



Policy No: «Bound_PolicyNumber»
Agreement No: B1180D170978

Item 1. Named Insured:

«Company_Name»
 «AdditionalCompanies»

Address:

«Company_Address»
 «Company_City», «Company_State» «Company_ZipCode»

Item 2. Policy Period:

From: «Bound_Effective_Date» To: «Bound_Expiration_Date»
 Both dates at 12:01 a.m., Standard Time at the address of the **Named Insured**

Item 3. Retention(s):

\$5,000 each **Claim** or each **Data Breach** or each **Extortion Threat**
 \$5,000 for legal costs under paragraph III. a. 1. of the Policy wording for each **Data Breach**. This **Retention** is part of, not in addition to the **Retention** shown above.

Item 4. Limit of Liability:

- a. Policy Limit:
 \$1,000,000 in the aggregate for the **Policy Period**
- b. **PCI Fines and Assessments** Sublimit (part of, and not in addition to, the Policy Limit):
 \$50,000 in the aggregate for the **Policy Period**
- c. Computer Forensic Costs Sublimit (part of, and not in addition to, the Policy Limit):
 \$250,000 in the aggregate for the **Policy Period**
- d. Crisis Management and Public Relations Costs Sublimit (part of, and not in addition to, the Policy Limit):
 \$250,000 in the aggregate for the **Policy Period**
- e. **Business Interruption Costs** Sublimit (part of, and not in addition to, the Policy Limit):
 \$10,000 Hourly Sublimit
 \$100,000 in the aggregate for the **Policy Period**

Item 5. Retroactive Date:
«Bound_Retroactive_Date»

Item 6. Waiting Period:
Business Interruption Costs under paragraph III. B. of the Policy wording shall subject to **Waiting Period** of 12 Hours.

Item 7. Premium:

| | |
|-----------------------|-----------------------------|
| Premium: | «Bound_Premium» |
| Surplus Lines Tax: | «BoundFee_SurplusLinesTax» |
| Stamping Fee: | «BoundFee_StateStampingFee» |
| Misc State Fee: | «BoundFee_MiscStateCharge» |
| Policy Fee: | «BoundFee_PolicyIssueFee» |
| <hr/> | |
| Total Premium: | \$ 0.00 |

<INSERT STATE SPECIFIC SURPLUS LINES STAMP HERE>

Item 8. Notice of Cancellation to:

15200 Traditions Blvd Bldg C
Edmond OK 73013

Item 9. Nominee for Service of Suit against Insurer:
Mendes & Mount, LLP
750 Seventh Ave
New York, NY 10019-6829
Or, in respect to California risks:
Eileen Ridley
FLWA Service Corp
c/o Foley & Lardner LLP
555 California St, Suite 1700
San Francisco, CA 94104-1520

Item 10. Notice of Claim(s), matter(s) reasonably likely to lead to Claim(s), Data Breach(es) or Extortion Threat(s) to:

Notification to Underwriters for Cyber-related Sections:

Kari A Timm
BatesCarey LLP
191 North Wacker, Suite 2400
Chicago, IL 60606
CyberThreatProtect@batescarey.com

For data or privacy breach, security failure or breach, cyber extortion, or ransomware:

Melissa Ventrone
Thompson Coburn LLP
55 East Monroe St, 37th Floor
Chicago, IL 60603
Breach Hotline: 1-844-998-2292 (844-99-TCCYBER)
DataBreach@thompsoncoburn.com

Note: Notification to Thompson Coburn LLP is for the benefit of the Insured's direct legal representation and does not constitute notice to Underwriters. Notifications must also therefore be made to BatesCarey, which accepts notice on behalf of Underwriters.

This Declarations page, together with the **Application** for this Policy, the attached Policy form and all Endorsements thereto, shall constitute the contract between the Insurer and the **Insured**. The Policy is valid only if signed below by a duly authorized representative of the Insurer.

In witness whereof, the Insurer issuing this Policy has caused this Policy to be signed by its authorized officers, but it shall not be valid unless also signed by a duly authorized representative of the Insurer.

2/19/2018

Date



Authorized Representative



Coverage under this policy for **claims** is provided on a claims made and reported basis, and applies to **claims** first made against the **insured** and reported to the underwriters during the **policy period**. Coverage under this policy for **breach costs, cyber extortion costs, business interruption costs, and data recovery costs** is provided on an incident discovered and reported basis, and applies to incidents first discovered by the **insured** and reported to the underwriters during the **policy period**.

In consideration of the premium charged and in reliance on the statements made and information provided to the underwriters, including but not limited to the statements made and information provided in and with the application, which is made a part of this policy, as well as subject to the policy limit, the **waiting period, retention**, and all of the terms, conditions, limitations, and exclusions of this policy, the underwriters agree with the **named insured** as follows:

I. Insuring agreement

The underwriters will pay on behalf of the **insured**:

Loss incurred by the **insured** in excess of the **retention** resulting from a **data breach, security failure, or extortion threat** that first occurs on or after the **retroactive date** and is discovered by the **insured** during the **policy period**.

Loss means:

- a. **breach costs**;
- b. **claim expenses, damages, and PCI fines and assessments** because of a **claim** made against the **insured**;
- c. **claim expenses and penalties** because of a **regulatory proceeding** initiated against the **insured**;
- d. **cyber extortion costs**;
- e. **business interruption costs**; and
- f. **data recovery costs**.

II. Defense and settlement of claims

- a. The underwriters will have the right and duty to defend any covered **claim** or **regulatory proceeding**, even if such **claim** or **regulatory proceeding** is groundless, false, or fraudulent.
- b. The underwriters will have the right to appoint defense counsel upon being notified of such **claim**. Defense counsel will be mutually agreed between the **named insured** and the underwriters, which agreement will not be unreasonably withheld. However, in the absence of such agreement, the underwriters' decision will be final.
- c. Notwithstanding paragraph b., underwriters will have no obligation to pay **claim expenses** until the **insured** has satisfied the applicable **retention**.
- d. The underwriters' duty to defend will terminate upon the exhaustion of the applicable limit of liability stated in item 4 of the declarations.
- e. The underwriters will have the right to solicit and negotiate settlement of any **claim**. Underwriters will not, however, enter into a settlement unless the **insured** and the underwriters agree, which agreement will not be unreasonably withheld.
- f. The **insured** must notify the underwriters immediately of any settlement demands or offers. The underwriters agree that the **insured** may settle any **claim** where the total **loss, claim expenses, and damages** does not exceed the **retention**, provided the entire **claim** is resolved and the **insured** obtains a full release on behalf of all **insureds**.



- g. If the **insured** refuses to agree to any settlement recommended by the underwriters and acceptable to the claimant, then underwriters' liability for such **claim** will not exceed the sum of:
1. the amount for which such **claim** could have been settled, less the **retention**, plus **claim expenses** incurred up to the date of such refusal; and
 2. fifty percent (50%) of any **claim expenses** incurred after the date such settlement was refused by the **insured**, plus fifty percent (50%) of any **damages, PCI fines and assessments**, and **penalties** above the amount for which the **claim** could have settled.

III. Definitions

- a. **Breach costs** means the following costs incurred in response to an actual or suspected **data breach**:
1. legal costs:
 reasonable and necessary costs for an attorney to provide advice to the **insured organization** in connection with its investigation of a **data breach**, to assist with the preparation of notifications to the regulators and affected individuals, and to determine and pursue the **insured's** indemnification rights under a written agreement with a third-party;
 2. computer forensic costs:
 reasonable and necessary costs for a computer forensic analysis conducted by outside forensic experts to:
 - a. investigate the cause of a **data breach** and determine the information impacted; and
 - b. stop or contain a **data breach**, provided all costs under this paragraph 2.b. will be limited to fees for time incurred by such outside forensic expert;
 3. notification costs:
 reasonable and necessary costs to notify individuals, regulators, or others as required by law, and to voluntarily notify individuals affected by a **data breach**;
 4. call center costs:
 reasonable and necessary costs to operate a call center to answer questions from affected individuals;
 5. identity protection services:
 reasonable costs to provide affected individuals with one year (or more as required by law) of services to monitor, restore, and/or protect an individual's credit or identity; and
 6. crisis management and public relations costs:
 reasonable costs:
 - i. for a public relations or crisis management consultant to assist the **insured organization** in reestablishing its business reputation and to respond to media reports regarding a **data breach**;
 - ii. for an attorney to advise the **insured organization** on reducing the likelihood of or costs of any **claim** otherwise covered by this policy; and
 - iii. to issue statements via email or the **insured organization's** website regarding a **data breach** to individuals whose information was not impacted by such **data breach**.



The **insured** may incur legal costs under paragraph 1. provided by a firm on the breach response providers list without the underwriters' prior written consent. All other **breach costs** require the underwriters' prior written consent.

The **insured** may request in writing the right to retain privacy counsel that is not on the breach response providers list. The underwriters will only consider such a request if the firm has not yet been retained to perform services in connection with the **data breach**, and whether to grant such request will be at the underwriters' sole discretion.

Breach costs will not mean, and the underwriters will have no obligation to pay, any of the **insured's** own costs, salaries, or overhead expenses.

- b. **Business interruption costs** means **income loss** and **extra expense** actually sustained during the **period of restoration** directly due to the total or partial interruption of the **insured organization's** business for a period greater than the **waiting period**.

Business interruption costs does not mean:

1. legal costs or expenses;
2. costs to update, upgrade, enhance, or replace any computer system or program to the level beyond that which existed prior to the **data breach, security failure, or extortion threat**;
3. any amounts due to unfavorable business conditions; or
4. costs to identify or remove software program errors or vulnerabilities.

- c. **Claim** means:

1. a written assertion of liability or any written demand for financial compensation or injunctive relief; or
2. a **regulatory proceeding**.

- d. **Claim expenses** means the following that are incurred by underwriters or by the **insured** with the underwriters' prior written consent:

1. all reasonable and necessary fees, costs, and expenses (including the fees of attorneys and forensic or other experts) incurred in the investigation, defense, and appeal of a **claim**; and
2. premiums on appeal bonds, attachment bonds, or similar bond. However, the underwriters will have no obligation to apply for or furnish any such bonds.

Claim expenses will not mean and the underwriters will not be obligated to pay:

1. overhead costs, general business expenses, salaries, or wages incurred by an **insured**; or
2. the defense of any criminal investigation, criminal grand jury proceeding, or criminal action.

- e. **Cyber extortion costs** means the following costs incurred with the underwriters' prior written consent in response to an **extortion threat**:

1. the ransom paid or, if the demand is for goods or services, the fair market value at the time of surrender; and
2. reasonable and necessary fees and expenses incurred by a representative appointed by underwriters to provide the **insured** with assistance.

- f. **Damages** means a monetary judgment or monetary award that the **insured** is legally obligated to pay (including pre- or post-judgment interest and claimant's attorneys' fees) or a monetary settlement agreed to by the underwriters and the **insured**.

Damages will not mean:



1. fines, civil or criminal penalties, taxes, or sanctions;
 2. **Penalties;**
 3. **PCI fines and assessments;**
 4. any punitive, exemplary, or multiple damages; however, underwriters will pay punitive or exemplary damages to the extent insurable in any applicable jurisdiction that most favors coverage;
 5. the return or reduction of fees, commissions, profits, or charges for goods provided or services rendered;
 6. restitution, disgorgement of profits, or unjust enrichment;
 7. the cost of complying with injunctive relief; or
 8. any coupons, discounts, prizes, or other incentives, unless agreed in advance by the underwriters in their discretion; provided any such amounts will not include any profits to the **insured**.
- g. **Data asset** means any electronic data or software of the **insured organization**.
- h. **Data breach** means the acquisition, access, or disclosure of **personally identifiable information** or confidential corporate information by a person or entity, or in a manner, that is unauthorized by the **insured organization**.
- i. **Data recovery costs** means reasonable and necessary expenses incurred by the **insured** with the underwriters' prior consent to:
1. regain access to a **data asset**; or
 2. replace, restore, or repair a **data asset** from back-ups, originals or other sources.
- If a **data asset** cannot reasonably be accessed, recovered, or repaired, then **data recovery costs** will not exceed the reasonable and necessary expenses incurred by the **insured organization** to reach that determination.
- Data recovery costs** will not mean:
1. amounts to identify or remediate software program errors or vulnerabilities;
 2. the economic value of any **data asset**, including trade secrets;
 3. costs to restore, update, or replace any **data asset** to a level beyond which existed prior to the **data breach, security failure, or extortion threat**; or
 4. costs to research or develop any **data asset**.
- j. **Extortion threat** means a threat from a third-party to commit an intentional attack against the **insured organization's** website or computer systems or publicly disclose confidential corporate information or **personally identifiable information** misappropriated from the **insured organization** if money, securities, or other property of value is not paid.
- k. **Extra expense** means reasonable and necessary costs incurred by the **insured organization** to minimize the interruption of the **insured organization's** business that are over and above the cost that the **insured organization** ordinarily would have incurred to conduct its business had no **data breach, security failure, or extortion threat** occurred.
- l. **Income loss** means the sum of the following:
1. Net Income (Net Profit or Loss before income taxes) that would have been earned; and
 2. continuing normal operating expenses incurred, including payroll.



- m. **Insured** means:
1. the **named insured** and any **subsidiaries** (together, the '**insured organization**');;
 2. an officer or director of the **insured organization**, but only with respect to the performance of his or her duties as such on behalf of the **insured organization**;
 3. an employee of the **insured organization**, including any part-time, temporary or leased employee, but only with respect to the performance of his or her duties as such on behalf of the **insured organization**;
 4. in the event the **named insured** is a partnership, limited liability partnership, or limited liability company, a general or managing partner, principal or owner, but only with respect to the performance of his or her duties as such on behalf of the **named insured**;
 5. any person who previously qualified as an **insured** under paragraphs 2., 3., or 4. above, but only with respect to the performance of his or her duties as such on behalf of the **insured organization**;
 6. 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
 7. the spouse or domestic partner of any **insured** identified in paragraphs 2., 3., or 4., but solely with respect to any act, error, or omission of an **insured** other than the spouse or domestic partner.
- n. **Merchant services agreement** means any agreement between the **insured organization** and a credit or debit card company, credit or debit card processor, financial institution, or independent sales organization allowing the **insured organization** to accept payment by credit card, debit card, or prepaid card.
- o. **Named insured** means the entity named in item 1 of the declarations.
- p. **PCI fines and assessments** means all amounts the **insured** is legally obligated to pay under a **merchant services agreement** following a **data breach** or **security failure** impacting credit, debit, or prepaid card information, including:
1. contractual fines or penalties for non-compliance with the PCI Data Security Standards ('PCI DSS');
 2. monetary assessments (including for operational expenses, card reissuance fees, and fraud recoveries) and case management fees; and
 3. fees for a mandatory audit following a **data breach** to show that the **insured organization** is PCI DSS compliant.
- q. **Penalties** means any monetary amounts imposed in a **regulatory proceeding** to the extent insurable by law; however, '**penalties**' will not mean any: costs to comply with injunctive relief; costs to establish or improve security or privacy practices; or audit, reporting, or compliance costs.
- r. **Period of restoration** means the time period that:
1. begins on the date and time that the interruption of the **insured organization's** business first occurred; and
 2. ends on the earlier of the date and time that the interruption of the **insured organization's** business: (i) ends; or (ii) could have ended had the **insured** acted with due diligence and dispatch.
- In no event will the **period of restoration** exceed 60 days.
- s. **Personally identifiable information** means the following, in any form:

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1. non-public individually identifiable information as defined in any federal, state, local, or foreign statute, rule, or regulation, including but not limited to protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and any rule or regulation promulgated thereunder; or
 2. an individual's: social security number or taxpayer identification number; driver's license number or state identification number; passport number; or financial account number or credit or debit card number.
- t. **Policy period** means the period of time stated in item 2 of the declarations, including any optional extended reporting period under section VII, when purchased.
- u. **Regulatory proceeding** means a request for information or assertion of liability by a governmental entity in its official capacity.
- v. **Retention** means:
1. with respect to all **claims** or **loss** other than **business interruption costs**, the amount(s) stated in item 3 of the declarations.
 2. with respect to **business interruption costs**, the greater of: (i) the amount of **business interruption costs** incurred during the **waiting period** stated in item 6 of the declarations; or (ii) the **retention** amount stated in item 3 of the declarations.
- w. **Retroactive date** means the date stated in item 5 of the declarations. Provided, in the event a **subsidiary** is acquired during the **policy period**, the **retroactive date** for such **subsidiary** will be the date the **named insured** acquired effective control of the entity.
- x. **Security failure** means any failure by the **insured** or by others on the **insured's** behalf (including the **insured organization's** subcontractors, outsourcers, or independent contractors) in securing the **insured organization's** computer system.
- y. **Subsidiary** means:
1. any entity in which, on or prior to the effective date of the **policy period**, either directly or indirectly through one or more **subsidiaries**, the **named insured** owns more than fifty percent (50%) of the issued and outstanding voting securities or the right to elect or appoint such entity's board of directors or equivalent management structure ('effective control');
 2. any entity of which the **named insured** acquires effective control during the **policy period**, and whose revenues:
 - i. do not exceed 10% of the current annual revenues of the **named insured**; or
 - ii. exceed 10% of the current annual revenues of the **named insured**, but only if within 90 days of such acquisition the **named insured**:
 - a) provides the underwriters with written notice of such acquisition and any information they require in connection therewith; and
 - b) pays any additional premium and accepts any special terms, conditions, and exclusions in connection therewith.
- However, with respect to a **subsidiary** described in paragraph 2. of this definition, the policy will only cover **claims** or **loss** resulting from acts, errors, omissions, incidents, or events occurring while the **named insured** had effective control of such **subsidiary**.
- An entity ceases to be a **subsidiary** once the **named insured** no longer has effective control of such entity, either directly or indirectly through one or more **subsidiaries**, and this policy will not respond to **loss** incurred or **claims** made against such entity after it ceases to be a **subsidiary**.
- z. **Waiting period** means the number of hours stated in item 6 of the declarations.

IV. Exclusions

This policy does not apply to and the underwriters will have no obligation to pay any **loss**, **damages**, or **claim expenses**:

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- a. based upon or arising out of any actual or alleged fraud, dishonesty, criminal conduct, or any knowingly wrongful, malicious, or intentional acts or omissions; however underwriters will pay **claim expenses** until there is a non-appealable adjudication establishing such conduct.

This exclusion will apply to the **named insured** only if the conduct was committed or allegedly committed by any:

1. board member, trustee, director, or officer (or equivalent position) of the **named insured**; or
2. employee of the **named insured** if any board member, trustee, director, or officer (or equivalent position) of the **named insured** knew or had reason to know of such conduct by the employee.

This exclusion will apply separately to each **insured** and will not apply to any **insured** who did not commit, participate in, acquiesce to, or ratify such conduct committed by another **insured**.

- b. based upon or arising out of any actual or alleged infringement, use, misappropriation or disclosure of any intellectual property, including but not limited to patent, trade secret, copyright, trademark, trade dress, service mark, service name, title, or slogan, or any publicity rights violations, cybersquatting violations, moral rights violations, or any act of passing-off; however, this exclusion will not apply to:
1. **loss** resulting from a **data breach** committed by a third-party; or
 2. **loss** resulting from a **security failure**.
- c. based upon or arising out of any contractual liability or obligation; however, this exclusion will not apply to:
1. **loss** resulting from a **data breach**;
 2. the extent the **insured** would have been liable in the absence of such contract or agreement; or
 3. any contractual obligation of the **insured organization** to indemnify a third-party in connection with a **data breach** or **security failure** committed by or on behalf of the **insured**.
- d. based upon or arising out of any actual or alleged unfair competition, deceptive trade practices, restraint of trade, or antitrust violation; however, this exclusion will not apply to a **regulatory proceeding** resulting from a **data breach** or **security failure**.
- e. based upon or arising out of any actual or alleged:
1. violation of any federal, state, local, or foreign securities law, including but not limited to the U.S. Securities Act of 1933 and Securities Exchange Act of 1934, both as amended, or any similar law;
 2. violation of any taxation law or regulation; or
 3. breach of any fiduciary duty owed by the **insured**.
- However, this exclusion will not apply to a **claim** resulting from a **data breach** involving **personally identifiable information** provided that no board member, trustee, director, or officer (or equivalent position) of the **insured organization** participated or colluded in such **data breach**.
- f. based upon or arising out of any actual or alleged collusion, extortion, threatened violence, or violation of racketeering or conspiracy law, including but not limited to violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act and all amendments to this Act or any rules or regulations promulgated under it; however, this exclusion will not apply to **cyber extortion costs**.

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- g. based upon or arising out of any actual or alleged:
 - 1. harassment, wrongful termination, retaliation, or discrimination, including but not limited to adverse or disparate impact; or
 - 2. liability or breach of any duty or obligation owed to the **insured organization** and/ or its shareholders by any of the **insured organization's** current or former board members, trustees, directors, or officers, in their capacity as such.
- h. based upon or arising out of any **claim** made by or on behalf of:
 - 1. any **insured**;
 - 2. any entity in which an **insured** directly or indirectly holds more than a 15% ownership interest, or that the **named insured** or any **subsidiary** directly or indirectly manages, controls, or operates, in whole or in part; or
 - 3. any person or entity that directly or indirectly holds more than a 15% ownership interest in the **insured organization**, or that directly or indirectly owns, manages, controls, or operates the **insured organization**, in whole or in part.

however, this exclusion will not apply to a **claim** brought by an employee alleging injury resulting from a **data breach**.
- i. based upon or arising out of any related or continuing acts, errors, incidents, **data breaches**, **security failures**, **extortion threats**, or events where the first act, error, incident, **data breach**, **security failure**, **extortion threat**, or event first occurred prior to the **retroactive date**.
- j. based upon or arising out of:
 - 1. any prior or pending litigation, **claim**, written demand, arbitration, administrative or regulatory proceeding, or investigation which was filed or commenced against the **insured** and of which the **insured** had notice prior to the first date of the **policy period**;
 - 2. any actual or alleged matter that prior to the first date of the **policy period** the **insured** knew or reasonably ought to have known would be likely to lead to a **claim** or **loss**; or
 - 3. any **claim**, potential **claim**, or **loss** which has been the subject of any written notice given under any other policy before the effective date of this policy.
- k. directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.
- l. based upon or arising out of any actual, alleged, or threatened discharge, dispersal, release, or escape of **pollutants**, including any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **pollutants**. As used in this exclusion '**pollutants**' means any solid, liquid, gaseous, biological, radiological, or thermal irritant or contaminant, including smoke, vapor, asbestos, silica, dust, nanoparticles, fibers, soot, fumes, acids, alkalis, chemicals, nuclear materials, germs, and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.
- m. based upon or arising out of any actual or alleged damage to, or destruction or loss of use of any tangible property; however, this exclusion will not apply to:
 - 1. damage to data, or destruction or loss of use of data; or
 - 2. a **data breach** or **security failure** resulting from damage to or destruction of tangible property.
- n. based upon or arising out of any actual or alleged failure or interruption of service provided by an internet service provider, telecommunications provider, utility provider or other infrastructure provider; however, this exclusion will not apply to a **data breach** involving

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- data that was stored in the cloud, on remote servers, or at a co-location or data hosting service.
- o. based upon or arising out of any actual or alleged repair, upgrade, correction, recall, replacement, withdrawal, removal, or disposal costs incurred by the **insured** or others.
 - p. based upon or arising out of any actual or alleged false or misleading advertisement; however, this exclusion will not apply to any **claim** resulting from a **data breach**.
 - q. based upon or arising out of any actual or alleged violation of any federal, state, local, or foreign statutes, ordinances, regulations, or other laws regarding or relating to unsolicited telemarketing, solicitations, emails, faxes, text messages, mobile video messages, or any other communications of any type or nature, including but not limited to the Telephone Consumer Protection Act, CAN-SPAM Act, or any anti-spam or do-not-call statutes, ordinances, or regulations.
 - r. based upon or arising out of any actual or alleged:
 - 1. collection of information by the **insured** (or others on the **insured's** behalf) without the knowledge or permission of the persons to whom such information relates; however, this exclusion will not apply if no board member, trustee, director, or officer (or equivalent position) of the **insured organization** knew or had reason to know of such conduct; or
 - 2. use of **personally identifiable information** by the **insured** (or others on the **insured's** behalf) in violation of law.
 - s.
 - 1. for any actual or alleged loss, theft, or transfer of the **insured's** funds, monies, or securities, or the funds, monies, or securities of others in the **insured's** care, custody, or control, or in the care, custody, or control of any third-party for whom the **insured** is legally liable, including the value of any funds, monies, or securities transferred by the **insured** or others on the **insured's** behalf.
 - 2. based upon or arising out of any actual or alleged transfer, payment or delivery of funds, monies or securities from one party to another resulting from:
 - i. any instruction to a financial institution which purports to have been transmitted or issued by any member of the **insured organization** but which was in fact fraudulently transmitted or issued by someone else;
 - ii. any instruction to a financial institution which was originally issued by any member of the **insured organization** but which was subsequently forged or altered by someone else;
 - iii. the intentional misleading or deception of any member of the **insured organization** by any person falsely purporting to be someone else.
 - 3. based upon or arising out of incorrect information being given by any member of the **insured organization** to any party which results in the actual or alleged transfer, payment or delivery of funds, monies or securities from that party to another, where the information has been fraudulently transmitted or issued to the **insured organization**.
 - t. based upon or arising out of any actual or alleged disputes with any of the **insured organization's** present or former directors, officers, trustees, partners, joint venturers, employees, agents, or independent contractors concerning ownership of or the exercise of rights relating to information, content, material, or services supplied to the **insured** by any of them.
 - u. with respect to **cyber extortion costs** only, based upon or arising out of:
 - 1. the surrender of a ransom at the location where the illegal threat and ransom demand was first made, unless brought to such location after receipt of the ransom demand for the sole purpose of paying such ransom demand; or
 - 2. a fraudulent or criminal act committed by or in collusion with a board member, trustee, director, or officer (or equivalent position) of the **insured organization**.



- v. with respect to **business interruptions costs** and **data recovery costs** only, based upon or arising out of:
1. any bodily injury, sickness, or disease, including death, humiliation, mental injury, or mental anguish, emotional distress, suffering, or shock;
 2. any seizure, confiscation, nationalization, destruction, or loss of use of computer systems or **data assets** due to any action by a governmental authority;
 3. the bankruptcy, financial impairment, or insolvency of the **insured organization** or other person or entity;
 4. ordinary wear and tear or gradual deterioration of the physical components of a computer system;
 5. physical cause or natural peril, including, but not limited to, fire, wind, water, flood, subsidence, earthquake, or act of God;
 6. any liability to third-parties or contractual penalties; or
 7. any **data breach** involving information that is not under the **insured organization's** direct control, or any **security failure** or **extortion threat** against an entity that is not an **insured**.

V. Retention and limit of liability

- a. The policy limit stated in item 4 of the declarations will be the maximum amount the underwriters will be liable to pay for all **loss, damages, and claim expenses** under the policy, regardless of the number of **claims, data breaches, security failures, or extortion threats**.
- b. The sublimit of liability stated in item 4 of the declarations will be the maximum amount the underwriters will be liable to pay for all **PCI fines and assessments**, regardless of the number of **claims**. Such sublimit is part of, and not in addition to, the policy limit stated in item 4 of the declarations.
- c. The underwriters will not be responsible for payment of any **loss, damages, or claim expenses** until the **retention** amount(s) stated in item 3 of the declarations has been satisfied. Such **retention(s)** must be paid by the **insured** and cannot be insured.
- d. With respect to **business interruption costs**, the **retention** will be the greater of: i) the amount of **business interruption costs** incurred during the **waiting period** stated in item 6 of the declarations; or ii) the **retention** amount stated in item 3 of the declarations.
- e. The underwriters may at their sole discretion advance payment of **losses, damages, or claim expenses** within the **retention** amount on the **insured's** behalf, but the **insured** will reimburse the underwriters for any such amounts as soon as they request such reimbursement.

VI. Notice

- a. The **insured** must notify the underwriters of **claims** as soon as practicable once such **claim** is known to any board member, trustee, director, officer, in-house counsel, risk manager, chief technology officer, chief information officer, or chief privacy officer of the **insured organization**, but in any event no later than: (i) the end of the **policy period**; or (ii) 30 days after the end of the **policy period** for **claims** made against the **insured** in the last 30 days of the **policy period**. Proper notification of **claims** must be sent in accordance with the notification details stated on the declarations.
- b. The **insured** may notify the underwriters of any matter reasonably likely to lead to a **claim** covered under this policy. Such notification must be provided as soon as practicable and within the **policy period**, and must, to the full extent possible, identify the particulars of the potential **claim**, including identifying the potential claimant(s), the likely basis for alleged liability, the likely demand for relief, and any additional information about the potential **claim** that the underwriters reasonably request. If such a potential **claim** notification is made to the underwriters, then the underwriters will treat any **claim** arising from the same



particulars as that notification as if it had first been made against the **insured** on the date the **insured** properly notified the underwriters of the potential **claim**, even if the **claim** is first made against the **insured** after the **policy period** has expired. Proper notification of potential **claims** must be sent in accordance with the notification details stated on the declarations.

- c. The **insured** must promptly notify the underwriters of a **data breach**, **security failure**, or **extortion threat** once such **data breach**, **security failure**, or **extortion threat** is first discovered by the **insured**, but in any event no later than: (i) the end of the **policy period**; or (ii) 30 days after the end of the **policy period** for **data breaches**, **security failures**, or **extortion threats** first discovered by the **insured** in the last 30 days of the **policy period**. Proper notification of **data breaches**, **security failures**, or **extortion threats** must be sent in accordance with the notification details stated on the declarations.

VII. Optional extended reporting period

- a. If the underwriters or the **named insured** cancel or non-renew this policy, then the **named insured** will have the right to purchase for an additional premium an optional extended reporting period. Provided, however, the right to purchase an optional extended reporting period will not apply if:
1. this policy is cancelled by underwriters for non-payment of premium;
 2. the total premium for this policy has not been fully paid; or
 3. the **insured** has purchased replacement coverage.
- b. The optional extended reporting period will apply only to any **claims** that:
1. are first made against the **insured** and reported to the underwriters during such optional extended reporting period; and
 2. result from acts, **data breaches**, or **security failures** occurring on or after the **retroactive date** but prior to the effective date of cancellation or non-renewal.
- c. The additional premium and effective dates will be stated in the purchased extended reporting period endorsement.
- d. Notice of election and full payment of the additional premium for the optional extended reporting period must be received within 30 days after the effective date of cancellation or non-renewal. In the event the additional premium is not received within the 30 days, any right to purchase the optional extended reporting period will lapse and no further optional extended reporting period will be offered.
- e. The limits of liability applicable during any purchased optional extended reporting period will be the remaining available policy limit under the cancelled or non-renewed policy. There will be no separate or additional limit of liability available for any purchased optional extended reporting period and the purchase of any optional extended reporting period will in no way increase the policy limit or any policy sublimit.

VIII. Related claims and losses

For purposes of this policy:

- a. all **claims** arising from any common nexus of fact, circumstance, situation, event, transaction, or cause, or series of related facts, circumstances, situations, events, transactions, or causes will be considered a single **claim** made against the **insured** on the date the first such **claim** was made;
- b. all **data breaches**, **security failures**, or **extortion threats** arising from any common nexus of fact, circumstance, situation, event, transaction, or cause, or series of related facts, circumstances, situations, events, transactions, or causes will be considered a single **data breach**, **security failure**, or **extortion threat** first discovered on the date the first such **data breach**, **security failure**, or **extortion threat** was discovered by the **insured**; and



- c. all **claims** or **losses** arising from the same or related **data breach**, **security failure**, or **extortion threat** will be considered a single **claim** or **loss** first made against or incurred by the **insured** on the date the first **data breach**, **security failure**, or **extortion threat** was discovered by the **insured**.

IX. Conditions applicable to cyber extortion costs

The following are conditions precedent to the payment by the underwriters of any **cyber extortion costs** under this policy:

- a. the **insured** must inform, or allow the underwriters to inform, the appropriate law enforcement authorities where the illegal threat and ransom demand was made;
- b. the **insured** must keep the underwriters fully informed of all developments concerning the **extortion threat** and must obtain the underwriters' agreement regarding the timing and manner of any ransom payment prior to making any ransom payment;
- c. the **insured** must demonstrate to the underwriters that the ransom has been surrendered under duress and that before agreeing to its payment the **insured** has taken all reasonable efforts to determine that the threat is genuine and not a hoax; and
- d. at least one trustee, director, or officer of the **named insured** (or equivalent position) must agree to the ransom payment.

X. Conditions applicable to business interruption costs

The following are conditions precedent to the payment by the underwriters of any **business interruption costs**:

- a. the **insured** must complete and sign a written, detailed, and affirmed proof of loss within 90 days after the **insured's** discovery of the interruption of the **insured organization's** business (unless such period has been extended by the underwriters in writing) which will include, at a minimum, the following information:
 1. a full description of the circumstances surrounding the **business interruption costs**, including, without limitation, the time, place, and cause of the **loss**;
 2. a detailed calculation of any **business interruption costs**; and
 3. all underlying documents and materials that reasonably relate to or form part of the basis of the proof of such **business interruption costs**.
- b. any costs incurred by the **insured** in connection with establishing or proving **business interruption costs**, including but not limited to preparing a proof of loss, will be the **insured's** obligation, and are not covered under this policy.
- c. In determining the amount of **income loss** covered under section I. e. (**business interruption costs**), due consideration will be given to the prior experience of an **insured's** business, and to the probable business an **insured** could have performed had no **security failure**, **data breach**, or **extortion threat** occurred. Provided, such **income loss** will not include income that would likely have been earned as a result of an increase in volume of business due to favorable business conditions caused by the interruption of any other entity's business. **Income loss** will be calculated on a daily basis.

XI. Cancellation

- a. This policy may be canceled by the **named insured** by giving advance written notice to the underwriters at the address stated in item 8 of the declarations stating when thereafter such cancellation will be effective.
- b. This policy may be canceled by the underwriters by mailing to the **named insured** by registered, certified or other first class-mail, at the **named insured's** address stated in item 1 of the declarations, written notice stating when the cancellation will be effective, such date not to be less than 60 days thereafter (or ten days thereafter when cancellation is due to non-payment of premium).



- c. The mailing of such notice will be sufficient proof of notice and this policy will terminate at the date and hour specified in such notice.
- d. If this policy is canceled by the **named insured**, the underwriters will retain the customary short rate portion of the premium.
- e. If this policy is canceled by the underwriters, the underwriters will retain the pro-rata portion of the premium.
- f. Payment or tender of any unearned premium by the underwriters will not be a condition precedent to the effectiveness of the cancellation, but such payment will be made as soon as practicable.

XII. Duty to cooperate

- a. The **insured** must provide the underwriters with full, timely, and accurate information about all matters, **claims**, and **losses** notified to the underwriters under this policy. If the **insured**, or anyone on the **insured's** behalf, tries to deceive the underwriters by deliberately giving false information in connection with a notification, the underwriters immediately will be relieved of all obligations under this policy with respect to the notification at issue, including the duty to defend the **insured**.
- b. If the underwriters have accepted notice of any matter, **claim**, or **loss** under this policy, then the **insured** must:
 - 1. give the underwriters, or anyone appointed by the underwriters, at the **insured's** expense, all the assistance, cooperation, and information which the underwriters reasonably require under this policy, and the **insured** must do anything the underwriters reasonably request to avoid, minimize, or resolve any matter, **claim**, or **loss**, including paying the **retention** when requested by the underwriters; and
 - 2. notify the underwriters as soon as practicable of all settlement offers made by a claimant in connection with any **claim** or potential **claim**.
- c. The **insured** will not, except as provided in section II. f. or in the definition of **breach costs**, make any payment, incur any expense, admit any liability, or assume any obligation without the underwriters' prior consent.

XIII. Change in ownership

The **named insured** must notify the underwriters as soon as practicable if the **insured organization** merges with or is acquired by another business. In that event, coverage under this policy will continue until the end of the **policy period**, and only with respect to **claims** arising from acts, **data breaches**, or **security failures** occurring prior to such merger or acquisition.

XIV. Dispute resolution

- a. Except as provided in section XIV. b., any dispute arising out of or relating to this policy, including but not limited to its construction, application and validity, or any breach thereof, will be referred to a qualified mediator in a good faith effort to negotiate a resolution of the dispute, prior to the initiation of any litigation or other proceedings.

In the event the underwriters fail to pay an amount claimed under the policy and mediation cannot resolve the dispute, at the **insured's** request, the underwriters will agree to submit to a court of competent jurisdiction within the United States. The underwriters' agreement, however, does not constitute a waiver of underwriters' rights to commence an action in any court of competent jurisdiction in the United States, remove an action to any district court, or seek to transfer a case to another court as permitted by the laws of the United States or any state in the United States. The underwriters appoint the person named in the declarations to accept service of process on their behalf.
- b. If the **named insured** and the underwriters do not agree on the amount of **business interruption costs**, either party may make a written demand for an appraisal of the **business interruption costs**. If such demand is made, each party will select a competent and impartial appraiser. The appraisers will then jointly select an umpire. If the appraisers cannot agree on an umpire, they may request that such selection be made by a judge of a



court having jurisdiction. Each appraiser will separately state the amount of **business interruption costs**. If the appraisers do not agree on the amount of the **business interruption costs**, they will submit their differences to the umpire. Agreement by the umpire and at least one of the appraisers regarding the amount of the **business interruption costs** will be binding on all **insureds** and the underwriters. Each party will pay their respective chosen appraiser and will equally share the costs of the umpire.

XV. Other insurance Any payment due under this policy is specifically excess of and will not contribute with any other valid and collectible insurance unless such other insurance is specifically written as excess insurance over the limit of liability of this policy. However, with respect to **breach costs** only, this policy will be primary.

XVI. Subrogation In the event of any payment by the underwriters under this policy, the underwriters will be subrogated to all of the **insured's** rights of recovery to such payment. The **insured** will do everything that may be necessary to secure and preserve such subrogation rights, including but not limited to the execution of any documents necessary to allow the underwriters to bring suit in the **insured's** name. The **insured** will do nothing to prejudice such subrogation rights without first obtaining the underwriters' written consent.

Any recovery will first be paid to the underwriters up to the amount of any **loss, damages, or claim expenses** that the underwriters have paid. Any remaining amounts will be paid to the **insured**.

XVII. Alteration and assignment No change in, modification of, or assignment of any interest under this policy will be effective unless made by written endorsement to this policy signed by the underwriters' authorized representative.

XVIII. Representations All **insureds** agree that all representations (whether oral or written) made and all materials submitted in connection with the application for this policy are true, accurate, and not misleading, and were relied upon by the underwriters and were material to the underwriters' decision to issue this policy. If the underwriters learn that such representations or submitted materials were untrue, inaccurate, or misleading in any material respect, the underwriters are entitled to treat this policy as if it had never existed.

XIX. Bankruptcy and insolvency The **insured's** bankruptcy or insolvency will not relieve the underwriters of their obligations under this policy.

XX. Multiple policies issued by underwriters Two or more policies may be issued by the underwriters to an **insured**, and these policies may cover **loss** and/or **claim(s)** arising from the same matter, **data breach, security failure, or extortion threat**, or related matters, **data breaches, security failures, or extortion threats**. In such a case, if such **loss** and/or **claim(s)** is covered under more than one policy issued by the underwriters to the **insured**, then:

- a. all such **loss** and **claim(s)** are covered only under the first such policy for which coverage is available; and
- b. the policy limit of the first such policy for which coverage is available is the maximum the underwriters will be required to pay in the aggregate for all **loss** and **claim(s)**.

XXI. Sanctions This policy will not be deemed to provide coverage and the underwriters will not be liable to pay any **claim** or **loss** or provide any benefit under the policy to the extent that the provision of such



coverage, payment of such **claim** or **loss**, or provision of such benefit would expose the underwriters to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws, or regulations of the European Union, United Kingdom, or United States of America.

XXII. Choice of law

With the exception of the insurability of punitive or exemplary damages as provided in the definition of '**damages**', this policy, including its construction, application and validity, is governed by the laws of the State of New York without reference to that state's choice of law principles.

XXIII. Headings

The titles of paragraphs, sections, 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.

Specimen

NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD) (U.S.A.)

For attachment to insurances of the following classifications in the U.S.A., its Territories and Possessions, Puerto Rico and Canal Zone:

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability),

not being insurances of the classifications to which the Nuclear Incident Exclusion Clause-Liability-Direct (Limited) applies.

This Policy* does not apply:

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction
 - a) with respect to which an insured under the Policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the Insured is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of American, or any agency thereof, with any person or organization.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if
 - a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
 - b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 - c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories' or possessions or Canada, this exclusion (c) applies only to injury to or destruction of

property at such nuclear facility.

IV. As used in this endorsement:

“hazardous properties” include radioactive, toxic or explosive properties; “nuclear material” means source material, special nuclear material or by-product material; “source material”, “special nuclear material”, and “by-product material” have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; “spent fuel” means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; “waste” means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; “nuclear facility” means

- a) any nuclear reactor,
- b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; “nuclear reactor” means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass or fissionable material. With respect to injury to or destruction of property, the word “injury” or “destruction” includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

*NOTE: As respects policies which afford liability coverages and other forms of coverage in addition, the words underlined should be amended to designate the liability coverage to which this clause is to apply.

RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE-LIABILITY-DIRECT (U.S.A.)

For attachment (in addition to the appropriate Nuclear Incident Exclusion Clause-Liability-Direct) to liability insurances affording worldwide coverage.

In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this Policy does not cover any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

NMA1477

13/02/1964

WAR AND TERRORISM EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

- 1) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- 2) any act of terrorism.
For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action take in controlling, preventing, suppressing or in any way relating to (1) and/or (2) above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

NMA2918

08/10/2001

SANCTION LIMITATION AND EXCLUSION CLAUSE

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

LMA3100
15 September 2010

Specimen

FRAUDULENT CLAIM CLAUSE

If the (re)insured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this contract shall become void and all claim hereunder shall be forfeited.

LMA5062
04/06/2006

Specimen

**U.S. TERRORISM RISK INSURANCE ACT OF 2002 AS AMENDED
NOT PURCHASED CLAUSE**

This Clause is issued in accordance with the terms and conditions of the "U.S. Terrorism Risk Insurance Act of 2002" as amended as summarized in the disclosure notice.

It is hereby noted that the Underwriters have made available coverage for "insured losses" directly resulting from an "act of terrorism" as defined in the "U.S. Terrorism Risk Insurance Act of 2002", as amended ("TRIA") and the Insured has declined or not confirmed to purchase this coverage.

This Insurance therefore affords no coverage for losses directly resulting from any "act of terrorism" as defined in TRIA except to the extent, if any, otherwise provided by this policy.

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged and apply in full force and effect to the coverage provided by this Insurance.

LMA5219
12 January 2015