

THOMAS  
MILLER  
SPECIALTY

# CYBER RISK

*Insurance Policy*



## THE POLICY

Here is your new Insurance Policy. Please read this Policy carefully to ensure that it is in accordance with your requirements and that you understand its terms, conditions and exclusions. If it is incorrect, please tell us and return it to us immediately.

In consideration of the **Insured** paying the Premium to Thomas Miller Specialty (the Insurer) the Insurer agrees (subject to the terms, conditions and exclusions of this Policy) to pay the **Insured** for any insured loss occurring in the **Territory**.



**Deputy Chairman**

**For and on behalf of Lloyd's Underwriters**

This insurance will be underwritten by Thomas Miller Specialty for and on behalf of Underwriters at Lloyd's of London. Thomas Miller Specialty is a trading name for Osprey Underwriting Agency Ltd (OUAL), a member of the Thomas Miller Group. OUAL (company number 02519540, FCA no: 312791) is authorised and regulated by the Financial Conduct Authority. Registered in England and Wales at 90 Fenchurch Street, London, EC3M 4ST. Tel: +44 (0) 20 7283 4646.

Coverholder at **LLOYDS**

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**SECTION I – FIRST PARTY**

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**1. INSURING CLAUSES**

Coverage is provided under any of the Section I Insuring Clauses subject to the applicable provisions of the rest of the Policy and only if an amount is shown in the Schedule as the Aggregate Limit for the specific Insuring Clause.

**A. DAMAGE TO DIGITAL ASSETS**

**1. Cover provided**

The Insurer will pay to the **Named Insured** any *Digital Asset Losses*, and **Special Expenses**, incurred as a direct result of **Damage** to the **Insured's Digital Assets**, provided that such **Damage** was directly caused by an *Insured Cause* which:

- a. first occurred during the Policy Period,
- b. was first **Discovered** during the Policy Period, and
- c. was reported by the **Insured** to the Insurer within 90 days of **Discovery**.

If a Retroactive Date is stated in the Schedule, an *Insured Cause* will be treated as having first occurred within the Policy Period if it first occurred after such Retroactive Date and before the end of the Policy Period.

**2. Covered losses**

*Digital Asset Losses* in this Insuring Clause A means reasonable and necessary expenses and costs incurred by the **Insured** in restoring, updating, recreating or replacing **Damaged Digital Assets** to the same or equivalent condition they were in (and with the same or equivalent contents) immediately before their **Damage**, including expenses for materials and machine time (and also including employee working time to replace, recreate or restore **Digital Assets** calculated on the basis of any Schedule of Employee Billable Hours if set out in an Endorsement to this Policy); provided that:

- a. only such losses incurred within 12 months after **Discovery** of the *Insured Cause* are covered;
- b. if the affected **Digital Asset** was purchased from a **Third Party**, the maximum *Digital Asset Loss* recoverable under this Policy is the re-purchase price from such **Third Party**; and
- c. if the **Digital Assets** cannot be replaced, restored or recreated, then only the **Insured's** actual and necessary expenses incurred before such determination are recoverable under this Policy.

**B. NON-PHYSICAL  
BUSINESS  
INTERRUPTION AND  
EXTRA EXPENSE**

**1. Cover provided**

The Insurer will pay to the **Named Insured** any *Income Loss* and *Interruption Expenses* (but not *Digital Asset Losses* referred to at Insuring Clause A) incurred by the **Insured** because of the suspension or deterioration of its business during the **Period of Restoration** directly as a result of the total or partial interruption, degradation in service or failure of the **Insured's Network** to the extent that such period exceeds the **Time Retention**, provided that such interruption, degradation or failure was directly caused by an *Insured Cause* which:

- a. first occurred during the Policy Period,
- b. was first **Discovered** during the Policy Period, and
- c. was reported by the **Insured** to the Insurer within 90 days of **Discovery**.

The Insurer will have no obligation to pay any losses under this Insuring Clause B incurred during the **Time Retention**. The **Time Retention** applies to each **Period of Restoration**.

If a Retroactive Date is stated in the Schedule, an *Insured Cause* will be treated as having first occurred within the Policy Period if it first occurred after such Retroactive Date and before the end of the Policy Period.

**2. Covered losses**

*Income Loss*, for the purpose of this Insuring Clause B, is an amount determined by one of the following two methods, as set out in the Policy Schedule, subject to adjustment for seasonality of the **Insured's** revenues if agreed by Policy Endorsement.

**Method 1 - Reduction of income**

- a. The **Insured's** net profit before tax that could have been reasonably projected during the **Period of Restoration** but which was lost, taking into account the prior experience of the **Insured's** business during the previous twelve months immediately prior to the *Insured Cause* and the likely experience had the relevant *Insured Cause* not happened (subject to a reduction to the extent to which the **Insured** maintains its revenue stream by substitute methods, facilities or personnel); and
- b. any fixed operating expenses (including ordinary payroll) for services which are redundant because of the suspension or deterioration of the **Insured's** business, to the extent that such expenses must continue during the **Period of Restoration**.

NON-PHYSICAL  
BUSINESS  
INTERRUPTION AND  
EXTRA EXPENSE CONT'D

**Method 2 – Agreed Amount**

The amount of any agreed hourly income loss stated in the Schedule applied to the **Period of Restoration**.

2.2 *Interruption Expenses* means expenses (excluding **Special Expenses**) incurred to:

- (i) avoid or minimise the suspension or deterioration of the **Insured's** business, which the **Insured** would not have incurred had the relevant *Insured Cause* not occurred, including the cost of: renting/leasing equipment, substitute work or production procedures, third party services and additional staff expenditure or employment costs, provided that such expenses shall in no case exceed the amount by which the insured *Income Loss* is reduced by such expenses; and
- (ii) minimise or avoid an *Insured Cause* to enable the **Insured's** business to continue; and
- (iii) preserve critical evidence of any criminal or malicious wrongdoing; and
- (iv) discover and determine the nature of the *Insured Cause* and to substantiate the *Income Loss*.

C. CYBER EXTORTION

**1. Cover provided**

The Insurer will pay to the **Named Insured** any *Extortion Monies* paid by the **Insured**, with the Insurer's prior written consent, such consent not to be unreasonably withheld as a direct result of an **Extortion Demand** that is first made against the **Insured** during the Policy Period. Each **Extortion Demand** that forms part of a related series of **Extortion Demands** will be treated as being first made against the **Insured** when the first of such related **Extortion Demands** is made.

An **Extortion Demand** shall be deemed to be first made against the **Insured** only when a **Member of the Control Group** first **Discovers** the **Extortion Demand**.

**2. Covered losses**

*Extortion Monies* means any money or property paid by the **Insured** to a person reasonably believed to be responsible for the **Extortion Demand** for the purpose of terminating that threat, plus any reasonable expenses incurred with the Insurer's prior written consent, such written consent not to be unreasonably withheld, in order to meet, eliminate or mitigate any such **Extortion Demand**.

**D. REPUTATIONAL  
DAMAGE HARM**

**1. Cover provided**

The Insurer will pay to the **Named Insured** any:

- (i) *Income Loss*, and
- (ii) **Increased Cost of Working**; and/or
- (iii) **PR Expenses** (unless such cover is more specifically provided under Section IV of this Policy);

incurred by the **Insured** during the **Reputation Indemnity Period**, which is solely and directly caused by a **Reputational Damage Event** which:

- a. first occurred during the Policy Period,
- b. was first **Discovered** during the Policy Period and
- c. was reported by the **Insured** to the insurer as soon as practicable and in any event within 45 days of its **Discovery**.

If a Retroactive Date is stated in the Schedule, a **Reputational Damage Event** will be treated as having first occurred within the Policy Period if it first occurred after such Retroactive Date and before the end of the Policy Period.

Where there are multiple **Reputational Damage Events** that relate to the same original incident (or similarly caused or motivated incidents) or underlying activity, all such **Reputational Damage Events** shall constitute a single loss event with the date of the first such **Reputational Damage Event** being the relevant date of occurrence of all such events.

**2. Covered losses**

2.1 *Income Loss* for the purpose of this Insuring Clause D is:

- a. the **Insured's** net profit before tax that could have been reasonably projected during the **Reputation Indemnity Period** but which was lost, taking into account the prior experience of the **Insured's** business during the previous twelve months immediately prior to the **Reputational Damage Event** and the likely experience had the **Reputational Damage Event** not happened (subject to a reduction to the extent to which the **Insured** maintains its revenue stream by substitute methods, facilities or personnel); and provided that the effects of a *Temporary Factor* shall be disregarded; and
- b. any fixed operating expenses (including ordinary payroll) for services which are because of the suspension or deterioration of the **Insured's** business, to the extent that such expenses must continue during the **Reputation Indemnity Period**.

**REPUTATIONAL DAMAGE  
HARM CONT'D**

- 2.2 A *Temporary Factor* is a circumstance beyond the **Insured's** control, and unexpected by the **Insured** (acting reasonably), other than a **Reputational Damage Event**, which starts after the date of the **Proposal** and/or ends before the expiry of the **Reputation Indemnity Period**, and which increases or decreases the **Insured's** net profit before tax.
- 2.3 The Insurer may provide payments on account based upon provisional calculations of loss of net profit before tax during the **Reputation Indemnity Period**, with a final assessment made as soon as is practicable after the expiry of the **Reputation Indemnity Period**, when any adjustments will be due and payable by the **Insured** or Insurer (as applicable).

**3. Exclusions**

Cover is not provided under this Insuring Clause D:

- a. for **Notification Expenses, Privacy Assistance Expenses, Crisis Management Expenses or Forensic Expenses;**
- b. for any loss, costs or expense:
- (i) incurred by the **Insured** in an effort to re-establish its reputation (other than as **PR Expenses** if these are covered under this Insuring Clause);
  - (ii) which are insured by or would, but for the existence of this Policy, be insured by any other insurance policy or policies, except in respect of any excess beyond the amount which would have been payable under such other policy or policies had this policy not been effected.

## **E. COMPUTER CRIME**

### **1. Cover provided**

The Insurer will pay to the **Named Insured** any *computer crime losses* incurred by the **Insured** incurred as a direct result of unauthorised access to the **Insured's Network** that causes financial loss which:

- a. first occurred during the Policy Period,
- b. was first **Discovered** during the Policy Period, and
- c. was reported by the **Insured** to the Insurer within 90 days of **Discovery**.

If a Retroactive Date is stated in the Schedule, a *computer crime loss* will be treated as having first occurred within the Policy Period if it first occurred after such Retroactive Date and before the end of the Policy Period.

### **2. Covered Losses**

*Computer crime losses* means financial loss sustained by the **Insured** as a result of fraudulent electronic transfer, theft of money or securities or other financial assets belonging to the **Insured** arising from the unauthorised access to the **Insured's network** and including when such a person had authorised access to the **Insured's network** but acted in an unauthorised manner.

## **2. INSURED CAUSES OF LOSS**

The *Insured Causes* of loss under Section I A & B of this Policy (First Party) are as follows:

### **1. Accidental damage or destruction**

- a. Accidental physical damage or destruction of **Hardware**, so that stored **Digital Assets** are no longer machine-readable.
- b. Failure of, or under- or over-voltage in, power supply, only if such power supply is under the direct operational control (including by back-up generator) of the **Insured**.
- c. Electrostatic build-up and static electricity affecting **Digital Assets**.

### **2. Administrative or operational mistakes**

- An unintentional, accidental or negligent act, error or omission in:
- a. the entry, or modification of the **Insured's Data**; or
  - b. the creation, handling, development, modification, or maintenance of the **Insured's Digital Assets**; or
  - c. on-going operation or maintenance of the **Insured's Network**; by an **Employee** or **Third Party Provider**.

### **3. Computer crime and computer attacks**

**Denial of Service, Malicious Code** or unauthorised access to or use of the **Insured's Network**, intended to maliciously cause harm to the **Insured's Network**, which is not prevented by the **Insured** by reason of an accidental, unintentional or negligent act, error or omission in the operation of the **Insured's Network** or handling of the **Insured's Digital Assets** by an **Employee**, or **Third Party Provider**.



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## **SECTION II – PRIVACY, CONFIDENTIALITY AND SECURITY LIABILITY**

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Coverage is provided under Policy Section II, subject to the applicable provisions of the rest of the Policy, only if an amount is shown in the Schedule as the Aggregate Limit for Policy Section II.

The Insurer will pay on behalf of the **Insured** any **Liability Expense** or **Defence Expense** arising out of a **Claim** alleging that the **Insured** committed or failed to prevent a *Wrongful Act* after the Retroactive Date stated in the Schedule and before the end of the Policy Period plus any costs reasonably and necessarily incurred by the **Insured** with the Insurer's prior written consent to preserve critical evidence of any criminal or malicious wrongdoing associated with such **Claim**.

A *Wrongful Act* under this Insuring Clause II is any:

- a. breach of a **Third Party's** or **Employee's** right to privacy or any equivalent or similar allegation in the jurisdiction where the **Claim** is brought;
- b. malicious or unauthorised use of the **Insured's Network** to damage, alter, corrupt, distort, copy, delete, steal, misuse, or destroy **Third Party Digital Assets**;
- c. malicious or unauthorised use of the **Insured's Network** to cause a **Denial of Service**, or failing to prevent or hinder such use;
- d. breach of any legal, regulatory or contractual duty to protect the security or confidentiality of a **Third Party's** or **Employee's** confidential information or personal data, or failure to comply with applicable law or regulation requiring the **Insured** to disclose such a breach;
- e. failure to comply with applicable law or regulation requiring the **Insured** to dispose of a **Third Party's** or **Employee's** confidential information or personal data;
- f. phishing or pharming, or any other communication designed to obtain confidential information or personal data from a **Third Party** under false pretences, or failing to prevent or hinder such communication; or
- g. transmission of **Malicious Code** from the **Insured's Network** to a **Third Party's Network** (excluding that of a **Third Party Provider**), or failing to prevent such transmission
- h. failure to comply with applicable law or regulation regarding the collection or use on personal data.

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### **SECTION III – PRIVACY REGULATION DEFENCE, AWARDS AND FINES**

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To the extent insurable under applicable law, the Insurer will pay on behalf of the **Insured** any *Regulatory Liability Expense* or *Regulatory Defence Expense* arising out of a **Claim** which is a formal civil administrative proceeding, regulatory proceeding or investigation, including an informal request for information following an alleged Privacy Breach or Security Breach, taken against the **Insured** by an applicable regulatory authority alleging that the **Insured** committed a *Wrongful Act* after the Retroactive Date stated in the Schedule and before the end of the Policy Period plus any costs reasonably and necessarily incurred by the **Insured** with the Insurer's prior written consent to preserve critical evidence of any criminal or malicious wrongdoing associated with such regulatory proceedings.

A *Wrongful Act* under this Insuring Clause III is any:

- a. breach of a **Third Party's** or **Employee's** right to privacy or any equivalent or similar allegation in the jurisdiction where the **Claim** is brought;
- b. malicious or unauthorised use of the **Insured's Network** to damage, alter, corrupt, distort, copy, delete, steal, misuse, or destroy **Third Party Digital Assets**;
- c. malicious or unauthorised use of the **Insured's Network** to cause a **Denial of Service**, or failing to prevent or hinder such use;
- d. breach of any legal, regulatory or contractual duty to protect the security or confidentiality of a **Third Party's** or **Employee's** confidential information or personal data, or failure to comply with applicable law or regulation requiring the **Insured** to disclose such a breach;
- e. failure to comply with applicable law or regulation requiring the **Insured** to dispose of a **Third Party's** or **Employee's** confidential information or personal data;
- f. phishing or pharming, or any other communication designed to obtain confidential information or personal data from a **Third Party** under false pretences, or failing to prevent or hinder such communication; or
- g. transmission of **Malicious Code** from the **Insured's Network** to a **Third Party's Network** (excluding that of a **Third Party Provider**), or failing to prevent such transmission.
- h. an unintentional breach by the **Insured** of the **Insured's** privacy & security policy on the **Insured's** website; or
- i. failure to comply with applicable law or regulation regarding the collection or use on personal data.

*Regulatory Liability Expense* means a fine, penalty or compensatory damages including consumer redress that the **Insured** is legally liable to pay.

*Regulatory Defence Expense* means reasonable and necessary legal fees and all other charges, costs and expenses, incurred by the **Insured** with the Insurer's prior written consent, resulting from the investigation, adjustment, defence and appeal of formal civil administrative proceedings, regulatory proceedings or investigation, including informal requests for information following an alleged Privacy Breach or Security Breach. *Regulatory Defence Expenses* does not include **Forensic Expenses**.

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## **SECTION IV – CUSTOMER CARE AND REPUTATIONAL EXPENSES**

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Coverage is provided under any of the Section IV Insuring Clauses a, b, c or d, subject to the applicable provisions of the rest of the Policy, only if an amount is shown in the Schedule as the Aggregate Limit for the specific Insuring Clause.

- a. Notification Expenses**
- b. Privacy Assistance Expenses**
- c. Crisis Management Expenses**
- d. Forensic Expenses**

in each case provided that they were reasonably and necessarily incurred by the **Insured** with the Insurer's prior written consent; and provided that the underlying cause of such loss occurred during the Policy Period or after the Retroactive Date shown in the Schedule and before the end of the Policy Period.

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## **SECTION V – MULTI-MEDIA LIABILITY**

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The Insurer will pay on behalf of the **Insured** any **Liability Expense** or **Defence Expense** arising out of a **Claim** alleging that the **Insured** committed a *Wrongful Act* after the Retroactive Date stated in the Schedule and before the end of the Policy Period in the course of publishing content in electronic or print media.

A *Wrongful Act* under this Insuring Clause V is any:

- a. Infringement of copyright, domain name or other intellectual property rights (excluding patents) of the **Claimant**, passing off, plagiarism, or unauthorised reproduction or distribution of electronic or audio-visual media or any equivalent or similar allegation in the jurisdiction where the **Claim** is brought.
- b. Defamation of any type or any equivalent or similar allegation in the jurisdiction where the **Claim** is brought.
- c. Breach of the **Claimant's** right to privacy or any equivalent or similar allegation in the jurisdiction where the **Claim** is brought, unless similar cover is provided under Section II (a) of this Policy.
- d. Negligence in the content of any publication by the **Insured**.

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**SECTION VI – POLICY TERMS APPLICABLE TO ALL SECTIONS**

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**A. DEFINITIONS**

**1. Act of Terrorism**

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 organisation(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.

**2. Card Association**

Mastercard, VISA, Discover, American Express, Diners Club or JCB, and includes all credit and debit card companies with enforcement ability in support of industry security standards such as PCI DSS.

**3. Change of Control**

Any of the events listed in Policy Section VI D10.2.

**4. Claim**

- a. A written demand for damages or non-monetary relief, a tolling agreement, the service of a civil suit, or institution of arbitration proceedings that is brought by a **Third Party** or **Employee** which is first made against the **Insured** during the Policy Period; or
- b. Only in relation to coverage afforded under Policy Section III a formal civil administrative proceeding, regulatory proceeding, investigation or an informal request for information following an alleged Privacy Breach or Security Breach that is first made against the **Insured** during the Policy Period ;

and which is not an **Employment Claim**.

**5. Claimant**

A **Third Party** or **Employee** that brings a **Claim**.

DEFINITIONS CONT'D

6. Crisis Management Expenses

Costs incurred by the **Insured** to protect or re-establish its reputation or public image to the extent that it is likely to be damaged, or has been damaged, as a direct result of any of the following being committed by the **Insured** and reported to the public by the print, television or electronic media:

- a. a breach of a legal, regulatory or contractual duty of privacy owed to a **Third Party** or **Employee** or any equivalent or similar allegation in the jurisdiction where the **Claim** is brought;
- b. malicious or unauthorised use of the **Insured's Network** to cause a **Denial of Service** or damage, alter, corrupt, distort, steal, misuse, or destroy **Third Party Digital Assets**, or failing to prevent or hinder such use;
- c. breach of any legal, regulatory or contractual duty to protect the security or confidentiality of a **Third Party's** or **Employee's** confidential information or personal data, or failure to comply with applicable law or regulation requiring the **Insured** to disclose such a breach;
- d. failure to comply with applicable law or regulation requiring the **Insured** to dispose of a **Third Party's** or **Employee's** confidential information or personal data;
- e. phishing or pharming, or any other communication designed to obtain confidential information or personal data from a **Third Party** under false pretences, or failing to prevent or hinder such communication; or
- f. transmission of **Malicious Code** from the **Insured's Network** to a **Third Party's Network** (excluding that of a **Third Party Provider**), or failing to prevent such transmission.

7. **Damage**

Damage or destruction to, or loss, alteration, corruption, distortion, theft or misuse of, the **Insured's Digital Assets** caused by an *Insured Cause*; and **Damaged** has a corresponding meaning.

8. **Data**

Machine-readable information other than **Programmes** and other than information existing in physical form.

9. **Defence Expenses**

Reasonable and necessary legal fees and all other charges, costs and expenses, incurred by the **Insured** with the Insurer's prior written consent, resulting from the investigation, adjustment, defence or appeal of a **Claim** and costs incurred by the **Insured** to retain the services of a law firm to establish the extent of the laws and regulations that have or may have been breached as a result of a breach of a **Third Party's** or **Employee's** right of privacy . These do not include **Forensic Expenses**.

10. **Denial of Service**

Unauthorised or unexpected interference or malicious attack that restricts or prevents legitimate access to a **Network** or **Digital Assets**.

**DEFINITIONS CONT'D**

**11. Digital Assets**

**Data** and **Programmes** in an **Insured's Network**, but not **Hardware**.

**12. Discovered**

Discovered or reasonably discoverable by a **Member of the Control Group**; **Discovers** and **Discovery** have corresponding meanings.

**13. Employee**

An individual who provides services for, on behalf of, or at the direction of the **Insured** under a contract of service, including on a part-time, seasonal or temporary basis, whom the **Insured** has the direct right to control.

An **Employee** includes any partner or director of **Insured** other than any **Member of the Control Group**.

**14. Employment Claim**

A **Claim** alleging breach of any employment contract, policy, procedure or similar, any employment-related law or regulation or discrimination of any kind.

**15. Extended Reporting Period**

Subject to the provisions of Policy Section VI D 5 a period of 12 months following the earlier of:

- a. the end of the Policy Period following expiry and non-renewal of the Policy;
- b. cancellation of the Policy; or
- c. a **Change of Control**

**16. Extortion Demand**

A malicious and unjustified demand for money accompanied by a credible threat to:

- a. release, copy, divulge, disseminate, destroy alter, damage, sell, restrict access to or use the **Insured's Digital Assets** acquired by unauthorised access to or unauthorised use of the **Insured's Network**;
- b. introduce **Malicious Code** into the **Insured's Network**;
- c. corrupt, damage or destroy the **Insured's Network**;
- d. electronically communicate with the **Insured's** customers under false pretences, with the intention of obtaining personal confidential information of the **Insured's** customers; or
- e. restrict or hinder access to the **Insured's Network**, including the threat of a criminal or malicious **Denial of Service** or the implantation of ransom ware on the **Insured's Network**.

**17. Forensic Expenses**

Costs incurred by the **Insured** to investigate the source or cause of the failure of computer security to prevent:

- a. malicious or unauthorised use of the **Insured's Network** to damage, alter, corrupt, distort, copy, delete, steal, misuse, or destroy **Third Party Digital Assets**;

## DEFINITIONS CONT'D

- b. malicious or unauthorised use of the **Insured's Network** to cause a **Denial of Service**, or failing to prevent or hinder such use;
- c. phishing or pharming, or any other communication designed to obtain confidential information or personal data from a **Third Party** under false pretences, or failing to prevent or hinder such communication; or
- d. transmission of **Malicious Code** from the **Insured's Network** to a **Third Party's Network** (excluding that of a **Third Party Provider**), or failing to prevent such transmission.

### 18. Hardware

Any and all physical components of a computer system.

### 19. Increased Cost of Working

The additional expenditure (other than any advertising or marketing costs or the like undertaken to rehabilitate the **Insured's** reputation and/or any legal costs or expenses) necessarily and reasonably incurred by the **Insured** for the sole purpose of avoiding or minimising a net trading loss or a reduction in net profit during the **Reputation Indemnity Period** caused solely and directly as a consequence of the **Reputational Damage Event**, subject to a maximum of the amount of the net trading loss or reduction in net profit thereby avoided.

### 20. Insured

Any and all of:

- a. The **Named Insured**.
- b. Any **Subsidiary**.
- c. Any **Employee**, director, officer, partner, member or trustee of a **Named Insured** or **Subsidiary**, but only in respect of **Claims** brought against them relating to acts or omissions committed in their capacity as such.

### 21. Insured's Network

An interconnected electronic, wireless, web or similar system (including all **Hardware**, **Programmes** and **Data**) used to process data or information in an analogue, digital, electronic or wireless format, including servers, associated input and output devices, data storage devices, networking equipment, wired or wireless peripherals, electronic back-up facilities, and media libraries, that is owned, operated and controlled by the **Insured** or operated by a **Third Party Provider** for the **Insured**.

### 22. Liability Expense

Money that the **Insured** is legally liable to pay to a **Claimant** in respect of a **Claim**, including but not limited to damages (including punitive or exemplary damages if insurable by the applicable law that most favours coverage for such damage), settlements, pre-judgment and post-judgment interest and defence costs. **Liability Expense** does not include taxes, fines, penalties (except as provided above with respect to punitive or exemplary damages), liquidated damages or the multiple portion of any multiplied damage award.

DEFINITIONS CONT'D

For the avoidance of any doubt, **Liability Expense** includes, but is not limited to, credit card reissuance costs that the **Insured** is legally liable to pay to a **Claimant** in respect of a **Claim**.

23. **Malicious Code**

Unauthorised software or computer code designed to infiltrate, corrupt or damage the **Insured's Network**, including but not limited to computer viruses, spy ware, Trojan horses, worms, logic bombs, and mutations of any of these.

24. **Member of the Control Group**

The Chief Executive Officer, Chief Information Officer, Chief Technology Officer, Chief Security or Privacy Officer, Risk Manager or General Counsel of, or other person holding an equivalent position at, the **Named Insured**.

25. **Merchant Services Agreement**

Any agreement between an **Insured** and a financial institution, **Card Association**, credit or 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.

26. **Network Event** means:

- a. a malfunction or failure of **Insured's Network**;
- b. An unintentional, accidental or negligent act, error or omission in on-going operation or maintenance of the **Insured's Network** by an **Employee** or **Third Party Provider**.
- c. breach of a **Third Party's** -right to privacy or any equivalent or similar allegation in the jurisdiction where the Claim is brought;
- d. malicious or unauthorised use of the **Insured's Network** to:
  - (i) damage, alter, corrupt, distort, copy, delete, steal, misuse, or destroy **Third Party Digital Assets**;
  - (ii) cause a **Denial of Service**, or failing to prevent or hinder such use;
- e. breach of any legal, regulatory or contractual duty to protect the security or confidentiality of a **Third Party's** confidential information or personal data, or failure to comply with applicable law or regulation requiring the **Insured** to disclose such a breach;
- f. failure to comply with applicable law or regulation requiring the **Insured** to dispose of a **Third Party's** confidential information or personal data;
- g. phishing or pharming, or any other communication designed to obtain confidential information or personal data from a **Third Party** under false pretences, or failing to prevent or hinder such communication; or
- h. transmission of **Malicious Code** from the **Insured's Network** to a **Third Party's Network** (excluding that of a **Third Party Provider**), or failing to prevent such transmission.



**DEFINITIONS CONT'D**

**27. Notification Expenses**

Legal, postage, advertising (but not public relations) and other related expenses (including but not limited to the cost of setting up a call centre in order to manage requests for additional information from notified individuals) incurred by the **Insured** in order to comply with a legal or regulatory requirement to notify any individual, including **Employees**, in the event of the actual or suspected unauthorised access by a **Third Party** or **Employee** to personally identifiable information of such an individual as a direct result of a security breach, privacy breach or breach of privacy regulations; or where there is not a legal or regulatory requirement, but it is deemed in the sole opinion of Insurers that the payment of such expenses will mitigate or avoid a **Claim** for which Insurers would have been liable under Section II or III of the Policy wording.

**28. Period of Restoration**

The period of time starting when the interruption, degradation or failure of the **Insured's Network** began and ending on the later of:

- a. the date on which the business is restored (or could have been, had the **Insured** acted reasonably expeditiously to restore the business), up to a maximum of 30 days after the date on which the **Insured's Network** is restored (or could have been, had the **Insured** acted reasonably expeditiously to restore the **Insured's Network**) to the same or equivalent condition, functionality and level of service that existed prior to the loss; or
- b. 180 days after the start of such period.

**29. Pollutant**

Any pollutant or contamination of any kind, including:

- a. Smoke, vapour, soot, fumes, acid, alkali, chemicals or waste.
- b. Ionising radiation or contamination by radioactivity from nuclear fuel, or nuclear waste from the combustion of nuclear fuel; or the radioactive, toxic, or explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- c. Mould, mildew, spores, fungi, mycotoxins, organic pathogens, or other micro organisms;
- d. An electromagnetic field, electromagnetic radiation or electromagnetism;
- e. Asbestos, asbestos fibres or asbestos dust;
- f. Any solid, liquid, gaseous or thermal irritants or contaminants.

**30. PR Expenses**

Expenses reasonably and necessarily incurred by the **Insured** with the Insurer's prior written consent to re-establish its reputation or public image to the extent that it was damaged as a direct result of a **Reputational Damage Event**.

**DEFINITIONS CONT'D**

**31. Privacy Assistance Expenses**

Costs incurred by the **Insured** in assisting any individual, including an **Employee**, (including by providing credit file monitoring services and/or identity theft assistance) following a breach by the **Insured** of a legal, regulatory or contractual obligation of confidentiality or privacy in respect of such an individual's confidential information or personal data held by the **Insured**.

**32. Programmes**

An organised set of instructions that, when executed, causes a computer to behave in a predetermined manner.

**33. Proposal**

The **Insured's** signed application for insurance and any attachments to it, submitted in connection with this Policy, including an application submitted at renewal, or at mid-term for a newly acquired **Subsidiary**.

**34. Reputational Damage Event** means the termination of the **Insured's** services contract by one of the **Insured's** client(s) which arises directly from a **Network Event**.

**34. Reputation Indemnity Period**

The period of time stated in the Schedule starting on the date of the first **Reputational Damage Event**.

**36. Special Expenses**

Costs reasonably and necessarily incurred by the **Insured** with the Insurer's prior consent to:

- a. prevent, minimise, or mitigate any **Damage** to the **Insured's Digital Assets**, including fees and expenses of specialist outside consultants or forensic experts to discover and determine the nature of the *Insured Cause* and to substantiate the *Digital Asset Losses* ;
- b. preserve critical evidence of any criminal or malicious wrongdoing;
- c. purchase replacement licences for **Programmes** solely as a consequence of an *Insured Cause* having destroyed or damaged the copy protection system and/or access control software.

**37. Subsidiary**

An entity of which more than 50% of the issued share capital was owned by the **Named Insured**, directly or through one or more **Subsidiaries**, at the time that the act giving rise to a **Claim** was brought against such entity or such entity suffered the relevant loss covered under this Policy (as applicable) and the **Named Insured** held such ownership:

- a. upon inception of this Policy; or
- b. following acquisition of such entity by the **Named Insured** during the Policy Period, provided the annual revenues of the newly acquired entity do not exceed 25% of the **Named Insured's** annual revenues as stated in its most recent audited financial statement and provided the act giving rise to

**DEFINITIONS CONT'D**

- a **Claim** was brought against such entity or such entity suffered the relevant loss covered under this Policy after it had been acquired by the **Named Insured**; or
- c. following acquisition of such entity by the **Named Insured** during the Policy Period, provided that if the revenues of the newly acquired entity exceed 25% of the **Named Insured's** annual revenues as stated in its most recent audited financial statement, the provisions of Section VI. D 10.1 of this Policy are complied with and provided the act giving rise to a **Claim** was brought against such entity or such entity suffered the relevant loss covered under this Policy after it had been acquired by the **Named Insured**.

**38. Third Party**

A person that is not the Insurer, or an **Insured** or a **Third Party Provider**.

**39. Third Party Digital Assets**

**Data** and **Programmes** (excluding **Hardware**) in an interconnected electronic, wireless, web or similar system used to process data or information in an analogue, digital, electronic or wireless format, including servers, associated input and output devices, data storage devices, networking equipment, wired or wireless peripherals, electronic back-up facilities, and media libraries, that is owned, operated and controlled by a **Third Party**.

For the purposes of the definition of **Network Event** d(i), **Third Party Digital Assets** shall mean **Data** and **Programmes** (excluding **Hardware**) in an interconnected electronic, wireless, web or similar system used to process data or information in an analogue, digital, electronic or wireless format, including servers, associated input and output devices, data storage devices, networking equipment, wired or wireless peripherals, electronic back-up facilities, and media libraries, that is owned, operated and controlled by the **Insured's** client who has terminated their services contract with the **Insured**.

**40. Third Party's Network**

An interconnected electronic, wireless, web or similar system (including all **Hardware**, **Programs** and **Data**) used to process data or information in an analogue, digital, electronic or wireless format, including servers, associated input and output devices, data storage devices, networking equipment, wired or wireless peripherals, electronic back-up facilities, and media libraries, that is owned, operated and controlled by a **Third Party**.

**41. Third Party Provider**

Any third party independent contractor that provides business process (including call centre, fulfilment and logistical support) and/or information technology (including hosting, security management, co-location, and data storage) services for the **Insured** in accordance with a written contract.

## DEFINITIONS CONT'D

### 42. Time Retention

The time period that starts with the start of the **Period of Restoration** and continues for the number of hours stated as the **Time Retention** in the Policy Schedule.

### 43. Undelivered Programmes

Programmes, applications or software including updates:

- a. where the development stage has not been finalized;
- b. not ready for operational use because they have not yet passed all test-runs; or
- c. which have not been proven successful in a live environment for a continuous period of 1 month.

## B. EXCLUSIONS

The Insurer shall have no liability under this Policy for any loss or **Claim** arising out of or in connection with any:

1. Loss or destruction of, or damage to, any physical property, including **Hardware**, or any replacement or repair of any physical property including **Hardware** unless covered under Section I of this Policy under *Insured Cause* 1 (a).
2. Death or bodily injury, except that this exclusion shall not apply to wrongful infliction of emotional distress or mental anguish.
3. Costs or expenses incurred to identify, patch, or remediate software programme errors or vulnerabilities of the **Insured's Network** except following a covered loss.
4. Costs or expenses that result in the **Insured's Network** having a higher level of functionality than it had before the *Insured Cause* except following a covered loss hereunder and only where the costs and expenses incurred are the same or less than those that would be incurred in restoring the **Insured's Network** to the same level of functionality that it had before the *Insured Cause* and subject to the Insurer's prior consent.
5. Diminution in the economic or market value of **Digital Assets**.
6. Fines or penalties, except to the extent expressly and specifically covered by this Policy and insurable under the applicable law that most favours coverage for such fines or penalties.
7. Punitive or exemplary damages (unless insurable under the applicable law that most favours coverage for such damages), of the jurisdiction applicable to the insurability of such damages), criminal fines or criminal penalties.
8. Fines or penalties arising out of any agreement by the **Insured** to comply with or follow the Payment Card Industry Standard (PCI) or any Payment Card Company Rules; or implement, maintain or comply with any security measures or standards related to any payment card data including, but not limited to, any fine or penalty imposed by a payment card company on a bank or payment processor that the **Insured** has paid or agreed to reimburse or indemnify.

**EXCLUSIONS CONT'D**

For the avoidance of doubt, this exclusion shall not apply to amounts covered under the definition of **Liability Expenses** or *Regulatory Liability Expense*, including, but not limited to, credit or debit card reissuance costs, or fraud charges or other reasonable or necessary costs (such as legal, postage, advertising and public relations expenses, credit file monitoring services, call centres and/or identity theft assistance or medical or financial identity restoration services, and/or IT forensic expense to investigate the foregoing unauthorised access) assessed by a **Card Association** resulting from a *Wrongful Act* under Section II and III that the **Insured** is legally liable to pay in respect of a **Claim**.

9. Loss of goodwill or damage to reputation except to the extent that they contribute to a loss that is covered under the terms of Policy Section I Insuring Clause D.
10. Liability to a third party (including to an **Employee**, director, partner or officer of the **Insured**), except if covered under Policy Section II, III or V.
11. Any failure or outage in, or disruption of, power, utility services, satellites, or telecommunications external services not under the direct operational control of the **Insured**.
12. Any bankruptcy, liquidation or insolvency of the **Insured** or any other person, including a **Third Party Provider**.
13. Fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, or any other natural weather or seismic event.
14. Failure in design, architecture or configuration of the **Insured's Network** or **Digital Assets** which arises out of **Undelivered Programmes**; provided that this exclusion shall not apply to Policy Sections I C, I D, II, III, IV, and V.
15. Any deliberate, intentional, criminal, unlawful, fraudulent or dishonest act if committed by the **Insured** with the knowledge, connivance or acquiescence of a **Member of the Control Group** as determined in a final adjudication in the underlying action.

However, the insurance afforded by this Policy shall apply to **Defence Expenses** incurred in defending any such **Claim**, but shall not apply to any **Liability Expense** that the **Insured** might become legally obligated to pay. Insurers will have the right to recover those **Defence Expenses** incurred from those parties found to have committed criminal, dishonest, fraudulent, or malicious acts by a court, jury, or arbitrator.

16. Any circumstance, act, error or omission committed or existing before the inception of the policy if on or before the inception of this Policy:
  - a. a **Member of the Control Group** knew or acting reasonably would have known, such circumstance, act, error or omission (i) existed and (ii) may give rise to a **Claim** or loss covered

**EXCLUSIONS CONT'D**

- under this Policy, and which the **Insured** did not disclose to the Insurer before inception of the Policy; or
- b. the **Insured** is entitled to cover under another insurance policy.
17. Any **Act of Terrorism**, strike or similar labour action, war, invasion, act of foreign enemy, 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, or any action taken in controlling, preventing or suppressing any of these things.
- Act of Terrorism** is not deemed to include *Cyber Terrorism*.
- Cyber Terrorism* for the purpose of this exclusion shall mean an act or series of acts of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisations(s), committed for political, religious or ideological purposes including but not limited to the intention to influence any government and/or to put the public in fear for such purposes by using activities perpetrated electronically or otherwise that are directed towards the destruction, disruption or subversion of communication and information systems, infrastructure, computers, the internet, telecommunications or electronic networks and/or its content thereof or sabotage and/or threat there from.
18. Wear and tear or the failure to maintain, **Hardware**, or any other equipment integral to the **Insured's Network** but only where the **Insured** is deemed as grossly negligent by an independent third party mutually agreed upon between the Insurer and the **Insured** and arising out of Section I. A and B..
19. An actual, alleged or threatened presence, discharge, dispersal, release, or escape of a **Pollutant**; or a governmental or regulatory directive or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralise a **Pollutant**, or in any way respond to or assess the effects of a **Pollutant**.
20. An **Employment Claim** or a **Claim** made by one **Insured** against another **Insured** other than where brought by an **Employee** under Section II or V of this Policy.
21. Loss which the Insurer is prohibited from covering as a result of applicable law or regulation.
22. Liability assumed by the **Insured** under the terms of a contract, except to the extent that such liability would have existed even in the absence of such contract. This exclusion shall not apply to **Liability Expense** under a **Merchant Services Agreement**
23. Trading or personal debt of the **Insured** except if covered under Policy Section I.E
24. Securities except if covered under Policy Section I.E

**EXCLUSIONS CONT'D**

25. Actual or alleged inaccurate, incomplete or inadequate description of the price of goods, products or services.
26. Actual or alleged discrimination.
27. Breach of a third party's intellectual property right except if specifically covered under Policy Section V.
28. Breach of competition or anti-trust laws. However, this shall not apply to an otherwise covered **Claim** under Section II of this Policy

**C. WARRANTIES**

The Insured warrants that:

1. The **Insured** will not disclose the existence of this Policy to any third party, except:
  - a. to professional advisers under an obligation of confidentiality; or
  - b. to third parties to whom the **Insured** is required by contract to demonstrate the existence of insurance, provided that such third parties undertake to the **Insured** to keep the existence of the Policy confidential; or
  - c. if the **Insured** is legally required to disclose the existence of this Policy or is a listed company and discloses the existence of this Policy as part of its statutory reporting provisions as a comment on mitigation of cyber risks.
2. Breach of the Duty of Fair Presentation

If prior to entering this Insurance contract or prior to entering into any variation, if there is a deliberate or reckless breach of the duty of fair presentation, the Insurer may avoid this Contract from the date of inception or variation as applicable and the Insurer may retain any premium. Any payment that the Insured has received under this Contract that resulted from or was after that deliberate or reckless act or omission must be repaid to the Insurer.

It is for the Insurer to demonstrate beyond a reasonable doubt that the alleged act or omission by the Insured is deliberate or reckless.

If the Insured's breach of the duty of fair presentation is not deliberate or reckless, the Insurer's remedy shall depend upon what the Insurer would have done if the Insured had complied with the duty of fair presentation:

- i) If the Insurer would not have entered into the contract at all, the Insurer may avoid the contract and refuse all claims, but must return the premiums paid.
- ii) If the Insurer would have entered into the contract, but on different terms (other than terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms from the outset, if the Insurer so requires.

- iii) In addition, if the Insurer would have entered into the contract, but would have charged a higher premium, the Insurer may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims). In those circumstances, the Insurer shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/higher premium}) \times 100$ .

The Insurer will not exercise its right to avoid this policy and therefore shall afford coverage under this policy to those of the **Insured** who did not personally misstate, misrepresent or non-disclose statements and information in the application for this insurance including any supplemental materials. However, the Insurer may exercise its right to avoid the policy in the event of material misstatement, misrepresentation or non-disclosure by a **Member of the Control Group**.

## D. MISCELLANEOUS TERMS AND CONDITIONS

### 1. Limits of cover

The *Policy Aggregate Limit* is the limit of the Insurer's liability under this Policy in the aggregate under all coverages combined, including **Defence Expenses** regardless of the types of losses, number of *Insured Causes*, **Claims**, persons or entities covered by this Policy, claimants, losses reported, or coverages triggered.

1.2 Any *Policy Section Aggregate Limit* is the limit of the Insurer's liability under the relevant Section of the Policy in the aggregate under all coverages combined, including **Defence Expenses** regardless of the types of losses, number of *Insured Causes*, **Claims**, persons or entities covered by that Section of the Policy, claimants, losses reported, or coverages triggered.

1.3 Any Aggregate Sub-limits and Insuring Clause Aggregate Limits shown in the Schedule or by endorsement are the most the Insurer will pay for loss insured under the relevant coverage part in the aggregate for the Policy, including **Defence Expenses**, and such limits are part of, subject to, included within, and do not increase, the *Policy Aggregate Limit*.

1.4 Any loss covered under this Policy that falls within more than one Insuring Clause shall only be subject to one limit of indemnity, being the higher of the applicable limits.

### 2. Deductible

2.1. The Insurer shall be liable under this Policy, including in respect of **Defence Expenses**, only in excess of any applicable Deductible and/or **Time Retention** as stated in the Schedule. The Deductible and/or **Time Retention** shall apply to each and every loss or **Claim**, irrespective of the number of such losses or **Claims**, during the Policy Period.



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- 2.2 Any loss covered under this Policy that falls within more than one Insuring Clause shall only be subject to one Deductible and/or **Time Retention** being the higher of those that apply.
- 2.3 All losses under this Policy resulting from **Denial of Service** will be deemed to be related to one single loss. All losses under this Policy resulting from **Malicious Code** will be deemed to be related to one single loss.
- 2.4 All claims under all applicable sections of this Policy, arising out of the same originating cause, will be deemed to be a single Policy claim, made at the time of the first such Policy claim.
- 3. Notification**
- 3.1 It is a condition precedent to cover under this Policy that except in the event of a loss or **Claim** arising out of the same originating cause of a previous Policy claim, the **Insured** shall notify the Insurer in writing as soon as practicable, and in any event within 60 days or within 45 days in the case of losses covered under Policy Section 1 Insuring Clause 1D (and within 60 days of the end of the Policy Period if the Policy is not renewed and no **Extended Reporting Period** applies; or before the end of any applicable **Extended Reporting Period**), after it **Discovers** any (a) **Claim**, (b) any circumstance that, in the reasonable opinion of a **Member of the Control Group**, may give rise to a **Claim** or (c) information from which, in the reasonable opinion of a **Member of the Control Group**, it may be reasonably concluded that any other loss that would be covered under this Policy is occurring, has occurred, or may occur.
- 3.2 It is a condition precedent to cover under this Policy that, in the event of a **Claim**, the **Insured** shall provide to the Insurer as soon as practicable all documents received from the **Claimant** in relation to the claim, including any letter of claim, claim form, application notice, summons, subpoena or other court document.
- 3.3 It is a condition precedent to cover under this Policy that the **Insured** shall provide as soon as practicable, but in any event no later than 90 days after **Discovery** of the relevant information referred to in 3.1:
- 3.3.1 a proof of loss detailing full evidence of the loss for which it is seeking cover under the Policy Section 1 First Party, including details of the loss, threat, or failure, a description of the incident, contact details for all relevant personnel, a description of the equipment involved, system and security logs, statements from outside experts or consultants, and a description of any **Digital Assets** involved.

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- 3.3.2 in respect of all other Sections of this Policy any pertinent information and evidence in the **Insured's** possession, custody or control concerning the **Claim**, circumstance or loss, including, as appropriate, detailed proof of all facts relating to the **Claim** or loss event, all information relevant to the amount of the **Claim** or loss, details of the loss, threat, or failure, a description of the incident, contact details for all relevant personnel, a description of the equipment involved, system and security logs, statements from outside experts or consultants, and a description of any **Digital Assets** involved.
- 3.4 It is the sole responsibility of the **Insured** to report the loss to any applicable governmental, regulatory or law enforcement authorities if appropriate.
- 3.5 It is a condition precedent to cover under this Policy that the **Insured** must provide the Insurer all the pertinent information and assistance that the Insurer reasonably requests and cooperate with the Insurer in the investigation or settlement of any loss. Notice of loss shall be treated as having been given to the Insurer on the date on which it was sent to the following address: Head of Claims, Thomas Miller Specialty, 90 Fenchurch Street, London, EC3M 4ST.
- 3.6 Policy Sections VI.D.3.1 to VI.D.3.5 are subject to Policy Section VI.D.4.
- 4. Innocent Insured Provision**
- 4.1 Whenever coverage under this Policy would be avoidable or otherwise prejudiced because of breach of Policy Section VI.D.3, any insurance as would otherwise be afforded under this Policy shall not be avoidable or otherwise prejudiced by reason of such breach with respect to those **Insureds** who did not personally commit, or personally connive or acquiesce in committing, such breach, provided that (a) the **Insured** entitled to the benefit of this provision shall comply with Policy Section VI.D.3 promptly after obtaining knowledge of the other **Insured's** breach, (b) the relevant circumstance, loss or **Claim** is notified to the Insurer during the Policy Period or **Extended Reporting Period**, if applicable and (c) the relevant circumstance, loss or **Claim** is not known by a **Member of the Control Group**.
- 4.2 Whenever coverage under this Policy would be excluded because of Exclusion 15 or 16, such insurance as would otherwise be afforded under this Policy shall not be excluded in respect of those **Insureds** who did not personally commit, or personally connive or acquiesce in committing, or have knowledge of, the relevant act, error or omission.

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5. **Extended Reporting Provision**

5.1 In the event of cancellation or non-renewal of this Policy by the **Insured** or Insurer, or a **Change of Control** (providing that the **Insured** has otherwise complied with the Policy terms and conditions), an **Extended Reporting Period** shall apply if the **Insured** shall pay to the Insurer, in addition to the premium already payable for the Policy, a further amount equal to the annual premium shown in the Schedule (the "*ERP Premium*") within 30 days of the non-renewal, cancellation or **Change of Control**; provided that:

5.1.1 At the commencement of such **Extended Reporting Period**, the entire *ERP Premium* shall be deemed fully earned, and if the **Insured** terminates the **Extended Reporting Period** for any reason before its expiry, no portion of the *ERP Premium* shall be repayable to the **Insured**.

5.1.2 The Policy Aggregate Limit for the **Extended Reporting Period** shall be part of, and not in addition to, the Policy Aggregate Limit for the Policy Period.

5.1.3 The **Insured** shall have no right to the **Extended Reporting Period** if cancellation or non-renewal by the Insurer is due to non-payment of premium or failure of the **Insured** to pay amounts within the applicable Deductible, **Time Retention**.

6. **Claims handling**

6.1 The Insurer shall have the right, but not an obligation, to conduct the investigation, adjustment, settlement, defence or appeal of any **Claim** or potential **Claim** in the name of the relevant **Insured**, in the manner and for as long as the Insurer in its absolute discretion thinks fit.

6.2 The **Insured** shall provide all reasonable co-operation to the Insurer in the investigation, adjustment, settlement, defence or appeal of any **Claim** or potential **Claim**, including in the provision of documents, the execution of documents, making the **Insured's** personnel available and requiring the **Insured's** personnel to provide evidence, witness statements or affidavits or submit to examination under oath as may be required by the Insurer.

6.3 If the **Insured** does not consent to the settlement of a **Claim** to which the Insurer and the **Claimant** have expressed their willingness to agree, the maximum liability of the Insurer under this Policy for such **Claim** is the amount for which the **Claim** could have been settled, less the remaining Deductible, plus the amount of **Defence Expenses** incurred up to the time of such refusal to consent plus Fifty percent (50%) of any **Liability Expense** and **Defence Expense** incurred after the date such settlement or compromise was recommended to the **Insured**. The remaining fifty percent (50%) of such **Liability Expense** and **Defence Expense** or other amounts covered

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under this Policy are to be borne by the **Insured** and are considered uninsured under this Policy.

- 6.4 It is a condition precedent to cover under this Policy that the **Insured** does not communicate with the court, any regulatory body or **Claimant**, admit liability, make any payment, assume any obligations, enter into any settlement or compromise agreement, incur any expense, consent to any judgment or court order, provide any formal statement, relating to any **Claim**, without the Insurer's prior written consent, except as the **Insured** may be required to do so by any applicable law or regulation.
- 6.5 The **Insured** shall have the right to select counsel of their choosing, subject to the Insurer's prior written consent, such consent shall not be unreasonably withheld.

**7. Subrogation, salvage and recoveries**

- 7.1 Any **Insured** under this Policy shall at the request and at the expense of the Insurer do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Insurer for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other persons to which the Insurer shall be or would become entitled or subrogated upon its paying for or making good any loss under this Policy, whether such acts and things shall be or become necessary or required before or after indemnification by the Insurer, and shall do nothing to prejudice those rights. In the case of recovery after payment of any loss by the Insurer, the amount recovered, after deducting the Insurer's costs incurred in obtaining or making such recovery, shall be applied in the following order:
- a. first to reimburse the **Insured** for any covered loss that was not indemnified under this Policy because it exceeded the limits of indemnity;
  - b. second to reimburse the Insurer for any amount paid under this Policy in respect of such loss;
  - c. any balance to the **Insured**.

**8. Other insurance**

- 8.1 The insurance provided by this Policy shall be excess of any other valid and collectable insurance available to the **Insured**.

**9. Loss mitigation**

- 9.1 The **Insured** shall use reasonable endeavours at all times during the Policy Period to protect the **Insured's** reputation and to do all things reasonably practicable to avoid or mitigate any damage to it, including taking all appropriate legal steps to uphold the **Insured's** reputation, and the defending of all legal actions brought against it by third parties the purpose of which might prejudice, extinguish, diminish or impair the **Insured's** reputation.

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9.2 Once loss or potential loss, or a **Claim** or potential **Claim**, has been **Discovered**, the **Insured** must take all reasonable steps to prevent further loss, including taking all reasonable measures to remove all traces of any **Malicious Code** before the **Network** resumes operation.

**10. Mergers, acquisitions and insolvency events**

10.1. During the Policy Period, if the **Named Insured** or any of the **Named Insured's Subsidiaries** acquires another entity whose revenues are more than 25% of the **Named Insured's** total annual revenues as set out in the most recent audited financial statements, there shall be no coverage under this Policy for any loss related to the acquired entity unless the **Named Insured** gives the Insurer written notice within thirty (30) days of the acquisition taking place, obtains the Insurer's prior written consent to extend coverage to such additional entities, and agrees to pay any additional premium required by the Insurer for doing so.

10.2 If, in relation to any of the **Insured** entities:

- a. it is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- b. it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or solvent reconstruction;
- c. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or solvent reconstruction;
- d. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over it;
- e. a person becomes entitled to appoint a receiver over its assets or a receiver is appointed over its assets;
- f. any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the above events in this paragraph;
- g. it suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- h. there is a change of control as defined in section 574 of the Capital Allowances Act 2001;

then, in respect to such entity, this Policy shall immediately cease to afford any coverage for any kind of loss subsequently **Discovered**, unless a **Change of Control Extended Reporting Period** applies under Policy Section VI D 5. Notwithstanding the foregoing, cover under Section II and III shall continue to apply in respect of any *Wrongful Act* committed or alleged to have been committed prior to the date

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of the **Change of Control**.

**11. Cancellation**

11.1 This Policy may be cancelled by the **Named Insured**, on behalf of all **Insured** entities, by written notice to the Insurer's Chief Cyber Risks Underwriter at the Insurer's registered office.

11.2 This Policy may be cancelled by the Insurer by not less than 90 days written notice to the **Named Insured** at the address shown in the Schedule

Notwithstanding the foregoing, if the **Insured** has not paid the Premium to the Insurer within 60 days of inception of this Policy (or, in respect of instalment premiums, when due), the Insurer shall have the right to cancel this Policy by notifying the **Named Insured** via the broker (at the address shown in the Schedule) in writing. In the event of cancellation, premium is due to the Insurer on a pro rata basis for the period that the Insurer is on risk but the full Policy Premium shall be payable to the Insurer in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this policy.

It is agreed that the Insurer shall give not less than 15 days prior notice of cancellation to the **Named Insured** via the broker (at the address shown in the Schedule) in writing. If premium due is paid in full to the Insurer before the notice period expires, notice of cancellation shall automatically be revoked. If not, the Policy shall automatically terminate at the end of the notice period.

Unless otherwise agreed, the Leading Insurer (and Agreement Parties if appropriate) are authorised to exercise rights under this clause on their own behalf and on behalf of all Insurers participating in this contract.

If any provision of this condition is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this condition which will remain in full force and effect.

Where the premium is to be paid through a London Market Bureau, payment to the Insurer will be deemed to occur on the day of delivery of a premium advice note to the Bureau.

11.3 If the Policy is cancelled before any notification under this Policy, the **Insured** shall be entitled to a refund of Premium pro rata to the time on risk. The premium shall be deemed fully earned if any notification of loss is made under this Policy on or before the cancellation.

**12. Governing law**

12.1 This Policy is governed by the law and jurisdiction of England and Wales unless stated otherwise in the Schedule.

**13. Fraud**

13.1 If the **Insured** makes a claim under this Policy that is fraudulent, as regards amount or otherwise, the Insurer may recover from the **Insured** any sums paid by the Insurer in respect of that claim. The Insurer may elect by notice to the **Insured** to treat this **Policy** as having been terminated with effect from the time of the fraudulent act.

**14. Arbitration**

14.1 Any dispute between the **Insured** and the Insurer relating to this Policy shall be resolved by arbitration according to the rules of the International Chamber of Commerce. The seat of the arbitration shall be in the place stated as such in the Schedule.



## **SECTION VII – COMPLAINTS PROCEDURE**

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We are dedicated to providing you with a high quality service and we want to ensure that we maintain this at all times.

However, in the event there is any cause for complaint, in the first instance the **Insured** should contact the intermediary who arranged the Policy.

If the matter is not resolved to the **Insured's** satisfaction, please write to our Compliance Officer at:

Thomas Miller Specialty  
90 Fenchurch Street  
London  
EC3M 4ST  
Telephone +44 (0)20 7283 1227  
Email: [specialty@thomasmiller.com](mailto:specialty@thomasmiller.com)

If you remain dissatisfied with our response, as your insurance product is underwritten on behalf of Lloyd's, complaints should be referred to the Complaints Team – Market Services, Lloyd's, One Lime Street, London EC3M 7HA. Telephone: +44 (0)20 7327 5693 or Email: [complaints@lloyds.com](mailto:complaints@lloyds.com)

Whether you are based in the United Kingdom or elsewhere you may also be able to refer this matter to the Financial Ombudsman Service. Their contact details are as follows:

**The Financial Ombudsman Service**  
**Exchange Tower**  
**London E14 9SR**

**Help line: 0800 023 4 567 Switchboard: 020 7964 1000 For calls outside of the UK: +44 20 7964 1000**

Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

Email: [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)

Making a complaint to The Financial Ombudsman Service does not affect the **insured's** rights under this Policy.



## **DATA PROTECTION NOTICE**

### **Who is responsible for your personal information?**

Thomas Miller is the registered data controller for personal information held by it about you for the purposes of the Data Protection Act 1998 or similar provision applying in any amending or replacing legislation. You should show this notice to anyone who may also be covered by your insurance policy with us.

“You” shall include, as relevant, individual insured customers (including prospective customers) such as sole traders, a company’s owners, partners and/or any individual who may be covered by an insurance policy with Thomas Miller.

### **What details do we collect and why?**

We will use the information you provide or we collect to manage and handle your insurance queries, applications and any policy and related claims. This includes underwriting and handling claims with help from other Thomas Miller Group companies. To provide you with products and services, we hold information in our data systems or it is held by our agents or subcontractors or by other Thomas Miller Group companies. We may use your personal information for our business processes and activities including analysis, review, planning and business transactions, dealing with insurance and/or legal claims; and for compliance with our legal and regulatory obligations.

### **Sensitive details**

We may need to collect sensitive personal information (such as information about physical or mental health or medical conditions, criminal and/or motor convictions and pending proceedings, and bankruptcy/debt details) about you and others named on the insurance policy and third parties involved in a claim. By going ahead with a Thomas Miller insurance policy or by giving us your personal information including sensitive personal information you will be agreeing to us, our agents, other insurers and the other persons who we describe in this notice processing this information including sensitive personal information for all purposes as are relevant to your relationship with Thomas Miller. Before you provide information about others, you should make sure they are aware of how we will use their information and have given their permission. Credit reference checks and fraud prevention, anti-money laundering and counter terrorism financing checks

We may check the information you provide against other information available to the public (such as on the electoral roll and court judgments, bankruptcy or repossession and other insurance industry databases, and this may involve carrying out bankruptcy/judgment debt checks, fraud prevention, anti-money laundering and counter terrorism financing checks, subject to data protection law and with your consent if required). Subject to data protection law, we may share information with others as set out below. We may use this information in order to help with risk and credit assessment and decisions, to comply with our legal and regulatory obligations and other Thomas Miller Group companies may do the same for their own compliance purposes.

### **Statistics**

We may amend the personal information so that you cannot be identified from the data either by itself or when combined with any other data we hold. That data will then not be subject to this notice or data protection law. We may use it for insurance administration purposes including analysis of trends, carrying out actuarial work, planning service delivery, risk assessment and costs and charges.

What details do we share, who with and why?

We may share information about you and your claims history with:

- our agents and service providers;
- other insurers, either directly or through people acting for us and them (such as loss adjusters);
- other Thomas Miller Group companies (both inside and outside the EEA);
- any agent or representative acting for you;
- recognised trade, governing and regulatory organisations we belong to or are governed by;
- the police, other law-enforcement agencies, government agencies or regulatory authorities, and any other person or organisation to comply with insurance law; and
- any other person where necessary to perform any insurance contract with you, in order to protect ourselves from risk or to ensure regulatory compliance or good governance.

We may exchange information with the Claims and Underwriting Exchange Register, run by Insurance Database Services Ltd (IDS Ltd) and the Motor Insurance Anti-Fraud and Theft Register, run by the Association of British Insurers (ABI). The aim is to help us check information and to prevent fraudulent claims. When we deal with your request for insurance, we may search these registers. Under the conditions of your policy, you must tell us about any incident which may lead to a claim.

#### **More information and contacting us**

You can ask us for a copy of the information we hold about you by writing to our Data Protection Officer (see contact details below). Please allow up to 40 days for us to send this information to you. You may also ask us to change or delete any information we hold about you.

For a full copy of this notice including further details on how your personal information may be used for credit reference and fraud prevention purposes, please see the Privacy Policy which you can view by visiting [www.thomasmiller.com/cookie-privacy-policy/](http://www.thomasmiller.com/cookie-privacy-policy/) or if you wish to request a hard copy or have any questions about this notice, please contact our Data Protection Officer at Thomas Miller Specialty, 90 Fenchurch Street, London, EC3M 4ST.

#### **CORPORATE INFORMATION**

This insurance will be underwritten by Thomas Miller Specialty for and on behalf of Lloyd's of London. Thomas Miller Specialty is a trading name for Osprey Underwriting Agency Ltd (OUAL), a member of the Thomas Miller Group. OUAL (company number 02519540, FCA no: 312791) is authorised and regulated by the Financial Conduct Authority. Registered in England and Wales at 90 Fenchurch Street, London, EC3M 4ST. Tel: +44 (0) 20 7283 4646.