

This document is provided for informational purposes only. It compares BBR 2017 and BBR 5.0. Formatting changes have been hidden to reduce visual clutter. Comments in this document are not part of the policy. The coverage ultimately provided shall be subject to and governed by the terms and conditions of the policy as issued. This document is subject to change.

Beazley Breach Response 5.0

Cyber Insurance Policy

THIS POLICY'S LIABILITY INSURING AGREEMENTS PROVIDE COVERAGE ON A CLAIMS MADE AND REPORTED BASIS AND APPLY ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE OPTIONAL EXTENSION PERIOD (IF APPLICABLE) AND REPORTED TO THE UNDERWRITERS IN ACCORDANCE WITH THE TERMS OF THIS POLICY. AMOUNTS INCURRED AS CLAIMS EXPENSES UNDER THIS POLICY WILL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY AND ARE SUBJECT TO RETENTIONS.

The Underwriters agree with the **Named Insured**, in consideration of the payment of the premium and reliance upon the statements contained in the information and materials provided to the Underwriters in connection with the underwriting and issuance of this Insurance Policy (hereinafter referred to as the "Policy") and subject to all the provisions, terms and conditions of this Policy:

Please refer to the Declarations, which show the insuring agreements that the **Named Insured** purchased. If an insuring agreement has not been purchased, coverage under that insuring agreement of this Policy will not apply.

Insuring Agreements

Breach Response

To provide **Breach Response Services** to the **Insured Organization** because of an actual or reasonably suspected **Data Breach** or **Security Breach** that the **Insured** first discovers during the **Policy Period**.

First Party Loss

To indemnify the **Insured Organization** for:

Business Interruption Loss

Business Interruption Loss that the **Insured Organization** sustains as a result of a **Security Breach** (including a **Voluntary Shutdown**) or **System Failure** that the **Insured** first discovers during the **Policy Period**.

Computer Bricking Loss

Computer Bricking Loss that the **Insured Organization** sustains as a result of a **Security Breach** that the **Insured** first discovers during the **Policy Period**.

Dependent Business Interruption Loss

Dependent Business Loss that the **Insured Organization** sustains as a result of a **Dependent Security Breach** or a **Dependent System Failure** that the **Insured** first discovers during the **Policy Period**.

Commented [CL1]: Voluntary Shutdown coverage is now included within the Business Interruption Loss insuring Agreement. This addition eliminates the need for the Voluntary Shutdown Coverage endorsement (E12967 052019 ed.).

Commented [CL2]: Computer Bricking Loss (f/k/a Computer Hardware Loss) is now included as a First Party Loss insuring agreement. This addition eliminates the need for the Computer Hardware Replacement Cost endorsement (E11783 072018 ed.).

Cyber Extortion Loss

Cyber Extortion Loss that the **Insured Organization** incurs as a result of an **Extortion Threat** first made against the **Insured Organization** during the **Policy Period**.

Data Recovery Costs

Data Recovery Costs that the **Insured Organization** incurs as a direct result of a **Security Breach** or **System Failure** that the **Insured** first discovers during the **Policy Period**.

Reputation Loss

Reputation Loss that the **Insured Organization** sustains solely as a result of an **Adverse Media Event** concerning a **Data Breach**, **Security Breach** or **Extortion Threat** that the **Insured** first discovers during the **Policy Period**.

Proof of Loss Expenses

Proof of Loss Expenses that the **Insured Organization** incurs as a result of a **Security Breach** or **System Failure** that the **Insured** first discovers during the **Policy Period**.

Commented [CL3]: System Failure is now included as part of a cause of Data Recovery Costs. This addition eliminates the need for the Amend Data Recovery Costs endorsement (E11294 032018 ed.).

Commented [CL4]: Reputation Loss is now included as a First Party Loss insuring agreement. This addition eliminates the need for the Reputation Loss endorsement (E13038 062019 ed.).

Commented [CL5]: Proof of Loss Expenses is now included as a First Party Loss insuring agreement. This coverage was previous contained within the Notice of Claim or Loss section, below.

Liability

Data & Network Liability

To pay **Damages** and **Claims Expenses**, which the **Insured** is legally obligated to pay because of any **Claim** first made against any **Insured** during the **Policy Period** for:

1. a **Data Breach**;
2. a **Security Breach**;
3. the **Insured Organization's** failure to timely disclose a **Data Breach** or **Security Breach**;
4. failure by the **Insured** to comply with that part of a **Privacy Policy** that specifically:
 - (a) prohibits or restricts the **Insured Organization's** disclosure, sharing or selling of **Personally Identifiable Information**;
 - (b) requires the **Insured Organization** to provide an individual access to **Personally Identifiable Information** or to correct incomplete or inaccurate **Personally Identifiable Information** after a request is made; or
 - (c) mandates procedures and requirements to prevent the loss of **Personally Identifiable Information**;

provided the **Insured Organization** has in force, at the time of such failure, a **Privacy Policy** that addresses those subsections above that are relevant to such **Claim**.

Regulatory Defense & Penalties

To pay **Penalties** and **Claims Expenses**, which the **Insured** is legally obligated to pay because of a **Regulatory Proceeding** first made against any **Insured** during the **Policy Period** for a **Data Breach** or **Security Breach**.

Payment Card Liabilities & Costs

To indemnify the **Insured Organization** for **PCI Fines, Expenses and Costs**, which it is legally obligated to pay because of any **Claim** first made against any **Insured** during the **Policy Period**.

Media Liability

To pay **Damages** and **Claims Expenses**, which the **Insured** is legally obligated to pay because of any **Claim** first made against any **Insured** during the **Policy Period** for **Media Liability**.

Contingent Bodily Injury

To pay **Damages** and **Claims Expenses**, which the insured is legally obligated to pay because of any **Claim** first made against any **Insured** during the **Policy Period** for **Contingent Bodily Injury**.

eCrime

To indemnify the **Insured Organization** for any direct financial loss sustained **by the Insured Organization** resulting from:

- (i) **Fraudulent Instruction**;
- (ii) **Funds Transfer Fraud**;
- (iii) **Telephone Fraud**; and
- (iv) **Invoice Manipulation**;

that the **Insured** first discovers during the **Policy Period**.

Supplemental First Party Loss

Cryptojacking

To reimburse the **Insured Organization** for any direct financial loss sustained by the **Insured Organization** resulting from **Cryptojacking** that the **Insured** first discovers during the **Policy Period**.

Criminal Reward

To indemnify the **Insured Organization** for **Criminal Reward Funds**.

Definitions

Additional Insured means any person or entity that the **Insured Organization** has agreed in writing to add as an **Additional Insured** under this Policy prior to the commission of any act for which such person or entity would be provided coverage under this Policy, but only to the extent the **Insured Organization** would have been liable and coverage would have been afforded under the terms and conditions of this Policy had such **Claim** been made against the **Insured Organization**.

Adverse Media Event means:

1. publication by a third party via any medium, including but not limited to television, print, radio, electronic or digital form, of previously non-public information specifically concerning a **Data Breach, Security Breach** or **Extortion Threat**; or

Commented [CL6]: Contingent Bodily Injury is now included as a Liability insuring agreement. This addition eliminates the need for the Contingent Bodily Injury with Sublimit endorsement (E10675 012019 ed.).

Commented [CL7]: This revision has been made to clarify that the Insured Organization must be the entity sustaining direct financial loss.

Commented [CL8]: Invoice Manipulation has been added to the eCrime insuring agreement. This addition eliminates the need for the Invoice Manipulation Coverage endorsement (E11848 072018 ed.).

Commented [CL9]: Supplemental First Party Loss is a new heading that now contains two coverages: Cryptojacking and Criminal Reward.

Commented [CL10]: Cryptojacking has been added as a Supplemental First Party Loss insuring agreement. This addition eliminates the need for the Cryptojacking Endorsement (E12968 052019 ed.).

Commented [CL11]: Added to support Reputation Loss insuring agreement.

2. notification of individuals pursuant to part 4. of the **Breach Response Services** definition.

Multiple **Adverse Media Events** arising from the same or a series of related, repeated or continuing **Data Breaches**, **Security Breaches** or **Extortion Threats**, shall be considered a single **Adverse Media Event**, and shall be deemed to occur at the time of the first such **Adverse Media Event**.

Bodily Injury means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress that results from such physical injury, sickness, disease or death.

Commented [CL12]: Added to support Contingent Bodily Injury insuring agreement.

Breach Notice Law means any statute or regulation that requires notice to persons whose personal information was accessed or reasonably may have been accessed by an unauthorized person. **Breach Notice Law** also includes any statute or regulation requiring notice of a **Data Breach** to be provided to governmental or regulatory authorities.

Breach Response Services means the following fees and costs, provided by a vendor on the list of Incident Response Services maintained at <https://cyberservices.beazley.com>, in response to an actual or reasonably suspected **Data Breach** or **Security Breach**:

Commented [CL13]: Added to clarify BBR panel requirement, which has always been a requirement on BBR.

1. for an attorney to evaluate the **Insured Organization's** obligations pursuant to **Breach Notice Laws** or a **Merchant Services Agreement** and in connection with providing the **Breach Response Services** described below;
2. for a computer security expert to examine the **Insured Organization's Computer Systems** to determine the existence, cause and scope of an actual or reasonably suspected **Data Breach**, and if such **Data Breach** is actively in progress on the **Insured Organization's Computer Systems**, to assist in containing it;
3. for a PCI Forensic Investigator to investigate the existence and extent of an actual or reasonably suspected **Data Breach** involving payment card data and for a Qualified Security Assessor to certify and assist in attesting to the **Insured Organization's** PCI compliance, as required by a **Merchant Services Agreement**;
4. to notify those individuals whose **Personally Identifiable Information** was, or may reasonably be believed to be, part of a **Data Breach**, exceeding the **Notified Individuals Threshold**;
5. to provide a call center for a period of up to 90 days and during standard business hours to respond to inquiries about a **Data Breach** that exceeds the **Notified Individuals Threshold**;
6. to provide a credit monitoring, identity monitoring or other solution for a period of 12 months, or longer if required by statute or regulation, to individuals notified pursuant to part 4., above, that exceeds the **Notified Individuals Threshold**; and
7. public relations and crisis management costs directly related to mitigating harm to the **Insured Organization** which are approved in advance by the Underwriters in their discretion.

Commented [CL14]: Added to clarify whose obligations the attorney is evaluating.

Commented [CL15]: Added to clarify the scope of investigation.

Commented [CL16]: Added to clarify that we cover those who were actually part of a data breach *in addition to* those who are reasonably believe to be a part of a data breach.

Commented [CL17]: Added to clarify the standard scope of call center services.

Commented [CL18]: Added to clarify the standard scope of credit monitoring and additional coverage if required by statute or regulation (which is our current practice).

Commented [CL19]: Added to clarify that credit monitoring is for those individuals who are notified.

Breach Response Services also includes assistance from the Beazley Cyber Services Team and access to **Education and Loss Prevention Tools**.

Breach Response Services will not include any internal salary or overhead expenses of the **Insured Organization** or the expenses, fees or costs of any service or provider that is not on the list of Incident Response Services identified above.

Commented [CL20]: Added to clarify that the expenses covered by Breach Response Services are intended for panel vendors only.

Business Interruption Loss means:

1. **Income Loss**;
2. **Forensic Expenses**; and
3. **Extra Expense**;

actually sustained during the **Period of Restoration** as a result of the actual interruption of the **Insured Organization's** business operations caused by a **Security Breach** (including a **Voluntary Shutdown**) or **System Failure**. Coverage for **Business Interruption Loss** will apply only after the **Waiting Period** has elapsed.

Commented [CL21]: Added consistent with our Voluntary Shutdown coverage.

Business Interruption Loss will not include (i) loss arising out of any liability to any third party; (ii) legal costs or legal expenses; (iii) loss incurred as a result of unfavorable business conditions; (iv) loss of market or any other consequential loss; (v) **Dependent Business Loss**; or (vi) **Data Recovery Costs**.

Claim means:

1. a written demand received by any **Insured** for money or services;
2. with respect to coverage provided under the Regulatory Defense & Penalties insuring agreement only, institution of a **Regulatory Proceeding** against any **Insured**; and
3. with respect to coverage provided under part 1. of the Data & Network Liability insuring agreement only, a demand received by any **Insured** to fulfill the **Insured Organization's** contractual obligation to provide notice of a **Data Breach** pursuant to a **Breach Notice Law**;

Multiple **Claims** arising from the same or a series of related, repeated or continuing acts, errors, omissions or events will be considered a single **Claim** for the purposes of this Policy. All such **Claims** will be deemed to have been made at the time of the first such **Claim**.

Claims Expenses means:

1. all reasonable and necessary legal costs and expenses resulting from the investigation, defense and appeal of a **Claim**, if incurred by the Underwriters, or by the **Insured** with the prior written consent of the Underwriters; and
2. the premium cost for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any **Claim** against an **Insured**; provided the Underwriters will have no obligation to appeal or to obtain bonds.

Claims Expenses will not include any salary, overhead or other charges by the **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance that might lead to a **Claim** notified under this Policy, or costs to comply with any regulatory orders, settlements or judgments.

Contingent Bodily Injury means those **Claims** wherein the **Damages** sought by the claimant are for **Bodily Injury** which arise solely out of a **Security Breach** affecting the **Insured Organization's Computer Systems** which is otherwise covered under the terms and conditions of this Policy. **Contingent Bodily Injury** does not include any **Claim** where the **Insured's** own act, error or omission is the direct immediate cause of such **Claim** for **Bodily Injury**. Furthermore, this extension of coverage applies only if such **Claim** for **Bodily Injury** is not covered under any other policy of insurance.

Commented [CL22]: Added to support the Contingent Bodily Injury insuring agreement.

Computer Bricking Loss means the reasonable and necessary expenses incurred by the **Insured Organization** during the **Period of Restoration** to minimize, reduce or avoid **Income Loss**, **Extra Expense** or **Data Recovery Costs** to replace computers or any associated devices or equipment operated by, and either owned by or leased to, the **Insured Organization** that are unable to function as intended due to corruption or destruction of software or firmware resulting from a **Security Breach**.

Commented [CL23]: Added to support the Computer Bricking Loss insuring agreement. Note that Computer Bricking Loss may now be incurred to minimize, reduce or avoid Extra Expense and Data Recovery Costs *in addition to* Income Loss.

Computer Systems means computers, any software residing on such computers and any associated devices or equipment:

1. operated by and either owned by or leased to the **Insured Organization**; or
2. with respect to coverage under the Breach Response and Liability insuring agreements:

- (i) operated by a third party pursuant to written contract with the **Insured Organization** and used for the purpose of providing hosted computer application services to the **Insured Organization** or for processing, maintaining, hosting or storing the **Insured Organization's** electronic data; or
- (ii) operated by a director, officer, principal, partner or employee of the **Insured Organization** either (1) for work done while acting within the scope of employment and related to the conduct of the **Insured Organization's** business or (2) in accordance with the terms and conditions of the **Insured Organization's** BYOD ("Bring Your Own Device") policy, provided such policy is in force at the time of any actual or reasonably suspected **Data Breach** or **Security Breach**.

Commented [CL24]: Added to cover BYOD devices. Eliminates the need for the Amend Definition of Computer Systems endorsement (E12961 042020 ed.) and the Employee Device Endorsement (E13915 052020 ed.).

Continuity Date means:

1. the Continuity Date listed in the Declarations; and
2. with respect to any **Subsidiaries** acquired after the Continuity Date listed in the Declarations, the date the **Named Insured** acquired such **Subsidiary**.

Control Group means any principal, partner, corporate officer, director, general counsel (or most senior legal counsel) or risk manager of the **Insured Organization** and any individual in a substantially similar position.

Criminal Reward Funds means any amount offered and paid by the **Insured Organization** with the Underwriters' prior written consent for information that leads to the arrest and conviction of any individual(s) committing or trying to commit any illegal act related to any coverage under this Policy; but will not include any amount based upon information provided by the **Insured**, the **Insured's** auditors or any individual hired or retained to investigate the illegal acts. All **Criminal Reward Funds** offered pursuant to this Policy must expire no later than 6 months following the end of the **Policy Period**.

Cryptojacking means the **Unauthorized Access or Use** of **Computer Systems** to mine for **Digital Currency** that directly results in additional costs incurred by the **Insured Organization** for electricity, natural gas, oil, cloud service provider or internet; provided, however, that such additional costs are:

1. incurred pursuant to a written contract between the **Insured Organization** and the respective utility provider, which was executed before the **Cryptojacking** first occurred;
2. billed to the **Insured Organization** by statements issued by the respective utility provider, which include usage or consumption information;
3. not charged to the **Insured Organization** at a flat fee that does not scale with the rate or use of the respective utility; and
4. incurred pursuant to statements issued by the respective utility provider and due for payment during the **Policy Period**.

Commented [CL25]: Added to support Cryptojacking insuring agreement. Note that costs incurred by the Insured Organization for a "cloud service provider" are now included. (The previous Cryptojacking endorsement did not include "cloud service provider.")

Cyber Extortion Loss means:

1. any **Extortion Payment** that has been made by or on behalf of the **Insured Organization**, in an amount subject to the Underwriters' prior written consent, to prevent or terminate an **Extortion Threat**; and
2. reasonable and necessary expenses, including fees of an attorney to determine whether an **Extortion Payment** can be made in compliance with applicable law, incurred by the **Insured Organization** with the Underwriters' prior written consent, to prevent or respond to an **Extortion Threat**.

Commented [CL26]: Added to remove the consent requirement as to payment; consent only required as to amount.

Commented [CL27]: Added to provide ensure that policyholders can meet their compliance obligations.

Damages means a monetary judgment, award or settlement, including any award of prejudgment or post-judgment interest; but **Damages** will not include:

1. future profits, restitution, disgorgement of unjust enrichment or profits by an **Insured** or the costs of complying with orders granting injunctive or equitable relief;
2. return or offset of fees, charges or commissions charged by or owed to an **Insured** for goods or services already provided or contracted to be provided;
3. taxes or loss of tax benefits;
4. fines, sanctions or penalties;
5. punitive or exemplary damages or any damages which are a multiple of compensatory damages, unless insurable by law in any applicable venue that most favors coverage for such punitive, exemplary or multiple damages;
6. discounts, coupons, prizes, awards or other incentives offered to the **Insured's** customers or clients;
7. liquidated damages, but only to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement;
8. fines, costs or other amounts an **Insured** is responsible to pay under a **Merchant Services Agreement**; or
9. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**.

Data means any software or electronic data that exists in **Computer Systems**.

Data Breach means the theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Information** or **Third Party Information** that is in the care, custody or control of the **Insured Organization** or a third party for whose theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Information** or **Third Party Information** the **Insured Organization** is liable.

Data Recovery Costs means the reasonable and necessary costs incurred by the **Insured Organization** to regain access to, replace or restore **Data**, or if **Data** cannot reasonably be accessed, replaced or restored, then the reasonable and necessary costs incurred by the **Insured Organization** to reach this determination.

Data Recovery Costs will not include (i) the monetary value of profits, royalties or lost market share related to **Data**, including but not limited to trade secrets or other proprietary information or any other amount pertaining to the value of **Data**; (ii) legal costs or legal expenses; (iii) loss arising out of any liability to any third party; (iv) **Cyber Extortion Loss**; or (v) any salaries, employee wages or overhead of the **Insured**.

Dependent Business means any entity that is not a part of the **Insured Organization** but which provides necessary products or services to the **Insured Organization** pursuant to a written contract.

Dependent Business Loss means:

1. **Income Loss**; and
2. **Extra Expense**;

actually sustained during the **Period of Restoration** as a result of an actual interruption of the **Insured Organization's** business operations caused by a **Dependent Security Breach** or **Dependent System Failure**. Coverage for **Dependent Business Loss** will apply only after the **Waiting Period** has elapsed.

Commented [CL29]: Added to clarify that Data Recovery Costs do not include internal costs. Internal costs may be recoverable as Business Interruption Loss.

Dependent Business Loss will not include (i) loss arising out of any liability to any third party; (ii) legal costs or legal expenses; (iii) loss incurred as a result of unfavorable business conditions; (iv) loss of market or any other consequential loss; (v) **Business Interruption Loss**; or (vi) **Data Recovery Costs**.

Dependent Security Breach means a failure of computer security to prevent a breach of computer systems operated by a **Dependent Business**.

Dependent System Failure means an unintentional and unplanned interruption of computer systems operated by a **Dependent Business**.

Dependent System Failure will not include any interruption of computer systems resulting from (i) a **Dependent Security Breach**, or (ii) the interruption of computer systems that are not operated by a **Dependent Business**.

Digital and Internet Infrastructure means Internet Exchange Point providers, Domain Name System (DNS) service providers, certificate authorities (including trust service providers), Content Delivery Network (CDN) providers, timing servers (including stratum-1 and 2) and **Electronic Communications Network Infrastructure** used for the provision of publicly available electronic communications services which support the transfer of information between network termination points.

Digital Currency means a type of digital currency that:

1. requires cryptographic techniques to regulate the generation of units of currency and verify the transfer thereof;
2. is both stored and transferred electronically; and
3. operates independently of a central bank or other central authority.

Education and Loss Prevention Tools means information and services made available by the Underwriters from time to time and includes access to a dedicated portal through which **Insureds** can access news and information regarding breach response planning, data and network security threats, best practices in protecting data and networks, offers from third party service providers and related information, tools and services. **Insureds** will also have access to communications addressing timely topics in data security, loss prevention and other areas addressing timely topics in data security, loss prevention and other areas.

Electronic Communications Network Infrastructure means:

1. transmission and telecommunication systems or services, whether or not based on a permanent infrastructure or centralized administration capacity;
2. switching or routing equipment; and
3. other resources, including network elements which are not active,

which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting and cable television networks.

Extortion Payment means **Money**, **Digital Currency** and marketable goods or services demanded to prevent or terminate an **Extortion Threat**.

Extortion Threat means a threat to:

1. alter, destroy, damage, delete or corrupt **Data**;

Commented [CL30]: Added to support the revisions introduced by the First Party Loss Exclusion Amendatory Endorsement (E15627 012023 ed.). This endorsement amended the First Party Loss exclusion and has now been incorporated into the policy.

Commented [CL32]: Added to support the revisions introduced by the First Party Loss Exclusion Amendatory Endorsement (E15627 012023 ed.). This endorsement amended the First Party Loss exclusion and has now been incorporated into the policy.

2. perpetrate the **Unauthorized Access or Use of Computer Systems**;
3. prevent access to **Computer Systems** or **Data**;
4. steal, misuse or publicly disclose **Data**, **Personally Identifiable Information** or **Third Party Information**;
5. introduce malicious code into **Computer Systems** or to third party computer systems from **Computer Systems**; or
6. interrupt or suspend **Computer Systems**;

unless an **Extortion Payment** is received from or on behalf of the **Insured Organization**.

Extra Expense means reasonable and necessary expenses incurred by the **Insured Organization** during the **Period of Restoration** to minimize, reduce or avoid **Income Loss**, over and above those expenses the **Insured Organization** would have incurred had no **Security Breach**, **System Failure**, **Dependent Security Breach** or **Dependent System Failure** occurred.

Financial Institution means a bank, credit union, saving and loan association, trust company or other licensed financial service, securities broker-dealer, mutual fund, liquid assets fund or similar investment company where the **Insured Organization** maintains a bank account.

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

Forensic Expenses means reasonable and necessary expenses incurred by the **Insured Organization** to investigate the source or cause of a **Business Interruption Loss**.

Fraudulent Instruction means the transfer, payment or delivery of **Money** or **Securities** by or on behalf of an **Insured** as a result of fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions provided by a third party, including any fraudulent instructions resulting from the use of deep-fake technology, synthetic media or any other technology enabled by the use of artificial intelligence, that is intended to mislead an **Insured** through the misrepresentation of a material fact which is relied upon in good faith by such **Insured**.

Fraudulent Instruction will not include loss arising out of:

1. any actual or alleged use of credit, debit, charge, access, convenience, customer identification or other cards;
2. any transfer involving a third party who is not a natural person **Insured**, but had authorized access to the **Insured's** authentication mechanism;
3. the processing of, or the failure to process, credit, check, debit, personal identification number debit, electronic benefit transfers or mobile payments for merchant accounts;
4. accounting or arithmetical errors or omissions, or the failure, malfunction, inadequacy or illegitimacy of any product or service;
5. any liability to any third party, or any indirect or consequential loss of any kind;
6. any legal costs or legal expenses; or
7. proving or establishing the existence of **Fraudulent Instruction**.

Funds Transfer Fraud means the loss of **Money** or **Securities** contained in a **Transfer Account** at a **Financial Institution** resulting from fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions by a third party issued to a **Financial Institution** directing such institution to

Commented [CL33]: Added to support the revisions introduced by the First Party Loss Exclusion Amendatory Endorsement (E15627 012023 ed.). This endorsement amended the First Party Loss exclusion and has now been incorporated into the policy.

Commented [CL34]: Added to broaden coverage for payments made on behalf of the Insured. Eliminates the need for the Amend Definition of Fraudulent Instruction endorsement (E16543 042024 ed.).

Commented [CL35]: Added to broaden coverage for fraud enabled by artificial intelligence. Eliminates the need for the Amend Definition of Fraudulent Instruction endorsement (E16543 042024 ed.).

transfer, pay or deliver **Money** or **Securities** from any account maintained by the **Insured Organization** at such institution, without the **Insured Organization's** knowledge or consent.

Funds Transfer Fraud will not include any loss arising out of:

1. the type or kind covered by the **Insured Organization's** financial institution bond or commercial crime policy;
2. any actual or alleged fraudulent, dishonest or criminal act or omission by, or involving, any natural person **Insured**;
3. any indirect or consequential loss of any kind;
4. punitive, exemplary or multiplied damages of any kind or any fines, penalties or loss of any tax benefit;
5. any liability to any third party, except for direct compensatory damages arising directly from **Funds Transfer Fraud**;
6. any legal costs or legal expenses; or proving or establishing the existence of **Funds Transfer Fraud**;
7. the theft, disappearance, destruction of, unauthorized access to, or unauthorized use of confidential information, including a PIN or security code;
8. any forged, altered or fraudulent negotiable instruments, securities, documents or instructions; or
9. any actual or alleged use of credit, debit, charge, access, convenience or other cards or the information contained on such cards.

Income Loss means an amount equal to the income that the **Insured Organization** would have generated from its business operations (less tax) during the **Period of Restoration** or **Protection Period**, less (a) actual income (less tax) generated directly from business operations during the **Period of Restoration** or **Protection Period**; and (b) any cost savings achieved as a direct result of the reduction in income.

Individual Contractor means any natural person who performs labor or service for the **Insured Organization** pursuant to a written contract or agreement that such natural person has with the **Insured Organization**. The status of an individual as an **Individual Contractor** will be determined as of the date of an alleged act, error or omission by any such **Individual Contractor**.

Insured means:

1. the **Insured Organization**;
2. any director or officer of the **Insured Organization**, but only with respect to the performance of that person's duties as such on behalf of the **Insured Organization**;
3. an employee (including a part time, temporary, leased or seasonal employee or volunteer) or **Individual Contractor** of the **Insured Organization**, but only for work done while acting within the scope of that person's employment and related to the conduct of the **Insured Organization's** business;
4. a principal if the **Named Insured** is a sole proprietorship, or a partner if the **Named Insured** is a partnership, but only with respect to the performance of that person's duties as such on behalf of the **Insured Organization**;

Commented [CL37]: The definition of Income Loss has been revised to take a "top down" approach, which should make it easier for insureds to calculate and prove their losses. There is no intent to change the scope of coverage.

Commented [CL38]: Added to clarify that the contract referred to in this definition is the contract between the Insured Organization and the Individual Contractor.

5. any person who previously qualified as an **Insured** under parts 2. - 4., but only with respect to the performance of that person's duties as such on behalf of the **Insured Organization**;
6. an **Additional Insured**, but only as respects **Claims** against such person or entity for acts, errors or omissions of the **Insured Organization**;
7. the estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Policy; and
8. the lawful spouse, including any natural person qualifying as a domestic partner of any **Insured**, but solely by reason of any act, error or omission of an **Insured** other than such spouse or domestic partner.

Insured Organization means the **Named Insured** and any **Subsidiaries**.

Invoice Manipulation means the direct net loss to the **Insured Organization** resulting from the **Insured Organization's** inability to collect payment for goods, products or services as a direct result of the release or distribution of a fraudulent invoice or fraudulent payment instruction to a third party that directly resulted from a **Security Breach** or a **Data Breach**. The direct net loss to the **Insured Organization** means the direct net cost to the **Insured Organization** to provide goods, products or services and does not include any profit to the **Insured Organization** as a result of providing such goods, products or services.

Loss means **Breach Response Services; Claims Expenses; Damages; PCI Fines, Expenses and Costs; Penalties**; loss covered under the First Party Loss, eCrime and Supplemental First Party Loss insuring agreements; and any other amounts covered under this Policy.

Multiple **Losses** arising from the same or a series of related, repeated or continuing acts, errors, omissions or events will be considered a single **Loss** for the purposes of this Policy.

With respect to the **Breach Response** and **First Party Loss** insuring agreements, all acts, errors, omissions or events (or series of related, repeated or continuing acts, errors, omissions or events) giving rise to a **Loss** or multiple **Losses** in connection with such insuring agreements will be deemed to have been discovered at the time the first such act, error, omission or event is discovered.

Media Liability means one or more of the following acts committed by, or on behalf of, the **Insured Organization** in the course of creating **Media Material** or displaying, broadcasting, disseminating or releasing **Media Material** to the public:

1. defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress, outrage, outrageous conduct or other tort related to disparagement or harm to the reputation or character of any person or organization;
2. a violation of the rights of privacy of an individual, including false light, intrusion upon seclusion and public disclosure of private facts;
3. invasion or interference with an individual's right of publicity, including commercial appropriation of name, persona, voice or likeness;
4. plagiarism, piracy or misappropriation of ideas under implied contract;
5. infringement of copyright;
6. infringement of domain name, trademark, trade name, trade dress, logo, title, metatag or slogan, service mark or service name;
7. improper deep-linking or framing;

Commented [CL39]: Added to support the Invoice Manipulation insuring agreement. Three notes:

1. This definition has been revised to remove reference to the definition of "Payment" and to rely, instead, on the ordinary meaning of that term.

2. This definition has also removed "Direct Net Loss" as a defined term, instead incorporating the language from that former definition into the text.

3. The definition broadens coverage by no longer requiring good or services to have been provided prior to the fraudulent payment being made.

Commented [CL40]: The changes made to this definition are for housekeeping purposes and not intended to change the scope of the policy.

Commented [CL41]: This revision was added to avoid the awkward construction, "... in the course of creating ... Media Material to the public."

8. false arrest, detention or imprisonment;
9. invasion of or interference with any right to private occupancy, including trespass, wrongful entry or eviction; or
10. unfair competition, if alleged in conjunction with any of the acts listed in parts 5. or 6. above.

Media Material means any information, including words, sounds, numbers, images or graphics, ~~that is displayed, broadcast, disseminated or released to the public,~~ but will not include computer software or the actual goods, products or services described, illustrated or displayed in such **Media Material**.

Commented [CL42]: This revision was added to mirror the language in the definition of Media Liability and to clarify that the intended scope of Media Material is that which is made public.

Merchant Services Agreement means any agreement between an **Insured** and a financial institution, credit/debit card company, credit/debit card processor or independent service operator enabling an **Insured** to accept credit card, debit card, prepaid card or other payment cards for payments or donations.

Money means a medium of exchange in current use authorized or adopted by a domestic or foreign government as a part of its currency.

Named Insured means the **Named Insured** listed in the Declarations.

Notified Individuals Threshold means the number of individual persons listed in the Declarations.

PCI Fines, Expenses and Costs means the monetary amount owed by the **Insured Organization** under the terms of a **Merchant Services Agreement** as a direct result of a suspected **Data Breach**. With the prior consent of the Underwriters, **PCI Fines, Expenses and Costs** includes reasonable and necessary legal costs and expenses incurred by the **Insured Organization** to appeal or negotiate an assessment of such monetary amount. **PCI Fines, Expenses and Costs** will not include any charge backs, interchange fees, discount fees or other fees unrelated to a **Data Breach**.

Penalties means:

1. any monetary civil fine or penalty payable to a governmental entity that was imposed in a **Regulatory Proceeding**; and
2. amounts which the **Insured** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment or settlement of a **Regulatory Proceeding** (including such amounts required to be paid into a "Consumer Redress Fund");

but will not include (a) costs to remediate or improve **Computer Systems**; (b) costs to establish, implement, maintain, improve or remediate security or privacy practices, procedures, programs or policies; (c) audit, assessment, compliance or reporting costs; or (d) costs to protect the confidentiality, integrity and/or security of **Personally Identifiable Information** or other information.

The insurability of **Penalties** will be in accordance with the law in the applicable venue that most favors coverage for such **Penalties**.

Period of Restoration means the 180-day period of time that begins upon the actual and necessary interruption of the **Insured Organization's** business operations.

Personally Identifiable Information means:

1. any information concerning an individual that is defined as personal information under any **Breach Notice Law**; and
2. an individual's driver's license or state identification number, social security number, unpublished telephone number, and credit, debit or other financial account numbers in combination with associated security codes, access codes, passwords or PINs; if such

information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual's financial account or medical record information.

but will not include information that is lawfully made available to the general public.

Policy Period means the period of time between the inception date listed in the Declarations and the effective date of termination, expiration or cancellation of this Policy and specifically excludes any **Optional Extension Period** or any prior policy period or renewal period.

Privacy Policy means the **Insured Organization's** public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to **Personally Identifiable Information**.

Proof of Loss Expenses means the reasonable and necessary costs that the **Named Insured** incurs to contract with a third party to prepare a proof of loss in support of a claimed **Loss** under the First Party Loss, eCrime and Supplemental First Party Loss insuring agreements.

Protection Period means the period beginning on the date the **Adverse Media Event** occurs, and ends after the earlier of:

1. 180 days; or
2. the date that gross revenues are restored to the level they would have been but for the **Adverse Media Event**.

Regulatory Proceeding means a request for information, civil investigative demand or civil proceeding brought by or on behalf of any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity.

Reputation Loss means the **Income Loss** that the **Insured Organization** would have earned during the **Protection Period** but for an **Adverse Media Event**.

When calculating any **Reputation Loss**, due consideration will be given to any amounts made up during, or within a reasonable time after the end of, the **Protection Period**.

Reputation Loss will not include any of the following:

- (i) loss arising out of any liability to any third party;
- (ii) legal costs or legal expenses of any type;
- (iii) loss incurred as a result of unfavorable business conditions;
- (iv) loss of market or any other consequential loss;
- (v) **Breach Response Services**;
- (vi) **Cyber Extortion Loss**; or
- (vii) loss arising out of an actual interruption of the **Insured Organization's** business operations for any period of time.

Securities means negotiable and non-negotiable instruments or contracts representing either **Money** or tangible property that has intrinsic value.

Security Breach means a failure of computer security to prevent:

1. **Unauthorized Access or Use of Computer Systems**, including **Unauthorized Access or Use** resulting from the theft of a password from a **Computer System** or from any **Insured**;

Commented [CL43]: This definition has been added to support the Proof of Loss Expenses insuring agreement. This definition also provides coverage to prepare a proof of loss for eCrime and Supplemental First Party Loss (Cryptojacking) insuring agreements, even though the policy does not require a proof of loss for these coverages. Policyholders may find it helpful to engage a forensic accountant to help them determine the quantum of their claim.

Commented [CL44]: This definition has been added to support the Reputation Loss insuring agreement.

Commented [CL45]: This definition has been added to support the Reputation Loss insuring agreement. Note that this definition has been broadened by longer absolutely excluding Reputation Loss coverage when there has been a business interruption. (The Reputation Loss endorsement for BBR 2017 excludes Reputation Loss coverage when there has been any interruption of business operations.) Rather, the definition excludes losses that can be attributed to business interruption; reputation losses that are not attributed to business interruption are not excluded.

2. a denial of service attack affecting **Computer Systems**;
3. with respect to coverage under the Liability insuring agreements, a denial of service attack affecting computer systems that are not owned, operated or controlled by an **Insured**; or
4. infection of **Computer Systems** by malicious code or transmission of malicious code from **Computer Systems**.

Subsidiary means any entity:

1. which, on or prior to the inception date of this Policy, the **Named Insured** owns or owned, directly or indirectly, more than 50% of the outstanding voting securities ("Management Control");
2. which the **Named Insured** acquires Management Control after the inception date of this Policy; provided that:
 - (i) the revenues of such entity do not exceed 15% of the **Named Insured's** annual revenues; or
 - (ii) if the revenues of such entity exceed 15% of the **Named Insured's** annual revenues, then coverage under this **Policy** will be afforded for a period of 60 days, but only for any **Claim** that arises out of any act, error, omission, incident or event first occurring after the entity becomes so owned. Coverage beyond such 60 day period will only be available if the **Named Insured** gives the Underwriters written notice of the acquisition, obtains the written consent of Underwriters to extend coverage to the entity beyond such 60 day period and agrees to pay any additional premium required by Underwriters; and
3. which the **Named Insured** divests, sells or otherwise no longer has Management Control after the inception date of this Policy.

This Policy provides coverage only for acts, errors, omissions, incidents or events that occur while the **Named Insured** has Management Control over an entity.

System Failure means an unintentional and unplanned interruption of **Computer Systems**.

System Failure will not include any interruption of computer systems resulting from (i) a **Security Breach**, or (ii) the interruption of any third party computer system.

Telephone Fraud means the act of a third party gaining access to and using the **Insured Organization's** telephone system in an unauthorized manner.

Third Party Information means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not insured under this Policy which is not available to the general public.

Transfer Account means an account maintained by the **Insured Organization** at a **Financial Institution** from which the **Insured Organization** can initiate the transfer, payment or delivery of **Money** or **Securities**.

Unauthorized Access or Use means the gaining of access to or use of **Computer Systems** by an unauthorized person(s) or the use of **Computer Systems** in an unauthorized manner.

Unauthorized Disclosure means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by the **Insured Organization** and is without knowledge, consent or acquiescence of any member of the **Control Group**.

Voluntary Shutdown means:

Commented [CL46]: Added to clarify that entities that are "spun off" continue to be considered "Subsidiaries." (Please be aware that the Policy only covers them for "pre-spin-off" events or liability, per the last sentence of the definition.)

Commented [CL47]: Added to support Voluntary Shutdown coverage in the Business Interruption Loss insuring agreement.

1. the voluntary and intentional shutdown of **Computer Systems** by the **Insured Organization**, but only to the extent necessary to limit the **Loss** during an active or ongoing **Unauthorized Access or Use of Computer Systems** or an infection of **Computer Systems** by malicious code, as covered by parts 1. or 4. of the definition of **Security Breach**; or
2. the intentional shutdown of **Computer Systems** by the **Insured Organization** as expressly required by any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity resulting from a situation described in parts 1. or 4. of the definition of a **Security Breach**, above.

Waiting Period means the period of time that begins upon the actual interruption of the **Insured Organization's** business operations caused by a **Security Breach** (including a **Voluntary Shutdown**), **System Failure**, **Dependent Security Breach** or **Dependent System Failure**, and ends after the elapse of the number of hours listed as the **Waiting Period** in the Declarations.

Commented [CL48]: Added to support Voluntary Shutdown coverage in the Business Interruption Loss insuring agreement.

Exclusions

The coverage under this Policy will not apply to any **Loss** arising out of:

Bodily Injury or Property Damage

1. **Bodily Injury**; but this exclusion shall not apply to any **Claim** under the Contingent Bodily Injury insuring agreement; or
2. physical injury to or destruction of any tangible property, including the loss of use thereof; but this exclusion shall not apply to the Computer Bricking Loss insuring agreement. Electronic data will not be considered tangible property;

Commented [CL49]: Modified to accommodate the Contingent Bodily Injury insuring agreement. Moved Bodily Injury description to its own definition.

Commented [CL50]: Added to support the Computer Bricking Loss insuring agreement.

Trade Practices and Antitrust

any actual or alleged false, deceptive or unfair trade practices, antitrust violation, restraint of trade, unfair competition (except as provided in the Media Liability insuring agreement), or false or deceptive or misleading advertising or violation of the Sherman Antitrust Act, the Clayton Act or the Robinson-Patman Act; but this exclusion will not apply to:

1. the Breach Response insuring agreement; or
2. coverage for a **Data Breach** or **Security Breach**, provided no member of the **Control Group** participated or colluded in such **Data Breach** or **Security Breach**;

Gathering or Distribution of Information

1. the unlawful collection or retention of **Personally Identifiable Information** or other personal information by or on behalf of the **Insured Organization**; but this exclusion will not apply to **Claims Expenses** incurred in defending the **Insured** against allegations of unlawful collection of **Personally Identifiable Information**; or
2. the distribution of unsolicited email, text messages, direct mail, facsimiles or other communications, wire tapping, audio or video recording, or telemarketing, if such distribution, wire tapping, recording or telemarketing is done by or on behalf of the **Insured Organization**; but this exclusion will not apply to **Claims Expenses** incurred in defending the **Insured** against allegations of unlawful audio or video recording;

Prior Known Acts & Prior Noticed Claims

1. any act, error, omission, incident or event committed or occurring prior to the inception date of this Policy if any member of the **Control Group** on or before the **Continuity Date** knew or

could have reasonably foreseen that such act, error or omission, incident or event might be expected to be the basis of a **Claim** or **Loss**;

2. any **Claim**, **Loss**, incident or circumstance for which notice has been provided under any prior policy of which this Policy is a renewal or replacement;

Racketeering, Benefit Plans, Employment Liability & Discrimination

1. any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organizations Act or RICO), as amended;
2. any actual or alleged acts, errors or omissions related to any of the **Insured Organization's** pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts;
3. any employer-employee relations, policies, practices, acts or omissions, or any actual or alleged refusal to employ any person, or misconduct with respect to employees; or
4. any actual or alleged discrimination;

but this exclusion will not apply to coverage under the Breach Response insuring agreement or parts 1., 2. or 3. of the Data & Network Liability insuring agreement that results from a **Data Breach**; provided no member of the **Control Group** participated or colluded in such **Data Breach**;

Sale or Ownership of Securities & Violation of Securities Laws

1. the ownership, sale or purchase of, or the offer to sell or purchase stock or other securities; or
2. an actual or alleged violation of a securities law or regulation;

Criminal, Intentional or Fraudulent Acts

any criminal, dishonest, fraudulent or malicious act or omission, or intentional or knowing violation of the law, if committed by an **Insured**, or by others if the **Insured** colluded or participated in any such conduct or activity; but this exclusion will not apply to:

1. **Claims Expenses** incurred in defending any **Claim** alleging the foregoing until there is a final non-appealable adjudication establishing such conduct; or
2. with respect to a natural person **Insured**, if such **Insured** did not personally commit, participate in or know about any act, error, omission, incident or event giving rise to such **Claim** or **Loss**.

For purposes of this exclusion, only acts, errors, omissions or knowledge of a member of the **Control Group** will be imputed to the **Insured Organization**;

Patent, Software Copyright, Misappropriation of Information

1. infringement, misuse or abuse of patent or patent rights;
2. infringement of copyright arising from or related to software code or software products other than infringement resulting from a theft or **Unauthorized Access or Use** of software code by a person who is not a past, present or future employee, director, officer, partner or independent contractor of the **Insured Organization**; or
3. use or misappropriation of any ideas, trade secrets or **Third Party Information** (i) by, or on behalf of, the **Insured Organization**, or (ii) by any other person or entity if such use or misappropriation is done with the knowledge, consent or acquiescence of a member of the **Control Group**;

Governmental Actions

a **Claim** brought by or on behalf of any state, federal, local or foreign governmental entity, in such entity's regulatory or official capacity; but this exclusion will not apply to the Regulatory Defense & Penalties insuring agreement;

Other Insureds & Related Enterprises

a **Claim** made by or on behalf of:

1. any **Insured**; but this exclusion will not apply to a **Claim** made by an individual that is not a member of the **Control Group** under the Data & Network Liability insuring agreement, or a **Claim** made by an **Additional Insured**; or
2. any business enterprise in which any **Insured** has greater than 15% ownership interest or made by any parent company or other entity which owns more than 15% of the **Named Insured**;

Trading Losses, Loss of Money & Discounts

1. any trading losses, trading liabilities or change in value of accounts;
2. any loss, transfer or theft of monies, securities or tangible property of the **Insured** or others in the care, custody or control of the **Insured Organization**;
3. the monetary value of any transactions or electronic fund transfers by or on behalf of the **Insured** which is lost, diminished or damaged during transfer from, into or between accounts; or
4. the value of coupons, price discounts, prizes, awards or any other valuable consideration given in excess of the total contracted or expected amount;

but this exclusion will not apply to coverage under the eCrime insuring agreement;

Media-Related Exposures

with respect to the Media Liability insuring agreement:

1. any contractual liability or obligation; but this exclusion will not apply to a **Claim** for misappropriation of ideas under implied contract;
2. the actual or alleged obligation to make licensing fee or royalty payments;
3. any costs or expenses incurred or to be incurred by the **Insured** or others for the reprinting, reposting, recall, removal or disposal of any **Media Material** or any other information, content or media, including any media or products containing such **Media Material**, information, content or media;
4. any **Claim** brought by or on behalf of any intellectual property licensing bodies or organizations;
5. the actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services; cost guarantees, cost representations or contract price estimates; or the failure of any goods or services to conform with any represented quality or performance;
6. any actual or alleged gambling, contest, lottery, promotional game or other game of chance; or

7. any **Claim** made by or on behalf of any independent contractor, joint venturer or venture partner arising out of or resulting from disputes over ownership of rights in **Media Material** or services provided by such independent contractor, joint venturer or venture partner;

First Party Loss

with respect to the First Party Loss insuring agreements:

1. seizure, nationalization, confiscation, or destruction of property or **data by official order** of any governmental or public authority;
2. costs or expenses incurred by the **Insured** to identify or remediate software program errors or vulnerabilities or update, replace, restore, assemble, reproduce, recollect or enhance data or **Computer Systems** to a level beyond that which existed prior to a **Security Breach, System Failure, Dependent Security Breach, Dependent System Failure or Extortion Threat**;
3. **failure, interruption, or malfunction of Financial Market Infrastructure, Digital and Internet Infrastructure**, power, water, oil, gas, electrical, sewage or other utilities, or mechanical infrastructure or services, that are not under the **Insured Organization's** direct operational control;
4. fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, act of God or other physical event; or
5. **an actual or alleged obligation for the Insured Organization to make payments for products or services to a third party pursuant to a written contract;**

Commented [CL51]: Added to incorporate the revisions introduced by the First Party Loss Exclusion Amendatory Endorsement (E15627 012023 ed.).

Commented [CL52]: Added to incorporate the revisions introduced by the First Party Loss Exclusion Amendatory Endorsement (E15627 012023 ed.).

Commented [CL53]: Added to clarify no coverage for any first party loss that arises from the insured's failure to pay their bills.

Commented [CL54]: Added to incorporate our Asbestos, Pollution, and Contamination Exclusion Endorsement (E10595 112017 ed.).

Asbestos, Pollution, and Contamination

either in whole or in part, directly or indirectly arising out of or resulting from or in consequence of, or in any way involving:

1. asbestos, or any materials containing asbestos in whatever form or quantity;
2. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; and any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins;

The Underwriters will have no duty or obligation to defend any **Insured** with respect to any **Claim** or governmental or regulatory order, requirement, directive, mandate or decree which either in whole or in part, directly or indirectly, arises out of or results from or in consequence of, or in any way involves the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind;

3. the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property; or

4. the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or any governmental, judicial or regulatory directive or request that the **Insured** or anyone acting under the direction or control of the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including gas, acids, alkalis, chemicals, heat, smoke, vapor, soot, fumes or waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

Limit of Liability and Coverage

Limits of Liability

The Policy Aggregate Limit of Liability listed in the Declarations (the “**Policy Aggregate Limit of Liability**”) is the Underwriters’ combined total limit of liability for all **Loss**, other than **Breach Response Services**, payable under this Policy.

The limit of liability payable under each insuring agreement will be an amount equal to the **Policy Aggregate Limit of Liability** unless another amount is listed in the Declarations. Such amount is the aggregate amount payable under this Policy pursuant to such insuring agreement and is part of, and not in addition to, the **Policy Aggregate Limit of Liability**.

All **Dependent Business Loss** payable under this Policy is part of and not in addition to the **Business Interruption Loss** limit listed in the Declarations.

The Underwriters will not be obligated to pay any **Damages, Penalties, PCI Fines, Expenses and Costs** or **Claims Expenses**, or to defend any **Claim**, after the **Policy Aggregate Limit of Liability** has been exhausted, or after deposit of the **Policy Aggregate Limit of Liability** in a court of competent jurisdiction.

Breach Response Limits

Coverage for **Breach Response Services** under this Policy is in addition to the **Policy Aggregate Limit of Liability**.

The Notified Individuals limit listed in the Declarations is the maximum total number of individuals to whom notification, call center and credit or identity monitoring services will be provided (or attempted) for all incidents or series of related incidents giving rise to an obligation to provide **Breach Response Services**.

The Legal, Forensic & Public Relations/Crisis Management limit listed in the Declarations is the aggregate limit of coverage for all services and costs covered under parts 1., 2., 3. and 7. of the definition of **Breach Response Services**.

Except as provided in the Additional Breach Response Limits clause below, the Underwriters will not be obligated to provide any **Breach Response Services** after the number of individuals to whom services are provided under part 4. of the definition of **Breach Response Services** reaches the Notified Individuals limit listed in the Declarations. If the total number of individuals to be notified under the Policy exceeds the Notified Individuals limit listed in the Declarations, the **Insured** will be responsible for notifying and providing call center services and credit or identity monitoring services to such additional individuals.

Additional Breach Response Limits

Notwithstanding the foregoing, if:

1. the total number of individuals to whom services described in parts 4., 5. and 6. of the definition of **Breach Response Services** are provided exceeds the amount listed in Notified Individuals limit listed in the Declarations; or

2. the dollar amount of the services described in parts 1., 2., 3. and 7. of the definition of **Breach Response Services** provided to the **Insured Organization** exceeds the Legal, Forensic & Public Relations/Crisis Management limit listed in the Declarations;

this Policy will cover the costs, fees and expenses incurred to provide such **Breach Response Services** up to an amount equal to the **Policy Aggregate Limit of Liability** (the “**Additional Breach Response Limit**”).

The **Additional Breach Response Limit** is part of, and not in addition to, the **Policy Aggregate Limit of Liability** and will be reduced and may be exhausted by payments under either limit. Upon exhaustion of the **Additional Breach Response Limit**, there will be no further coverage under this Policy for any costs, fees or expenses covered thereunder.

Retentions

The Retention listed in the Declarations applies separately to each incident, event or related incidents or events giving rise to a **Claim** or **Loss**. The Retention will be satisfied by monetary payments by the **Named Insured** of covered **Loss** under each insuring agreement. If any **Loss** arising out of an incident or **Claim** is subject to more than one Retention, the Retention for each applicable insuring agreement will apply to such **Loss**, provided that the sum of such Retention amounts will not exceed the largest applicable Retention amount.

The Retention for **Breach Response Services** listed in the Declarations applies separately to each incident, event or related incidents or events, giving rise to legal, forensic and public relations/crisis management services and costs covered under parts 1., 2., 3. and 7. of the definition of **Breach Response Services**. The Retention will be satisfied by monetary payments by the **Named Insured** for such services and costs.

Coverage for **Business Interruption Loss** and **Dependent Business Loss** will apply after the **Waiting Period** has elapsed and the Underwriters will then indemnify the **Named Insured** for all **Business Interruption Loss** and **Dependent Business Loss** sustained during the **Period of Restoration** in excess of the Retention.

Satisfaction of the applicable Retention is a condition precedent to the payment of any **Loss** under this Policy, and the Underwriters will be liable only for the amounts in excess of such Retention.

Optional Extension Period

Upon non-renewal or cancellation of this Policy for any reason except the non-payment of premium, the **Named Insured** will have the right to purchase, for additional premium in the amount of the Optional Extension Premium percentage listed in the Declarations of the full Policy Premium listed in the Declarations, an Optional Extension Period for the period of time listed in the Declarations. Coverage provided by such Optional Extension Period will only apply to **Claims** first made against any **Insured** during the Optional Extension Period and reported to the Underwriters during the Optional Extension Period, and arising out of any act, error or omission committed before the end of the **Policy Period**. In order for the **Named Insured** to invoke the Optional Extension Period option, the payment of the additional premium for the Optional Extension Period must be paid to the Underwriters within 60 days of the termination of this Policy.

The purchase of the Optional Extension Period will in no way increase the **Policy Aggregate Limit of Liability** or any sublimit of liability. At the commencement of the Optional Extension Period the entire premium will be deemed earned, and in the event the **Named Insured** terminates the Optional Extension Period for any reason prior to its natural expiration, the Underwriters will not be liable to return any premium paid for the Optional Extension Period.

All notices and premium payments with respect to the Optional Extension Period option will be directed to the Underwriters through the entity listed for Administrative Notice in the Declarations.

General Conditions

Notice of Claim or Loss

1. Notice of Breach

With respect to the Breach Response insuring agreement, the **Insured** must notify the Underwriters of any actual or reasonably suspected **Data Breach** or **Security Breach** as soon as practicable after discovery by the **Insured**, but in no event later than 60 days after the end of the **Policy Period**.

Notice must be provided to the Beazley Cyber Services Team listed in the Declarations.

Notice of an actual or reasonably suspected **Data Breach** or **Security Breach** in conformance with this subsection will also constitute notice of a circumstance that could reasonably be the basis for a **Claim**.

2. Notice of First Party Loss – Cyber Extortion

With respect to the Cyber Extortion Loss insuring agreement, the **Named Insured** must notify the Underwriters of any **Extortion Threat** as soon as practicable after discovery by the **Insured**, but in no event later than 60 days after the end of the **Policy Period**.

Notice must be provided to the Beazley Cyber Services Team listed in the Declarations.

3. Notice of First Party Loss – Other First Party Loss

With respect to the First Party Loss insuring agreements (other than Cyber Extortion Loss), the **Named Insured** must notify the Underwriters of the circumstance, incident or event giving rise to such loss as soon as practicable after discovery by the **Named Insured**, but in no event later than 60 days after the end of the **Policy Period**.

Notice must be provided through the contacts listed for Notice of Claim, Loss or Circumstance in the Declarations.

The **Named Insured** will provide the Underwriters a proof of loss for all **Loss** claimed under the First Party Loss insuring agreements (other than Cyber Extortion Loss). All such loss must be reported, and all proofs of loss must be provided, to the Underwriters no later than 180 days after discovery of the circumstance, incident or event giving rise to such loss.

4. Notice of Liability Claim

With respect to the Liability insuring agreements, the **Insured** must notify the Underwriters of any **Claim** as soon as practicable, but in no event later than (i) 60 days after the end of the **Policy Period**; or (ii) the end of the Optional Extension Period (if applicable).

Notice must be provided through the contacts listed for Notice of Claim, Loss or Circumstance in the Declarations.

Any **Claim** arising out of a **Loss** that is covered under the Breach Response, First Party Loss, eCrime or Supplemental First Party Loss insuring agreements and that is reported to the Underwriters in conformance with the General Conditions section herein will be considered to have been made during the **Policy Period**.

Commented [CL56]: This section has been revised to clarify notice obligations:

1. The notice requirements now appear in the same order that the insuring agreements appear in the policy.

2. Notices for Cyber Extortion must now be tendered to our Cyber Services Team. (BBR 2017 required Cyber Extortion to be noticed in the same way as a liability claim.)

3. To expedite loss evaluation and payment, Proofs of Loss are now required to be submitted 180 days after the incident, rather than 6 months after the end of the policy period.

Otherwise, the intent of the notice language is unchanged.

5. *Notice of eCrime and Supplemental First Party Loss*

With respect to the eCrime and Supplemental First Party Loss insuring agreements, the **Named Insured** must notify the Underwriters of any loss as soon as practicable, but in no event later than 60 days after the end of the **Policy Period**.

Notice must be provided through the contacts listed for Notice of Claim, Loss or Circumstance in the Declarations.

Notice of Circumstance

With respect to any circumstance that could reasonably be the basis for a **Claim** (other than a **Data Breach** or **Security Breach** noticed under the Breach Response insuring agreement) the **Insured** may give written notice of such circumstance to the Underwriters through the contacts listed for Notice of Claim, Loss or Circumstance in the Declarations as soon as practicable during the **Policy Period**. Such notice must include:

1. the specific details of the act, error, omission or event that could reasonably be the basis for a **Claim**;
2. the injury or damage which may result or has resulted from the circumstance; and
3. the facts by which the **Insured** first became aware of the act, error, omission or event.

Any subsequent **Claim** made against the **Insured** arising out of any circumstance reported to Underwriters in conformance with the foregoing will be considered to have been made at the time written notice complying with the above requirements was first given to the Underwriters during the **Policy Period**.

Defense of Claims

Except with respect to coverage under the Payment Card Liabilities & Costs insuring agreement, the Underwriters have the right and duty to defend any covered **Claim** or **Regulatory Proceeding**. Defense counsel will be mutually agreed by the **Named Insured** and the Underwriters but, in the absence of such agreement, the Underwriters' decision will be final.

With respect to the Payment Card Liabilities & Costs insuring agreement, coverage will be provided on an indemnity basis and legal counsel will be mutually agreed by the **Named Insured** and the Underwriters and will be selected from a firm maintained on Underwriters' website at <https://cyberservices.beazley.com/>.

The Underwriters will pay actual loss of salary and reasonable expenses resulting from the attendance by a corporate officer of the **Insured Organization** at any mediation meetings, arbitration proceedings, hearings, depositions or trials relating to the defense of any **Claim**, subject to a maximum of \$2,000 per day and \$100,000 in the aggregate, which amounts will be part of and not in addition to the **Policy Aggregate Limit of Liability**.

Settlement of Claims

If the **Insured** refuses to consent to any settlement recommended by the Underwriters and acceptable to the claimant, the Underwriters' liability for such **Claim** will not exceed:

1. the amount for which the **Claim** could have been settled, less the remaining Retention, plus the **Claims Expenses** incurred up to the time of such refusal; plus
2. seventy percent (70%) of any **Claims Expenses** incurred after the date such settlement or compromise was recommended to the **Insured** plus seventy percent (70%) of any **Damages, Penalties** and **PCI Fines, Expenses and Costs** above the amount for which the **Claim** could have been settled;

Commented [CL57]: Revised because we no longer provide an Information Packet with policies.

Commented [CL58]: Revised to broaden coverage after a policyholder refuses to consent to settlement.

and the Underwriters will have the right to withdraw from the further defense of such **Claim**.

The **Insured** may settle any **Claim** where the **Damages, Penalties, PCI Fines, Expenses and Costs and Claims Expenses** do not exceed the Retention, provided that the entire **Claim** is resolved and the **Insured** obtains a full release on behalf of all **Insureds** from all claimants.

Assistance and Cooperation

The Underwriters will have the right to make any investigation they deem necessary, and the **Insured** will cooperate with the Underwriters in all investigations, including investigations regarding coverage under this Policy and the information and materials provided to the Underwriters in connection with the underwriting and issuance of this Policy. The **Insured** will execute or cause to be executed all papers and render all assistance as is requested by the Underwriters. The **Insured** agrees not to take any action which in any way increases the Underwriters' exposure under this Policy. Expenses incurred by the **Insured** in assisting and cooperating with the Underwriters do not constitute **Claims Expenses** under the Policy.

The **Insured** will not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without the written consent of the Underwriters, except as specifically provided in the Settlement of Claims clause above. Compliance with a **Breach Notice Law** will not be considered an admission of liability.

Subrogation

If any payment is made under this Policy and there is available to the Underwriters any of the **Insured's** rights of recovery against any other party, then the Underwriters will maintain all such rights of recovery. The **Insured** will do whatever is reasonably necessary to secure such rights and will not do anything after an incident or event giving rise to a **Claim** or **Loss** to prejudice such rights. If the **Insured** has waived its right to subrogate against a third party through written agreement made before an incident or event giving rise to a **Claim** or **Loss** has occurred, then the Underwriters waive their rights to subrogation against such third party. Any recoveries will be applied first to subrogation expenses, second to **Loss** paid by the Underwriters and lastly to the Retention. Any additional amounts recovered will be paid to the **Named Insured**.

Other Insurance

The insurance under this Policy will apply in excess of any other valid and collectible insurance available to any **Insured** unless such other insurance is written only as specific excess insurance over this Policy.

Action Against the Underwriters

No action will lie against the Underwriters or the Underwriters' representatives unless and until, as a condition precedent thereto, the **Insured** has fully complied with all provisions, terms and conditions of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment or award against the **Insured** after trial, regulatory proceeding, arbitration or by written agreement of the **Insured**, the claimant and the Underwriters.

No person or organization will have the right under this Policy to join the Underwriters as a party to an action or other proceeding against the **Insured** to determine the **Insured's** liability, nor will the Underwriters be impleaded by the **Insured** or the **Insured's** legal representative.

The **Insured's** bankruptcy or insolvency of the **Insured's** estate will not relieve the Underwriters of their obligations hereunder.

Change of Law, Unavailability of Breach Response Services

If there is a change of law, regulation or enforcement that prevents the Underwriters or its providers from providing all or part of the **Breach Response Services**, or if a provider is unable to or does not provide **Breach Response Services**, the Underwriters will make reasonable efforts to procure similar services from other sources. In such event, the maximum the Underwriters will pay for the costs of procuring and providing all **Breach Response Services**, including substitute products and services, will be no more than USD 10,000,000 in the aggregate for the **Policy Period**, which amount will be in addition to the **Policy Aggregate Limit of Liability**. If it is not reasonably possible for the Underwriters to procure substitute products or services, the Underwriters will not be obligated to provide such services.

Entire Agreement

By acceptance of the Policy, all **Insureds** agree that this Policy embodies all agreements between the Underwriters and the **Insured** relating to this Policy. Notice to any agent, or knowledge possessed by any agent or by any other person, will not effect a waiver or a change in any part of this Policy or stop the Underwriters from asserting any right under the terms of this Policy; nor will the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy signed by the Underwriters.

Mergers or Consolidations

If during the **Policy Period** the **Named Insured** consolidates or merges with or is acquired by another entity, or sells more than 50% of its assets to another entity, then this Policy will continue to remain in effect through the end of the **Policy Period**, but only with respect to events, acts or incidents that occur prior to such consolidation, **merger, acquisition or sale**. There will be no coverage provided by this Policy for any other **Claim** or **Loss** unless the **Named Insured** provides written notice to the Underwriters prior to such consolidation, **merger, acquisition or sale**, the **Named Insured** has agreed to any additional premium and terms of coverage required by the Underwriters and the Underwriters have issued an endorsement extending coverage under this Policy.

Commented [CL59]: Housekeeping revision.

Commented [CL60]: Housekeeping revision.

Assignment

The interest hereunder of any **Insured** is not assignable. If the **Insured** dies or is adjudged incompetent, such insurance will cover the **Insured's** legal representative as if such representative were the **Insured**, in accordance with the terms and conditions of this Policy.

Cancellation

This Policy may be canceled by the **Named Insured** by giving written notice to the Underwriters through the entity listed for Administrative Notice in the Declarations stating when the cancellation will be effective.

This Policy may be canceled by the Underwriters by mailing to the **Named Insured** at the address listed in the Declarations written notice stating when such cancellation will be effective. Such date of cancellation will not be less than 60 days (or 10 days for cancellation due to non-payment of premium) after the date of notice.

If this Policy is canceled in accordance with the paragraphs above, the earned premium will be computed pro rata; but the premium will be deemed fully earned if any **Claim**, or any circumstance that could reasonably be the basis for a **Claim** or **Loss**, is reported to the Underwriters on or before the date of cancellation. Payment or tender of unearned premium is not a condition of cancellation.

Singular Form of a Word

Whenever the singular form of a word is used herein, the same will include the plural when required by context.

Headings

The titles of paragraphs, clauses, provisions or endorsements of or to this Policy are intended solely for convenience and reference, and are not deemed in any way to limit or expand the provisions to which they relate and are not part of the Policy.

Consent

Whenever consent of the Underwriters is required herein, such consent will not unreasonably be withheld.

Commented [CL61]: Added by popular request.

Representation by the Insured

All **Insureds** agree that the statements contained the information and materials provided to the Underwriters in connection with the underwriting and issuance of this Policy are true, accurate and are not misleading, and that the Underwriters issued this Policy, and assume the risks hereunder, in reliance upon the truth thereof.

Named Insured as Agent

The **Named Insured** will be considered the agent of all **Insureds**, and will act on behalf of all **Insureds** with respect to the giving of or receipt of all notices pertaining to this Policy, and the acceptance of any endorsements to this Policy. The **Named Insured** is responsible for the payment of all premiums and Retentions and for receiving any return premiums.

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