement. The foregoing notwithstanding, **Advertising Idea** does not include any invention or method protected by patent.
- **Application** means the application submitted to the Insurer including any competitor application, any and all materials and information submitted to the Insurer in connection with such application, and all publicly available material that is created by the **Insured** about the **Insured** that the Insurer obtained within twelve (12) months of the inception date of the Policy (including any

information contained on any websites maintained by or on behalf of the **Insured** or any other **Digital Content**), all of which are deemed to be on file with the Insurer and are deemed to be attached to, and form a part of, this Policy, as if physically attached.

- **Bodily Injury** means injury to the body, sickness or disease, and death. **Bodily Injury** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease or death of any person.
- **Business Interruption Loss** means the sum of 1) the **Organization's** continuing fixed operating and payroll expenses, and 2) **Actual Income Loss** resulting from the **Network Outage** of an **Organization's Computer System**. **Business Interruption Loss** will be calculated on an hourly basis and limited to the **Period of Restoration**.
- **Claim** means any:
  1. written demand against any **Insured** for **Damages** or non-monetary relief (including, without limitation, a demand to toll or waive the running of the statute of limitations) commenced by the **Insured's** receipt of such demand;
  2. civil proceeding against any **Insured** for **Damages** or non-monetary relief commenced by service of a complaint or similar pleading upon the **Insured**; or
  3. arbitration proceeding, or other form of civil alternative dispute resolution, against any **Insured** seeking **Damages** or non-monetary relief, commenced by a written demand for arbitration, request for mediation, or similar document commenced by the **Insured's** receipt of such demand;

that is made by a non-governmental person or entity.

**Claim** also means, however, a **Regulatory Proceeding** and **Regulatory Inquiry**, but such **Claims** are only covered under Insuring Agreement (B), (1) and (2), respectively.

The foregoing notwithstanding, **Claim** does not mean any claim or request by any **Insured** for **First Party Expenses**.

- **Claims-Made Coverage** means coverage under Insuring Agreements (A) through (C) for **Claims** made against the **Insured** for **Wrongful Acts**.
- **Computer Forensic Expenses** means reasonable and necessary expenses incurred by the **Organization** to conduct a computer forensic investigation of the **Organization's Computer System** to determine the nature and scope of a **Data Privacy Incident** or **Network Intrusion**, and to contain and stop the ongoing cause of the **Data Privacy Incident** or **Network Intrusion**.
- **Computer System** means computers, input and output devices, network devices and equipment, peripheral devices, storage devices, back-up facilities, mobile devices, and associated computer programs, software and applications.
- **Crisis Management Expenses** means reasonable and necessary expenses incurred by the **Organization**:
  1. for the services of a law firm to:
    - a. determine the **Organization's** legal obligations under **Data Privacy Laws**;
    - b. provide necessary legal services to the **Organization** in responding to a **Data Privacy Incident**; and
    - c. communicate prior to a **Claim** with regulators, consumers and clients regarding a **Data Privacy Incident**;
  2. to retain the services of a PCI Forensic Investigator to comply with the terms of the **Organization's Payment Card Agreement**; and
  3. to protect or mitigate harm to the **Organization's** reputation or brand through services provided by a public relations firm, crisis management firm, or law firm.

The foregoing notwithstanding, **Crisis Management Expenses** do not include any **Insured's** overhead expenses or any salaries, wages, fees, or benefits of its employees, nor do they include any amounts that are uninsurable pursuant to applicable law.

- **Cyber Extortion Threat** means any threat, or series of related threats, by a third party against the **Organization** to intentionally:
  1. cause a **Data Privacy Incident**;
  2. cause a **Network Intrusion** of an **Organization's Computer System**;
  3. alter, damage, encrypt, destroy, misappropriate, delete, corrupt, or render inaccessible or continue to render inaccessible a **Network Asset**;
  4. release an **Organization's** confidential business information; or
  5. cause a **Denial of Service Attack** on an **Organization's Computer System**;

for the purpose of demanding **Extortion Payments** from the **Organization** in exchange for not acting upon the threat. The foregoing notwithstanding, the threat must be deemed credible by a **CyberChoice First Responder**, or by reasonable investigation by the **Organization**, before any **Extortion Payment** is made.

- **CyberChoice First Responder** means a service provider approved by the Insurer to provide services related to the Insuring Agreements in this Policy, and maintained in a periodically updated written list on The Hartford Cyber Center portal available at the following link: <https://cybercenter.thehartford.com>
- **Cyber Terrorism** means the premeditated use, or threatened use, of disruptive activities, including a **Cyber Extortion Threat** against an **Organization's Computer System**, by an individual or group of individuals, whether acting alone or on behalf of or in connection with any organization or government, with the intent to demand an **Extortion Payment**, or cause a **Network Intrusion** or **Data Privacy Incident**, in furtherance of stated social, ideological, religious, economic or political objectives, or to intimidate the **Insured** in furtherance of such objectives.
- **Damages** mean settlements, compensatory damages, judgments, awards of prejudgment or post-judgment interest, and punitive or exemplary damages. **Damages** also means **PCI Loss**, but **PCI Loss** is only covered under Insuring Agreement (A). **Damages** also means **Regulatory Fines**, but **Regulatory Fines** are only covered under Insuring Agreement (B), (1).

The foregoing notwithstanding, **Damages** do not include:

1. fines, penalties, sanctions, taxes or the multiplied portion of a multiplied damage award, except, subject to sub-paragraph 10 of this Definition, below, **PCI Loss**, **Regulatory Fines**, and punitive or exemplary damages;
2. future profits, future royalties, costs of licensing, or other costs of obtaining future use;
3. restitution or disgorgement by any **Insured**;
4. the **Insured's** costs to comply with any injunctive or non-monetary relief;
5. return or offset of fees, charges, royalties, or commissions for goods or services already provided or contracted to be provided;
6. any contractual liability or the value of, or associated with, any cancelled contract, including but not limited to any sums due pursuant to a contractual provision for liquidated damages, agreed penalties, or similar remedy;
7. any amount for which the **Insured** is not liable or legally obligated to pay;
8. **First Party Expenses**, **Pre-Claim Expenses**, or **Regulatory Inquiry Expenses**;
9. any **Insured's** overhead expenses or any salaries, wages, fees, or benefits of its employees; or
10. any of the foregoing that are uninsurable pursuant to applicable law; provided, however, that

the insurability of punitive or exemplary damages will be governed by the laws of any applicable jurisdiction that does not prohibit coverage of such damages.

- **Data Privacy Incident** means any actual, alleged or reasonably suspected:
  1. improper collection, control, disclosure or use of **Nonpublic Personal Information** that is within the care, custody or control of the **Insured**, or any **Third Party Service Provider**; or
  2. improper and unintentional disclosure of third party corporate confidential information provided to the **Insured** and protected under the nondisclosure or confidentiality provision of a contract entered into by the **Organization**.
  
- **Data Privacy Laws** means any local, state, federal or foreign laws, statutes and regulations governing the collection, control, confidentiality or use of **Nonpublic Personal Information**. **Data Privacy Laws** include but are not limited to:
  1. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) (“HIPAA”);
  2. Gramm-Leach-Bliley of 1999 (“G-L-B”), also known as the Financial Services Modernization Act of 1999;
  3. The Family Educational Rights and Privacy Act (“FERPA”);
  4. Children’s Online Privacy Protection Act of 1998 (“COPPA”);
  5. Section 5(a) of the Federal Trade Commission Act, but solely to the extent it governs unfair and deceptive acts or practices resulting in a **Data Privacy Wrongful Act** or **Network Security Wrongful Act**;
  6. State privacy protection and breach notification laws, including but not limited to the California Database Protection Act of 2003 (Cal. SB 1386) and California A.B. 1950;
  7. The New York Department of Financial Services 23 NYCRR 500; and
  8. The European Union General Data Protection Regulation (“GDPR”).
  
- **Data Privacy Wrongful Act** means any act, error or omission by the **Insured** or a **Third Party Service Provider** that results in or is reasonably believed to result in:
  1. a **Data Privacy Incident**;
  2. a violation of a **Data Privacy Law**; or
  3. an unintentional violation of that part of an **Organization’s** written privacy policy that prohibits or restricts the disclosure, dissemination, or sale of **Nonpublic Personal Information** by an **Insured**.
  
- **Defense Expenses** means reasonable legal fees and expenses incurred in the defense or appeal of a **Claim**. The foregoing notwithstanding, **Defense Expenses** do not include any:
  1. **Insured’s** overhead expenses or any salaries, wages, fees, or benefits of its employees;
  2. **Regulatory Inquiry Expenses**;
  3. fees or expenses that are incurred by or on behalf of any party that is not an **Insured**;

4. **Damages;** or
  5. **First Party Expenses.**
- **Denial of Service Attack** means a malicious computer-generated attack initiated by a third party in an attempt to restrict or prevent access to the Internet or the computer program, software or application within the **Organization's** or **Third Party Service Provider's Computer System**.
  - **Dependent Business Interruption Loss** means the sum of 1) the **Organization's** continuing fixed operating and payroll expenses, and 2) **Actual Income Loss** resulting from a **Third Party Service Provider's Network Outage**. **Dependent Business Interruption Loss** will be calculated on an hourly basis and limited to the **Period of Restoration**.
  - **Digital Content** means any data, e-mails, graphics, images, video, sounds, text, or similar matter disseminated via electronic means or published electronically on the **Organization's** website, social media, or mobile platform. The foregoing notwithstanding, **Digital Content** does not include any material provided by third parties for dissemination or publication that is not reviewed and approved by the **Organization**.
  - **Digital Media Wrongful Act** means any act, error or omission by the **Organization** in the course of creating, using, disseminating or publishing **Digital Content** that results or allegedly results in:
    1. wrongful publication, defamation, slander or libel, product disparagement, trade libel or other tort related to disparagement or harm to the reputation or character of any person or organization;
    2. wrongful entry or eviction, invasion of the right to private occupancy, trespass, false arrest, wrongful imprisonment or malicious prosecution;
    3. invasion or interference with an individual's right of privacy or publicity, including torts of publication of private facts, false light, or commercial appropriation of name, persona, voice or likeness;
    4. plagiarism, piracy or unauthorized use of **Advertising Idea**, advertisement, literary or artistic format, character or performance; or
    5. infringement of copyright, logo, slogan, trademark, trade dress, service mark or service name, or infringement of domain name, metatag, linking and framing.
  - **Executive Officer** means the **Organization's** Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Chief Information Security Officer, Chief Technology Officer, Chief Privacy Officer, General Counsel or their functional equivalent.
  - **Extra Expense** means actual, reasonable and necessary expenses incurred by the **Organization**, with the Insurer's prior written consent which will not be unreasonably withheld, to reduce, minimize, or stop a **Network Outage**, or shorten a **Period of Restoration**. **Extra Expense** does not include any:
    1. contractual liability or the value of, or associated with, any cancelled contract, including but not limited to any sums due pursuant to a contractual provision for liquidated damages, agreed penalties, or similar remedy;
    2. costs or expenses incurred to update, replace, restore, or improve any **Computer System**;
    3. costs or expenses incurred to identify or remediate vulnerabilities or errors in any **Computer System**;
    4. **Damages**;
    5. **Defense Expenses**;
    6. **Pre-Claim Expenses** or **Regulatory Inquiry Expenses**;
    7. **Incident Response Expenses**;
    8. **Extortion Payments**; or
    9. amounts that are uninsurable pursuant to applicable law.

- **Extortion Payments** means any actual, reasonable, and necessary amounts, including amounts in bitcoin and cryptocurrencies, paid by the **Insured** with the Insurer's consent which will not be unreasonably withheld, to a third party whom the **Insured** reasonably believes to be responsible for the **Cyber Extortion Threat** if insurable pursuant to applicable law. **Extortion Payments** will also include any reasonable and necessary expenses incurred in order to facilitate, mitigate or negotiate any actual amount paid in response to the **Cyber Extortion Threat**.
- **First Party Expenses** means:
  1. **Incident Response Expenses;**
  2. **Extortion Payments;**
  3. **Network Restoration Expenses;**
  4. **Extra Expense;**
  5. **Business Interruption Loss;** and
  6. **Dependent Business Interruption Loss.**
- **Incident Response Expenses** means the expenses listed below when reasonable and necessary and incurred by the **Organization** with the Insurer's prior written consent which will not be unreasonably withheld:
  1. **Notification and Identity Protection Expenses;**
  2. **Crisis Management Expenses;**
  3. **Computer Forensic Expenses;**
  4. **Internal Expense;** and

At the sole discretion of the Insurer, **Incident Response Expenses** also means any other reasonable and necessary expenses incurred by the **Organization** effectuating a response to a **Data Privacy Incident** or **Network Intrusion** in order to reduce the likelihood of a **Claim** being made in connection with such **Data Privacy Incident** or **Network Intrusion**.

The foregoing notwithstanding, **Incident Response Expenses** do not include any amounts that are uninsurable pursuant to applicable law.

- **Insured** means any:
  1. **Organization;** or
  2. **Insured Person.**
- **Insured Person** means any past, present or future principal, partner, board member, director, officer, principal, partner, trustee, employee, intern, volunteer worker, individual independent contractor, temporary employee or leased personnel of the **Organization** but only with respect to the commission of a **Wrongful Act** within the scope of such person's duties performed on behalf of an **Organization**.
- **Internal Expense** means an **Organization's** overhead expenses, or any salaries, wages, or fees of its employees incurred as a result of a **Data Privacy Incident** or **Network Intrusion** of an **Organization's Computer System** when the **Insured** undertakes all or a portion of a response to a **Data Privacy Incident** or **Network Intrusion** instead of hiring an external vendor. Provided, however, that, as a condition precedent to coverage, **Internal Expense** will only be recognized if: 1) the **Insured** performs such task(s) under the advice of a **CyberChoice First Responder**, 2) such expenses are specifically allocable to the **Data Privacy Incident** or **Network Intrusion** response, and 3) the **Insured** submits activity based accounting records in full support of such expense allocation.
- **Interrelated Wrongful Acts** means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, goal, motive, methodology, or cause or series of

causally connected facts, circumstances, situations, events, transactions, goals, motives, methodologies or causes.

- **Loss** means **Damages, Defense Expenses, Regulatory Inquiry Expenses, Pre-Claim Expenses, and First Party Expenses.**
- **Named Insured** means the entity named in ITEM 1 of the Declarations.
- **Network Asset** is a computer program, software, application or other electronic data that is contained within the **Organization's Computer System.**
- **Network Intrusion** means the actual or suspected gaining of access to or use of a **Computer System** by an unauthorized party, or by an authorized party in an unauthorized manner, including but not limited to the receipt or transmission of malicious code.
- **Network Outage** means the actual and measurable, partial or total failure, interruption, degradation, suspension or delay in service or the failure of the **Computer System** directly resulting from a **Network Intrusion** or a **Denial of Service Attack.**
- **Network Restoration Expenses** means the actual, reasonable, and necessary expenses incurred by the **Insured**, with the Insurer's prior written consent which will not be unreasonably withheld, to restore, remediate, replace or recover a **Network Asset** that is altered, destroyed, stolen, impaired or erased as a direct result of a **Network Intrusion** of an **Organization's Computer System.**

If the **Organization** determines that such **Network Asset** cannot reasonably be restored, remediated, replaced or recovered, then **Network Restoration Expenses** means only the reasonable and necessary costs incurred by the **Organization** to reach this determination.

At the Insurer's sole discretion, and subject to the Insurer's prior written consent which will not be unreasonably withheld, the Insurer may agree to reimburse the **Named Insured** for **Internal Expense** incurred to restore, remediate, replace, or recover a **Network Asset.**

The foregoing notwithstanding, **Network Restoration Expenses** do not include costs or expenses incurred to:

1. identify any errors or vulnerabilities or to update, restore, replace, upgrade, maintain, or improve any **Computer System**;
2. update, replace, restore, or improve any computer program, software, application or other electronic data to a level beyond the condition in which it existed immediately preceding the **Network Intrusion**; or
3. research or develop any computer program, software, application or other electronic data.

Nor do **Network Restoration Expenses** include:

- a. the economic or market value of any **Computer System** or **Network Asset**; or
  - b. any amounts that are uninsurable pursuant to applicable law.
- **Network Security Wrongful Act** means any act, error or omission by the **Insured** or a **Third Party Service Provider** which results in a **Network Intrusion** or **Denial of Service Attack** of the **Organization's Computer System** or **Third Party Service Provider's Computer System.**
  - **Nonpublic Personal Information** means:
    1. a natural person's name; address; unpublished telephone number; social security number; drivers' license or state identification number; credit, debit or other financial account number; medical information; education records; username; passwords or PINs; website cookies; geo-location data; or any other information that would allow access to the natural person's financial or medical account; or
    2. any other information of a natural person that is designated as private or confidential by any local, state, federal or foreign laws, statutes or regulations, including **Data Privacy Laws.**

Notwithstanding the foregoing, **Nonpublic Personal Information** does not include information that is lawfully available to the general public.

- **Notification and Identity Protection Expenses** means reasonable and necessary expenses incurred by the **Organization** to:
  1. notify individuals, customers or clients of a **Data Privacy Incident** in compliance with a **Data Privacy Law**;
  2. voluntarily notify individuals, customers and clients of a **Data Privacy Incident**;
  3. establish call center services to respond to inquires of impacted parties following their receipt of notification of a **Data Privacy Incident**; and
  4. provide credit monitoring; identity monitoring; medical identity monitoring; account monitoring; fraud detection and alerts; and identity protection or restoration services to individuals in response to a **Data Privacy Incident**.

The foregoing notwithstanding, **Notification and Identity Protection Expenses** do not include any **Insured's** overhead expenses or any salaries, wages, fees, or benefits of its employees, nor do they include any amounts that are uninsurable pursuant to applicable law.

- **Organization** means the **Named Insured** and any **Subsidiary** created or acquired on or before the Inception Date in ITEM 3(A) of the Declarations or during the Policy Period, subject to Section IV(I).
- **Payment Card Agreement** means a contract between the **Organization** and a financial institution, payment card company, payment card processor, or merchant that establishes the terms and conditions for accepting and processing payment cards.
- **PCI Loss** means the monetary fines, expenses, assessments, and/or fraud reimbursements that the **Organization** is legally obligated to pay or incur under the terms of a **Payment Card Agreement** as a result of a **Data Privacy Wrongful Act** or a **Network Security Wrongful Act**. The foregoing notwithstanding, **PCI Loss** does not mean any charge backs, interchange fees, service charges, cost or expenses for system improvements, or any other costs or expenses related thereto, nor does it include any amounts that are uninsurable pursuant to applicable law.
- **Period of Restoration** means the period of time that begins with the date and time of the **Network Outage** and ends on the date and time that the **Organization's** income is or could have been restored to substantially the level that would have existed in the absence of the **Network Outage**, unless advised by a **CyberChoice First Responder** or law enforcement that restoration should be delayed. The foregoing notwithstanding, in no event will the **Period of Restoration** exceed the number of days set forth in ITEM 8 of the Declarations.
- **Policy Period** means the period from the Inception Date to either the Expiration Date in ITEM 3 of the Declarations or to any earlier cancellation date.
- **Pollutants** means: any solid, liquid, gaseous or thermal irritant, nuisance or contaminant, including, without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil product, radiation, asbestos or asbestos-containing product, waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, without limitation, material to be recycled, reconditioned or reclaimed. **Pollutants** also means any substance located anywhere in the world identified on a list of hazardous substances issued by any federal agency (including, nonexclusively, the Environmental Protection Agency) or any state, county, municipality or locality or counterpart thereof, or any foreign equivalent thereof.
- **Post-Incident Remediation Expense** means reasonable and actual expenses incurred by the **Organization** with the Insurer's prior written consent which will not be unreasonably withheld, in excess of ordinary operating expenses, solely to remediate deficiencies in the **Organization's** privacy and network security policy, process or controls that resulted in the **Data Privacy**

**Incident or Network Intrusion.** Consent will be deemed granted when a **CyberChoice First Responder** performs the services contemplated in this provision.

- **Pre-Claim Expenses** means reasonable and necessary costs incurred with the Insurer's prior written consent which will not be unreasonably withheld, to investigate a circumstance and mitigate or reduce the likelihood that a **Claim** will be made but does not include any amounts that are uninsurable pursuant to applicable law.
- **Property Damage** means physical injury to, loss or destruction of, or loss of use of tangible property.
- **Regulatory Fines** means any civil fine or money penalty payable to a governmental entity or regulatory authority resulting from a **Regulatory Proceeding**. **Regulatory Fines** include amounts which the **Insured** is legally obligated to deposit in a fund as equitable relief, including Consumer Redress Funds, due to settlement or adverse judgment in a **Regulatory Proceeding**, but do not include any amounts that are uninsurable pursuant to applicable law.
- **Regulatory Inquiry** means, in the absence of a formal **Regulatory Proceeding**, an informal inquiry or investigation of an **Organization's** security and privacy practices, made by a federal, state, local or foreign governmental regulator pursuant to such regulator's enforcement authority under applicable **Data Privacy Laws**, commenced by the **Organization's** receipt of a written demand or request for documents, interview(s) or testimony from such regulator; provided, however, that such investigation or inquiry:
  1. pertains to an **Organization's** business operations; and
  2. is being conducted to determine if any **Data Privacy Laws** that such regulator is authorized to enforce have been violated by an **Insured**.

**Regulatory Inquiry** will not include any industry examination, audit or inspection of an **Organization's** records undertaken by or initiated by a regulator, including, without limitation, any "sweep" examinations.

- **Regulatory Inquiry Expenses** means reasonable legal fees and expenses incurred with the Insurer's prior written consent which will not be unreasonably withheld, in response to a **Regulatory Inquiry**. The foregoing notwithstanding, **Regulatory Inquiry Expenses** do not include any:
  1. **Insured's** overhead expenses or any salaries, wages, fees, or benefits of its employees;
  2. **Defense Expenses**;
  3. **Insured's** costs to comply with any finding or recommendation of such regulator;
  4. **Pre-Claim Expenses**;
  5. **Damages**;
  6. **First Party Expenses**, including costs incurred in connection with a **Data Privacy Incident** or **Network Intrusion**; or
  7. any of the foregoing that are uninsurable pursuant to applicable law.
- **Regulatory Proceeding** means a suit, civil investigation, or formal administrative proceeding naming an **Insured**, made by a federal, state, local or foreign governmental regulator, including the state's attorney general, the Federal Trade Commission, and the Federal Communications Commission, commenced by the **Organization's** receipt of a:
  1. written investigative demand or similar request for information in connection with a **Data Privacy Incident**; or
  2. complaint or similar pleading alleging a **Data Privacy Wrongful Act**, or **Network Security Wrongful Act**.

- **Subsidiary** means any entity during any time which the **Organization**:

1. owns more than fifty percent (50%) of its outstanding voting shares, partnership interest or member units;
  2. controls, directly or indirectly, the right to elect or appoint more than fifty percent (50%) of such entity's directors or trustees; or
  3. has sole control over the management and operations of the entity through a written agreement.
- **Third Party Service Provider** means any party operating on behalf of the **Organization** pursuant to a written contract or agreement with the **Organization** but only if and to the extent that such party is acting within the scope of the terms of the written contract or agreement for the benefit of the **Organization**.
  - **Waiting Period** means the number of hours designated in ITEM 8 of the Declarations that must elapse before the Insurer will begin to pay for any **Business Interruption Loss** or **Dependent Business Interruption Loss**.
  - **Wrongful Act** means the following:
    1. **Data Privacy Wrongful Act**;
    2. **Network Security Wrongful Act**; and
    3. **Digital Media Wrongful Act**.

### III. EXCLUSIONS

There is no coverage under this Policy for any **Claim** or **Loss**:

- (A) based upon, arising from or in any way related to any actual or alleged **Network Intrusion, Data Privacy Incident, Cyber Extortion Threat, or Wrongful Act**:
  1. referenced in any prior or pending litigation or administrative or regulatory proceeding or investigation of which any **Insured** had received written notice before the Inception Date of the Policy set forth in ITEM 3(A) of the Declarations; or
  2. which took place in whole or in part before the applicable Retroactive Date set forth in ITEM 8 of the Declarations.
- (B) for any actual or alleged **Bodily Injury**; provided, however, that this exclusion will not apply to mental anguish or emotional distress resulting from a **Wrongful Act**.
- (C) based upon, arising from or in any way related to any actual or alleged **Property Damage**.
- (D) based upon, arising from or in any way related to any actual or alleged dishonest, criminal, intentional, malicious or fraudulent act, error, or omission by an **Insured**; provided, however, that this exclusion will not apply:
  1. to **Defense Expenses** until there is a final, non-appealable judgment against the **Insured** in an underlying action, or a binding arbitration against, an adverse admission by, a finding of fact against, or plea of no contest by an **Insured**, at which time the **Insured** will reimburse the Insurer for any **Defense Expenses** paid by the Insurer; or
  2. to any **Insured Person** who did not commit, acquiesce in, or remain passive after learning of the actions giving rise to the **Claim**.

For the purposes of this exclusion, only facts pertaining to, knowledge possessed by, or conduct of any past, present or future **Executive Officer** in their capacity as such of any **Organization** will be imputed to the **Organization**.

- (E) based upon, arising from or in any way related to any actual or alleged refusal to employ, termination of employment, coercion, demotion, evaluation, reassignment, discipline, harassment, humiliation, discrimination of any kind, including but not limited to, race, creed, religion, age,

handicap, sex, sexual orientation, marital status, or financial condition or any other employment-related practices, policies, acts, errors, or omissions.

- (F) based upon, arising from or in any way related to any actual or alleged false arrest or imprisonment, abuse of process, malicious prosecution, nuisance, wrongful eviction or entry, assault, battery or loss of consortium; provided, however, that this exclusion will not apply to that portion of a **Claim** alleging a **Digital Media Wrongful Act**.
- (G) based upon, arising from or in any way related to any actual or alleged price fixing, restraint of trade, monopolization, including violations of the Sherman Anti-Trust Act, the Clayton Act, or any similar provision of any federal, state, or local law anywhere in the world including common law; the Employee Retirement Income Security Act of 1974, as amended; the Securities Act of 1933, the Securities Exchange Act of 1934, or any other federal, state or local securities law.
- (H) based upon, arising from or in any way related to any actual or alleged war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), strike, lock-out, riot, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; provided, however, that this exclusion will not apply to any act of **Cyber Terrorism**.
- (I) based upon, arising from or in any way related to any:
  - 1. actual or alleged discharge, dispersal, release, or escape of **Pollutants** or any threat of such discharge, dispersal, release or escape; or
  - 2. direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**.
- (J) based upon, arising from or in any way related to any actual or alleged infringement or misappropriation of a trade secret; provided, however, that this exclusion will not apply to that portion of a **Claim** alleging a **Network Security Wrongful Act**.
- (K) based upon, arising from or in any way related to any actual or alleged infringement of a patent.
- (L) based upon, arising from or in any way related to any actual or alleged gaining in fact of any profit or advantage to which the **Insured** is not legally entitled.
- (M) based upon, arising from or in any way related to any actual or alleged fees, expenses, or costs paid to or by, or owed to or by, the **Insured**; provided, however, that this exclusion will not apply to any **Extortion Payments**.
- (N) based upon, arising from or in any way related to any actual or alleged false, deceptive, or unfair business practices, unfair competition or violation of any other consumer protection law; provided, however, that this exclusion will not apply to **First Party Expenses**, that portion of a **Claim** alleging the violation of a **Data Privacy Law**, or that portion of a **Claim** alleging a **Digital Media Wrongful Act**.
- (O) based upon, arising from or in any way related to any actual or alleged false, deceptive, fraudulent, intentionally misleading or misrepresenting statements in advertising.
- (P) based upon, arising from or in any way related to any actual or alleged obligation to pay licensing fees or royalty payments to or by the **Insured**.
- (Q) based upon, arising from or in any way related to any electrical or mechanical failures or interruption, including but not limited to any electrical disturbance, surge, spike, brownout or blackout, and outages to gas, water, telephone, cable, satellite, Internet, telecommunications or other infrastructure; provided, however, that this exclusion will not apply to failures, interruptions, disturbances, or outages of gas, water, telephone, cable, satellite, Internet, telecommunications or other infrastructure under the **Insured's** operational control resulting from a **Network Intrusion**.

- (R) based upon, arising from or in any way related to any fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, solar flares, act(s) of God(s) or any other physical event, however caused.
- (S) based upon, arising from or in any way related to any **Claim** made or maintained by, on behalf of, or in the right of any former or current **Insured**; provided, however, that this exclusion will not apply to that portion of a **Claim** by an employee alleging a **Data Privacy Wrongful Act**.
- (T) based upon, arising from or in any way related to any actual or alleged unsolicited dissemination of faxes, e-mails, text messages, or other communication by or on behalf of the **Insured**, including but not limited to actions made under the Telephone Consumer Protection Act, any foreign, federal, or state anti-SPAM statutes, or any other foreign, federal, or state statute, law, or regulation relating to a person's right of seclusion.
- (U) based upon, arising from or in any way related to any actual or alleged rendering of or the failure to render services to others; provided, however, that this exclusion will not apply to that portion of a **Claim** alleging a **Data Privacy Wrongful Act** or **Network Security Wrongful Act**.
- (V) based upon, arising from or in any way related to any actual or alleged loss, transfer, diminished value, or theft of monies, securities, or tangible property in the care, custody, or control of the **Insured** or the monetary value of any transactions or fund transfers by or on behalf of the **Insured**.

#### IV. CONDITIONS

##### (A) Interrelationship of Claims and Loss

1. All **Claims** based upon, arising from or in any way related to the same **Wrongful Act** or **Interrelated Wrongful Acts** will be deemed to be a single **Claim** for all purposes under this Policy first made on the earliest date that:
  - a. any such **Claim** was first made, regardless of whether such date is before or during the **Policy Period**;
  - b. notice of any **Wrongful Act, Interrelated Wrongful Act, Network Intrusion, Data Privacy Incident, Cyber Extortion Threat**, or circumstance underlying or alleged in any such **Claim** was given to the Insurer pursuant to Section IV(G); or
  - c. notice of any **Wrongful Act, Interrelated Wrongful Act, Network Intrusion, Data Privacy Incident, Cyber Extortion Threat**, or circumstance underlying or alleged in any such **Claim** was given under any prior insurance policy, regardless of whether such policy was issued by the Insurer.
2. If any **Network Intrusion, Data Privacy Incident, Cyber Extortion Threat, Wrongful Act, Interrelated Wrongful Act** or circumstance gives rise to coverage of **Loss** under this Policy, then any subsequent **Loss** based upon, arising from or in any way related thereto will also be subject to the Combined Policy Aggregate Limit of Liability of this Policy, subject to the terms, conditions, and exclusions herein, including, without limitation, any obligation to give notice thereof as soon as practicable.

##### (B) Limits of Liability

1. The Combined Policy Aggregate Limit of Liability stated in ITEM 8 of the Declarations is the maximum aggregate amount that the Insurer will pay for all **Loss** covered under this Policy. All other Limits of Liability under this Policy, including Sublimits thereto, are part of, and not in addition to, the Combined Policy Aggregate Limit of Liability. However, the Post-Incident Remediation Expense Fund stated in ITEM 8 of the Declarations is always in addition to the Combined Policy Aggregate Limit of Liability stated in ITEM 8 of the Declarations.
2. The Limit of Liability stated for each Insuring Agreement elected in ITEM 8 of the Declarations is the maximum aggregate amount that the Insurer will pay under such Insuring Agreement for all **Loss** covered under such Insuring Agreement. All Sublimits applicable

under an Insuring Agreement are part of, and not in addition to, the Limit of Liability stated for such Insuring Agreement.

3. The PCI Loss Sublimit stated in ITEM 8 of the Declarations is the maximum amount that the Insurer will pay for **PCI Loss** covered under Insuring Agreement A.
4. The Regulatory Fines Sublimit stated in ITEM 8 of the Declarations is the maximum amount the Insurer will pay for **Regulatory Fines** incurred for a **Regulatory Proceeding** covered under Insuring Agreement B, (1).
5. The Regulatory Inquiry Sublimit in ITEM 8 of the Declarations is the maximum amount the Insurer will pay for **Regulatory Inquiry Expenses** incurred for a **Regulatory Inquiry** covered under Insuring Agreement B, (2).
6. The Notification and Identity Protection Expenses Sublimit stated in ITEM 8 of the Declarations is the maximum amount the Insurer will pay for **Notification and Identity Protection Expenses** covered under Insuring Agreement D. Notwithstanding Section IV(B)(1) above, the Notification and Identity Protection Expenses Sub-Limit may be outside the Combined Policy Aggregate Limit of Liability, but only if so specified in ITEM 8 of the Declarations.
7. The Crisis Management Expenses Sublimit stated in ITEM 8 of the Declarations is the maximum amount the Insurer will pay for **Crisis Management Expenses** covered under Insuring Agreement D.
8. The Computer Forensic Expenses Sublimit stated in ITEM 8 of the Declarations is the maximum amount the Insurer will pay for **Computer Forensic Expenses** covered under Insuring Agreement D.
9. The Internal Expense Sublimits stated in ITEM 8 of the Declarations are the maximum amounts the Insurer will pay for the **Internal Expense** covered under Insuring Agreements D and F, respectively.
10. The Business Interruption Loss Limit of Liability is the maximum amount the Insurer will pay for **Business Interruption Loss** and **Extra Expense** covered under Insuring Agreement G(1).
11. The Dependent Business Interruption Loss Limit of Liability stated in ITEM 8 of the Declarations is the maximum amount the Insurers will pay for **Dependent Business Interruption Loss** and **Extra Expense** covered under Insuring Agreement G(2).
12. The Limits of Liability for the Extended Reporting Period, if applicable, are part of, and not in addition to, the Limits of Liability for the **Policy Period**.
13. Any payment of **Defense Expenses** by the Insurer will reduce the Limits of Liability.
14. **Claims** against, or **Loss** incurred by, more than one **Insured** under this Policy will not operate to increase the Limits of Liability.
15. If any Limit of Liability is exhausted, the premium for this Policy will be deemed fully earned.

(C) **Retention and Waiting Period**

1. The payment of the applicable Retention is a condition precedent to the payment by the Insurer of any **Loss**, including **Defense Expenses**. The Insurer's obligation to pay is only in excess of the applicable retention set forth in ITEM 8 of the Declarations. Such Retention will be borne uninsured by the **Insured** under this or any other policy available to the **Insured**.
2. If different parts of a single **Claim** or **Loss** are subject to different Retentions, the applicable Retention will be applied separately to each part of **Claim** or **Loss** but the sum of such Retentions will not exceed the largest applicable Retention.
3. With respect to Insuring Agreement G, the Waiting Period Retention will apply only to **Business Interruption Loss** and **Dependent Business Interruption Loss** covered thereunder, but not to **Extra Expense**. With respect to **Extra Expense** covered thereunder, only the Extra Expense Retention stated in ITEM 8 of the Declarations will apply.
4. With respect to Insuring Agreement I, the highest applicable Retention for the **Loss** arising out of the Insuring Agreements triggered by a **Data Privacy Incident** or **Network Intrusion** must be satisfied before the Insurer will reimburse the **Named Insured** for **Post-Incident Remediation Expense**.

(D) **Defense and Settlement**

1. The Insurer has the right and duty to defend any covered **Claim** made against the **Insured** even if such **Claim** is without merit, false or fraudulent. The Insurer has the right to appoint defense counsel to investigate and defend a covered **Claim** as the Insurer deems necessary.
2. The **Insured** will not:
  - a. incur any **Loss**, including, without limitation, **Defense Expenses**, without the Insurer's prior written consent which will not be unreasonably withheld;
  - b. settle, negotiate or offer to settle, any **Claim** without the Insurer's prior written consent which will not be unreasonably withheld; provided, however, that the **Insured** may, at its own risk against the terms and conditions of this Policy, settle a **Claim** with full releases for all applicable **Insureds** or make an **Extortion Payment** if the total **Loss** attributable to such **Claim** or **Extortion Payment** does not exceed the applicable Retention; or
  - c. admit or assume liability without the Insurer's prior written consent which will not be unreasonably withheld.

The Insurer will not be liable for any **Loss** related to a settlement, negotiation, offer, assumed obligation or admission to which it has not consented, such consent not to be unreasonably withheld.

3. The Insurer will not settle any **Claim** without the written consent of an **Insured**. However, if the **Insured** refuses to consent to a settlement recommended by the Insurer and acceptable to the claimant, the Insurer's total liability for any **Loss** will not exceed:
  - a. the amount for which the **Claim** could have been settled and **Defense Expenses** incurred up to the time the Insurer made its recommendation to settle to the **Insured**; plus
  - b. sixty percent (60%) of the amount of **Damages** in excess of such settlement amount for which the **Claim** could have been settled and sixty percent (60%) of **Defense Expenses** incurred after the time the Insurer made its settlement recommendation to the **Insured**.

The foregoing notwithstanding, in no event will the Insurer's obligation to pay exceed the Limit of Liability under the Policy.

4. The **Insured** will not need prior written consent for the retention of any service provider on the panel of **CyberChoice First Responders**.
5. The Insurer's duty to defend ceases upon the exhaustion of any applicable Limit of Liability.

#### (E) **Cooperation and Subrogation**

In the event of a **Claim**, the **Insured** will provide the Insurer with all information, assistance, and cooperation that the Insurer reasonably requests, and will do nothing that may prejudice the defense of the case or the Insurer's potential or actual rights of recovery. At the Insurer's request, the **Insured** will assist in any actions, suits, or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence, and obtaining the attendance of witnesses, and will also assist in all settlement discussions.

In the event of payment by the Insurer under this Policy, the Insurer will be subrogated to the extent of any such payment to all of the rights of recovery by the **Insured**. The **Insured** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Insurer to effectively to bring suit in their name.

Moreover, the Insurer will control any recovery action, including settlement in return for advancing funds for the subrogation action. The obligations of the **Insured** under this condition will survive the expiration or cancellation of the Policy.

Notwithstanding the above, the **Organization** may agree in writing to waive such right of recovery or subrogation against any person or entity if such waiver was a contractual obligation of the **Organization** and was executed prior to the **Claim, Network Intrusion, Data Privacy Incident** or **Wrongful Act** at issue.

(F) **Extended Reporting Period**

Solely with respect to **Claims-Made Coverage**:

1. If this Policy is cancelled or non-renewed for any reason other than non-payment of premium, the **Named Insured** will have the right to purchase an extension of time to report **Claims** made for **Wrongful Acts** occurring prior to such cancellation or nonrenewal(the "Extended Reporting Period"), subject to any applicable Retroactive Date and Section IV(1)(2). There will be no coverage during the Extended Reporting Period for any **Claim** or **Loss** based upon, arising from or in any way related to any **Wrongful Act** occurring during the Extended Reporting Period.
2. To elect the Extended Reporting Period, the **Named Insured** will send a written notice of election of the Extended Reporting Period to the Insurer together with the premium therefor. The right to elect the Extended Reporting Period will end unless the Insurer receives such notice and premium within sixty (60) days of cancellation or non-renewal. There will be no right to elect the Extended Reporting Period after such time.
3. The premium for the Extended Reporting Period will be that percentage specified in ITEM 4 of the Declarations of the sum of the original annual premium plus the annualized amount of any additional premium charged by the Insurer during the **Policy Period**. Such premium will be deemed fully earned at the inception of the Extended Reporting Period.
4. The Extended Reporting Period will be for the duration specified in ITEM 4 of the Declarations following the end of the **Policy Period**.
5. There is no separate or additional Limit of Liability for any Extended Reporting Period.

(G) **Notice**

1. All notices to the **Insured** will be sent to the **Named Insured** at the address specified in ITEM 1 of the Declarations. All notices to the Insurer will be sent to the address or e-mail specified in ITEM 7 of the Declarations. Any such notice will be effective upon receipt by the Insurer at such address.
2. As a condition precedent to coverage under this Policy, the **Insured** must give the Insurer written notice of any **Claim, Cyber Extortion Threat, Network Intrusion, or Data Privacy Incident** as soon as practicable after an **Executive Officer** becomes aware of such **Claim, Cyber Extortion Threat, Network Intrusion, or Data Privacy Incident** but in no event later than ninety (90) calendar days after the termination of the **Policy Period**.
3. If, during the **Policy Period**, an **Executive Officer** becomes aware of a circumstance that may reasonably be expected to give rise to a **Claim** or **Loss**, and if the **Insured** gives written notice of such circumstance to the Insurer during the **Policy Period**, or if applicable, Extended Reporting Period, including:
  - a. the reasons for anticipating such a **Claim** or **Loss**;
  - b. the nature and date of the circumstance;
  - c. the identity of any **Insured** allegedly involved;
  - d. the alleged injuries or damages sustained, or could be reasonably expected to be sustained;
  - e. the names of potential claimants; and
  - f. the manner in which the **Insured** first became aware of the circumstance;

then the terms and conditions of the Policy (including, without limitation, all obligations to give written notice to the Insurer as soon as practicable), and the remaining available Limits of Liability of the **Policy Period**, will apply to any **Claim** and **Loss** subsequently arising from such circumstance, notwithstanding that a **Claim** was not first made during the **Policy Period**.

4. With respect to coverage under Insuring Agreements (E) Cyber Extortion Loss, (G)(1) Business Interruption Loss, and (G)(2) Dependent Business Interruption Loss, the **Insured** will, as a condition precedent to coverage, and in addition to Section IV(G)(1):

- a. provide a written description of the details of a **Cyber Extortion Threat** or **Network Outage** as soon as practicable;
- b. provide the Insurer notice as soon as practicable of any **Extortion Payments** demanded, or **Business Interruption Loss, Dependent Business Interruption Loss, and Extra Expense** which is reasonably likely to be incurred as a result of the **Network Outage**;
- c. complete and execute a written, detailed and sworn proof of loss within ninety (90) days after incurring **Business Interruption Loss, Dependent Business Interruption Loss, and Extra Expense** (unless such period has been extended by the Insurer's written agreement) including a full description of such **Business Interruption Loss, Dependent Business Interruption Loss, and Extra Expense** and the surrounding circumstances, including but not limited to:
  - (i) the time, place and cause of the **Business Interruption Loss, Dependent Business Interruption Loss, and Extra Expense**;
  - (ii) a detailed calculation of any **Business Interruption Loss, Dependent Business Interruption Loss, and Extra Expense**;
  - (iii) any underlying documents and materials that reasonably relates to or forms a part of the basis for such **Business Interruption Loss, Dependent Business Interruption Loss, and Extra Expense**.
- d. upon the Insurer's request, submit to an examination under oath;
- e. take all reasonable actions to protect the **Computer System** from further loss or damage; and
- f. retain all records related to the **Network Outage** or **Cyber Extortion Threat**, and provide those records to the Insurer for inspection upon request.

The costs and expense of establishing or proving **Business Interruption Loss, Dependent Business Interruption Loss, and Extra Expense** under this Policy, including costs and expenses incurred in connection with preparing a proof of loss, is the obligation of the **Insured** and is not covered under this Policy.

(H) **Allocation of Loss**

1. The Insurer will determine the extent to which **Loss** is covered under this Policy on the basis of the relative legal and financial exposures of all parties involved in such **Loss**, subject to the terms, conditions and limitations of this Policy, including the Declarations, **Application** and any written endorsements attached hereto.
2. With respect to a covered **Claim** for which the Insurer has the duty to defend, 100% of the **Insured's Defense Expenses** will be allocated to covered **Loss**.
3. Upon agreement between the Insurer and the **Insured** on the amount of covered **Loss**, the Insurer will pay such amount as soon as practicable.
4. If, however, the Insurer and the **Insured** cannot agree on the amount of covered **Loss**, then the Insurer and **Insured** agree to use their best efforts to fairly and reasonably resolve such disagreement, and, during such disagreement, the Insurer will pay covered **Loss** in accordance with its determination referenced in sub-paragraph (H)(1) above herein.

(I) **Changes in Exposure**

1. **Mergers and New Subsidiaries**

If during or prior to the **Policy Period**, any **Organization**:

- a. merges with another entity such that the **Organization** is the surviving entity; or
- b. acquires or creates a **Subsidiary**,

then such merged, acquired or created entity and any **Subsidiary** or **Insured Person** will be **Insureds** under this Policy, but only for a **Wrongful Act** or **Cyber Extortion Threat** occurring after, or **Network Intrusion** or **Data Privacy Incident** discovered after, such merger, acquisition or creation. No coverage will be available for any **Wrongful Act** or **Cyber Extortion Threat** occurring before, or **Network Intrusion** or **Data Privacy Incident**

discovered before, such merger, acquisition or creation, or for any **Interrelated Wrongful Acts** thereto.

The foregoing notwithstanding, if the gross revenue of any newly merged, acquired or created entity exceed 25% of the total gross revenue of the **Organization** as reflected in its most recent consolidated audited financial statements prior to such merger, acquisition or creation, the **Insureds** will give the Insurer full details of the transaction in writing as soon as practicable and the Insurer will be entitled to impose such additional terms, conditions, and premium as the Insurer, in its absolute discretion, chooses. There will be no coverage under this Policy, and any renewal hereof, for any newly merged, acquired or created entity or any **Subsidiary** or **Insured Person** thereof unless the **Insureds** complied with the terms of this provision.

## 2. Takeover of Organization

If, during the **Policy Period**:

- a. the **Organization** merges into or consolidates with another entity such that the **Organization** is not the surviving entity; or
- b. more than 50% of the control of the **Organization's** board of directors or managers is acquired by another person or entity, group of persons or entities, or persons and entities acting in concert,

then coverage will continue under the Insuring Agreements, but only for a **Wrongful Act**, occurring before any such transaction. No coverage will be available for any **Wrongful Act** occurring after such transaction. Upon such transaction, this Policy will not be cancelled and the entire premium for this Policy will be deemed fully earned.

The **Insured** will give the Insurer written notice of such transaction as soon as practicable, but not later than ninety (90) days after the effective date of such transaction.

## 3. Loss of Subsidiary Status

If, during or prior to the **Policy Period**, any entity ceases to be a **Subsidiary**, then coverage will be available under the Insuring Agreements for such **Subsidiary** and its **Insured Persons**, but only for a **Wrongful Act** of such **Insureds** occurring before such transaction. No coverage will be available for any **Wrongful Act** of such **Insureds** occurring after such transaction.

### (J) Changes

This Policy may only be changed or modified by a written endorsement issued by the Insurer to form a part of this Policy.

### (K) Other Insurance

If any **Claim** or **Loss** is insured under any other valid and collectible policy or policies, then this Policy applies only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this Policy's Policy Number. However, if any **Claim** or **Loss** is insured under any other valid and collectible policy or policies issued by The Hartford, the **Insured** may designate which policy is primary. If the **Insured** does not designate a primary policy in that event, any **Claim** or **Loss** will be applied proportionally to those applicable policies issued by The Hartford.

### (L) Cancellation

1. The Insurer may cancel this Policy for non-payment of premium by sending not less than 10 days notice thereof to the **Named Insured**.

2. Except as provided in Section IV(1)(2), the **Named Insured** may cancel this Policy by sending written notice of cancellation to the Insurer. Such notice is effective upon receipt by the Insurer unless a later cancellation time is specified therein.
3. If the Insurer or the **Named Insured** cancels this Policy, unearned premium will be calculated on a pro rata basis. The Insurer will make payment of any unearned premium as soon as practicable.
4. This Policy will not be cancelled by the Insurer except for non-payment of premium.

(M) **Representation – Severability**

The **Insured** represents that the particulars and statements contained in the **Application** are true, accurate, and complete, and agrees that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Policy will be void with respect to the **Organization** and any **Insured** who knew of such untruth, misrepresentation or omission.

(N) **No Action Against the Insurer**

1. No action may be taken against the Insurer unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and the Insurer.
2. No person or entity has any right under this Policy to join the Insurer as a party to any **Claim** to determine the liability of any **Insured**; nor may the Insurer be impleaded by an **Insured** or his, her, or its legal representative in any such **Claim**.

(O) **Death, Incapacity, or Insolvency of an Insured**

In the event of death, incapacity or bankruptcy of an Insured person, any **Claim** made against the estate, heirs, legal representatives or assigns of such Insured Person for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** made against such **Insured Person**. No coverage will apply to any **Claim** for a **Wrongful Act** of such estate, heirs, legal representatives or assigns.

(P) **Assignment**

Assignment of interest under this Policy will not bind the Insurer without its consent as specified in a written endorsement issued by the Insurer to form a part of this Policy.

(Q) **Authorization of Named Insured**

The **Named Insured** acts on behalf of all **Insureds** with respect to all matters under this Policy, including, without limitation, giving and receiving of notices regarding **Claims**, cancellation, election of the Extended Reporting Period, payment of premiums, receipt of any return premiums, and acceptance of any endorsements to this Policy.

(R) **Entire Agreement**

This Policy, including the Declarations, **Application** and any written endorsements attached hereto, constitute the entire agreement between the **Insureds** and the Insurer relating to this insurance.

(S) **Headings**

The headings of the various sections of this Policy are intended for reference only and are not part of the terms and conditions of coverage.

(T) **References to Laws**

1. Wherever this Policy mentions any law, including, without limitation, any statute, Act or Code of the United States of America, such mention will be deemed to include all amendments of, and all rules or regulations promulgated under, such law.
2. Wherever this Policy mentions any law or laws, including, without limitation, any statute, Act or Code of the United States of America, and such mention is followed by the phrase "or any similar law", such phrase will be deemed to include all similar laws of all jurisdictions throughout the world, including, without limitation, statutes and any rules or regulations promulgated under such statutes as well as common law.

(U) **Territory**

This Insurance applies to **Claims** or **Loss** occurring anywhere in the world. However, this Insurance does not apply when a **Claim** is made, or **Loss** is incurred, in a country against which the United States government has imposed trade sanctions, embargoes, or any similar regulations that prohibit the transaction of business with or within such countries at the time the **Claim** is made or **Loss** is incurred.