



*Great American Insurance Company*

Cyber Risk

# *Cyber Risk Insurance Policy*

Great American Insurance Company  
Executive Liability Division  
Headquarters: 301 E. Fourth Street, Cincinnati, Ohio 45202

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THIS IS A CLAIMS MADE AND REPORTED POLICY. PLEASE READ IT CAREFULLY.

THIS POLICY CONTAINS A CLAUSE THAT MAY LIMIT THE AMOUNT PAYABLE.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company shown on the Declarations, a stock insurance company (hereinafter called the **Insurer**), including the statements made in the **Application**, and subject to all terms, conditions and limitations in this Policy, the **Insured** and the **Insurer** agree as follows:

## Section I. Insuring Agreements

### A. Data Compromise Coverage

If a **Data Compromise** is first discovered during the **Policy Period** and reported pursuant to Section VIII.A., then:

- (1) for a **Data Breach**, the **Insurer** shall pay on behalf of the **Company** the reasonable and necessary:
  - (a) legal fees, costs, or expenses charged by an **Incident Response Expert** in coordinating the investigation and response efforts related to a **Data Breach** including but not limited to a determination regarding the extent that any law, regulation, statute or contract requires notification of the **Data Breach** to any government agency or the persons or entities affected by the **Data Breach**;
  - (b) forensic fees incurred to investigate the cause of the **Data Breach** and/or to identify persons or entities affected by the **Data Breach**;
  - (c) costs of notification of the **Data Breach** to any persons or entities affected by the **Data Breach** or any government agency or other third party, but only to the extent:
    - (i) the **Incident Response Expert** determines applicable law, regulation, statute or contract requires such notification; or
    - (ii) the **Incident Response Expert** determines applicable law, regulation, statute or contract does not require such notification but the **Insurer** provides its prior written consent for such costs of notification to be incurred voluntarily;
  - (d) costs incurred to provide identity theft prevention (including but not limited to credit monitoring) and identity restoration services for persons affected by the **Data Breach**; and
  - (e) costs incurred to provide call center services in support of the **Company's** efforts to address inquiries from the persons or entities affected by the **Data Breach**;

provided each of the above are incurred with the **Insurer's** consent, which shall not be unreasonably withheld.
- (2) for a **PCI Compliance Violation**, the **Insurer** shall pay on behalf of the **Company** the **Assessments** the **Company** becomes obligated under contract to pay and any related reasonable and necessary legal fees, costs and expenses charged by an **Incident Response Expert** in coordinating the investigation and response efforts related to the **PCI Compliance Violation**; provided such amounts are incurred with the **Insurer's** consent, which shall not be unreasonably withheld;
- (3) for a **Network Disruption**, the **Insurer** shall reimburse the **Company** for **Business Income Loss**;
- (4) for **Data Asset Damage**, the **Insurer** shall pay **Restoration Costs** incurred by or under the direction of an **Incident Response Expert**; provided such amounts are incurred with the **Insurer's** consent, which shall not be unreasonably withheld;

- (5) for a **Cyber Crime**, the **Insurer** shall:
- (a) pay on behalf of the **Company**:
    - (i) reasonable and necessary forensic fees incurred by or under the direction of an **Incident Response Expert** to investigate the cause of the **Cyber Crime** and/or to discover if any other **Data Compromise** may be present; and
    - (ii) ransom money paid with the **Insurer's** prior written consent to a third party to terminate that party's **Data Extortion Threat**;provided such amounts are incurred or paid with the **Insurer's** consent, which consent shall not be unreasonably withheld; and
  - (b) reimburse the **Company** for any **Fraud Loss** that is not otherwise reimbursed by a financial institution directly resulting from the **Cyber Crime**; and
- (6) for **Reputational Harm**, the **Insurer** shall reimburse the **Company** for **Reputational Damage Loss**.

**B. Liability Coverage (Including Regulatory Actions)**

The **Insurer** shall pay on behalf of an **Insured** all **Loss** incurred as a result of any **Claim** for a **Multimedia Wrongful Act, Network Security Wrongful Act or Privacy Wrongful Act**, provided:

- (1) such **Claim** is first made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting Period** and reported pursuant to Section VIII.B. of the Policy; and
- (2) the **Wrongful Act** occurs after the **Retroactive Date** set forth in Item 6. of the Declarations.

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

**C. Public Relations Coverage**

Subject to the **Insurer's** prior written consent, the **Insurer** shall pay on behalf of the **Company** the costs of a public relations consultation:

- (1) in response to **Reputational Harm** related to a **Claim** or **Data Compromise**; or
- (2) necessary to inform potentially impacted individuals, vendors or suppliers of **Business Impersonation** first discovered and noticed to the **Insurer** during the **Policy Period**.

**Section II. Extended Reporting Period - Applicable to Insuring Agreement I.B. Only**

- (1) If the **Insurer** refuses to renew this Policy or the **Corporation** cancels or non-renews this Policy, the **Corporation** shall have the right, upon payment of:
  - (a) seventy-five percent (75%) of the annualized premium, to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during a period of twelve (12) months after the end of the **Policy Period**;
  - (b) one hundred twenty-five percent (125%) of the annualized premium, to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during a period of twenty-four (24) months after the end of the **Policy Period**; or
  - (c) one hundred fifty percent (150%) of the annualized premium, to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during a period of thirty-six (36) months after the end of the **Policy Period**;

but only with respect to a **Wrongful Act** committed or allegedly committed before the end of the **Policy Period**. This extension of coverage shall be referred to in this Policy as the **Extended Reporting Period**.

As a condition precedent to the right to purchase the **Extended Reporting Period**, the total premium for this Policy must have been paid and a written request together with payment of the appropriate premium for the **Extended Reporting Period** must be provided to the **Insurer** no later than thirty (30) days after the **Policy Period** ends.

- (2) The purchase of the **Extended Reporting Period** shall not in any way increase the Limit(s) of Liability stated in Item 3. of the Declarations. For purposes of the Limit(s) of Liability, the **Extended Reporting Period** is part of, and not in addition to, the **Policy Period**.

### Section III. Definitions

- A. **Application** shall mean the application accepted for the issuance of this Policy by the **Insurer**, including any and all materials and information submitted to the **Insurer** in connection with such application.
- B. **Assessments** shall mean any of the following amounts assessed against the **Company** pursuant to a merchant service agreement as a result of a **PCI Compliance Violation**:
  - (1) Account Data Compromise ("ADC") Fraud Recovery losses;
  - (2) ADC operational reimbursement costs for reissuing payment cards or monitoring compromised or potentially compromised accounts;
  - (3) Case management fees for the card association's costs to investigate the **PCI Compliance Violation**; or
  - (4) Fines or penalties.
- C. **Business Impersonation** shall mean fraudulent communications (including but not limited to websites, e-mails, or phone calls) from an entity or individual other than an **Insured** designed to impersonate the **Company** (including but not limited to its **Content**, products, services, or websites) and/or any **Insured Person** with the goal of deceiving any customer, supplier or business partner of the **Company** or any other third party, into sharing credentials and/or personally identifiable information with, or fraudulently inducing such parties to transfer their money or property to the sender of such fraudulent communication.
- D. **Business Income Loss** shall mean:
  - (1) **Restoration Costs** incurred with the **Insurer's** prior written consent;
  - (2) net profit before income taxes that the **Company** is prevented from earning due to a **Network Disruption**;
  - (3) normal operating expenses incurred by the **Company** (including payroll) if such operating expenses must continue during the **Restoration Period** and would have been incurred had there not been a **Network Disruption**; and
  - (4) reasonable and necessary expenses incurred by the **Company** with the **Insurer's** prior consent to minimize, avoid or reduce a **Network Disruption**, if over and above the **Company's** normal operating and payroll expenses.

**Business Income Loss** shall be subject to the **Waiting Period Retention**, limited by the **Restoration Period**, and calculated on an hourly basis by the sum of (1) through (4) above, each sustained during the **Restoration Period**. In determining the amount of net profit or loss and expenses covered under Insuring Agreement I.A.(3), the **Insurer** will give due consideration to the net profit or loss of the **Company** before the **Network Disruption** and the **Company's** probable net profit or loss if no **Network Disruption** had occurred. However, net profit or loss calculations shall not include, and the Policy will not cover, any net income that would likely have been earned as a result of an increase in the volume of the **Company's** business due to favorable business conditions caused by the impact of any event similar to a **Network Disruption** suffered by other businesses.

**Business Income Loss** shall not include **Loss, Fraud Loss, Reputational Damage Loss**; contractual penalties; goodwill impairment; liability to a third party; break-up fees; any other consequential losses or damages not mentioned above; or any related legal costs or expenses.

**E. Claim** shall mean:

- (1) a written demand for monetary damages or injunctive relief;
- (2) a **Regulatory Action**;
- (3) a written request to enter into an agreement to toll any applicable statute of limitations prior to the commencement of any judicial, administrative, regulatory, or alternative dispute resolution proceeding;
- (4) a written request that an **Insured** participate in an alternative dispute resolution proceeding; or
- (5) a civil or criminal proceeding brought against any **Insured** seeking monetary or non-monetary relief and commenced by the service of a complaint, Statement of Claim, Notice of Claim or similar pleading, the return of an indictment, or the receipt or filing of notice of charges or similar document.

A demand, written request or proceeding alleging **PCI Compliance Violations** shall not constitute a **Claim**.

**F. Company** shall mean the **Corporation**, any **Subsidiary** and, in the event of **Financial Insolvency** of the **Corporation** or any **Subsidiary**, the resulting debtor-in-possession or receiver (or foreign equivalent status), if any.

**G. Computer Systems** shall mean:

- (1) the **Covered Network**;
- (2) **Insured Person** owned devices when used in connection with the **Company's** business activities; and
- (3) **Third Party Networks**.

**H. Content** shall mean communicative material of any kind or nature whatsoever, including words, pictures, sounds, images, graphics, software, code and data, conveyed via any method or medium including print, broadcast, digital and electronic, for any purpose including news, entertainment, art, information, advertising and corporate communications, if created:

- (1) by or on behalf of the **Company** for its own use; or
- (2) by third parties and collected, maintained, moderated or disseminated by or on behalf of the **Company**, including via any chat room, blog, bulletin board, website or social media site moderated, owned or operated by or on behalf of the **Company**;

provided, however, **Content** shall not include advertising created by the **Insured** for others, product design, labelling or packaging, architectural or industrial design, or the goods, products or services described or displayed in communicative materials.

**I. Corporation** shall mean the entity named in Item 1. of the Declarations.

**J. Covered Network** shall mean all leased or **Company** owned:

- (1) computer hardware (including but not limited to desktops, laptops, mobile devices, printers, copiers, and servers); and
- (2) networking equipment (including but not limited to routers, switches, gateways, and hubs).

operated by the **Company** solely in connection with the **Company's** business operations;

- K. Cyber Crime** shall mean the following, if committed by a person or entity other than an **Insured** and without the involvement of an **Insured**:
- (1) the transmission of fraudulent instructions, whether written, electronic, or otherwise, to a financial institution which direct that financial institution to initiate an electronic funds transfer from the **Company** or otherwise debit the **Company's** accounts;
  - (2) the **Unauthorized Access**, through electronic means, of the credentials (including but not limited to passwords, PINs, or security codes) related to the **Company's** financial accounts or the accounts of third parties which are under the **Company's** control;
  - (3) **Telecommunications Hacking**; and
  - (4) **Data Extortion Threat**.
- L. Data Asset** shall mean software and electronic data (including but not limited to databases, audio/video files, websites, intranets, and extranets) maintained by or on behalf of the **Company** in connection with the **Company's** business operations.
- M. Data Asset Damage** shall mean loss of control over, damage to, or destruction of a **Data Asset**.
- N. Data Breach** shall mean **Unauthorized Access** to, **Unauthorized Use** of, loss of control over (including but not limited to the loss of any laptop, smartphone or other portable device that contains **Protected Information**), or disclosure of, **Protected Information** stored (or captured solely for purposes of processing electronic payments) by or on behalf of the **Company** in connection with the **Company's** business activities.
- O. Data Compromise** shall mean a **Data Breach**, **Data Extortion Threat**, **Data Asset Damage**, **Cyber Crime**, **PCI Compliance Violation** or **Network Disruption** sustained by the **Company**.
- P. Data Extortion Threat** shall mean a threat or series of threats by someone other than an **Insured** to cause or prolong a **Data Compromise**.
- Q. Defence Costs** shall mean:
- (1) reasonable and necessary legal fees, costs and expenses incurred solely in the investigation, defence or appeal of a **Claim**;
  - (2) premium for an appeal, attachment or similar bond, but without any obligation to apply for and obtain such bond, in connection with a **Claim**;
  - (3) reasonable and necessary legal fees, costs and expenses incurred by the **Insured** at the specific written request of the **Insurer** during the investigation, defence or appeal of a **Claim**; and
  - (4) forensic fees incurred to investigate the cause of and/or to identify persons or entities affected by an intrusion of the **Computer System** which resulted in **Unauthorized Access** to, **Unauthorized Use** of, loss of control over, or disclosure of, **Protected Information** in the care, custody, or control of the **Insured** or an independent contractor of the **Insured** that is holding, processing or transferring such information on behalf of the **Insured**.
- R. Employee** shall mean any natural person whose labour or service is engaged and directed by the **Company** including any permanent, temporary, leased, or volunteer worker. **Employee** shall not mean an **Executive** or an independent contractor.
- S. Executive** shall mean the **Company's**:
- (1) Chief Executive Officer, Chief Financial Officer, Chief Technology Officer, Chief Information Security Officer;

- (2) General Counsel;
- (3) Insurance Risk Manager;
- (4) Partners, in the event a **Company** or **Subsidiary** is organized as a partnership; or
- (5) Managing Member, in the event a **Company** or **Subsidiary** is organized as a Limited Liability Corporation;

or the respective functional equivalents of (1) through (5) above.

**T. Financial Insolvency** shall mean the **Company** becoming a debtor-in-possession, or the appointment of a creditors' committee, receiver, conservator, liquidator, trustee, rehabilitator, monitor, examiner or similar official to control, supervise, manage or liquidate the **Company**.

**U. Fraud Loss** shall mean:

- (1) loss of **Money** and/or **Securities**; or
- (2) solely with respect to **Telecommunications Hacking**, the charges for unauthorized calls;

incurred by the **Company**; provided, however, **Fraud Loss** shall not mean any indirect or consequential damages; or unless this Policy is specifically endorsed to provide such coverage, any loss to the **Company** resulting from the transfer of any property of the **Company** (including but not limited to money or other financial assets) by an authorized person by reason of that person having been deceived by a third party, regardless of whether or not such deception involves electronic means and/or manipulation.

**V. Incident Response Expert** shall mean the firm retained by the **Insured** or the **Insurer** pursuant to Section VII. of this Policy in connection with a **Data Compromise**.

**W. Insured** shall mean the **Company** and any **Insured Person**.

**X. Insured Person** shall mean any past, present or future:

- (1) **Executive**;
- (2) **Employee**;
- (3) members of the **Company's** Board of Directors (whether elected, appointed, or de facto); or
- (4) trustees of the **Company's** Board of Trustees.

**Y. Loss** shall mean:

- (1) **Defence Costs**;
- (2) solely with respect to any **Claim** other than a **Regulatory Action**:
  - (a) monetary damages, settlements or judgments;
  - (b) pre-judgment or post-judgment interest; and
  - (c) punitive, aggravated or exemplary damages, or the multiple portion of any multiplied damages award, but only to the extent such damages are insurable under the applicable law in the jurisdiction of the principal address of the **Corporation** as shown in the Declarations; and
- (3) solely with respect to a **Regulatory Action**:
  - (a) the amount paid to establish a consumer redress fund created as a result of a **Regulatory Action**; or



- (b) any civil fines or penalties imposed, damages awarded, or compensation payments made by the insured pursuant to any voluntary compliance agreement entered into between the Insured and the regulatory agency as a result of such **Regulatory Action**;

provided, however, **Loss** shall not include: taxes; the return or repayment of fees, deposits, commissions or charges for goods or services; the costs incurred in the recall, re-performance or correction of services, **Content**, goods or activities; the costs of the **Insured's** compliance with or any **Loss** incurred as a result of an injunction or other equitable order or judgment, other than the amount paid to establish a consumer redress fund as a result of a **Regulatory Action**; or civil or criminal fines or penalties, other than civil fines or penalties imposed as a result of a **Regulatory Action**.

**Z. Malicious Code** shall mean any virus, worm, trojan horse, backdoor or similar malicious software program.

**AA. Money** shall mean:

- (1) currency, including virtual currency (bitcoins), coins and bank notes in current use and having a face value; or
- (2) travelers cheques, register cheques and money orders held for sale to the public.

**BB. Multimedia Activity** shall mean:

- (1) the dissemination of **Content** by the **Insured**, by any form, method or medium of communication;
- (2) the creation or gathering of **Content** by the **Insured**; or
- (3) the dissemination of **Content** by any party with whom the **Insured** has entered into a written, oral or implied-in-fact indemnification or hold harmless agreement regarding such **Content**.

**CC. Multimedia Wrongful Act** shall mean any actual or alleged:

- (1) libel, slander, trade libel, product disparagement or any other defamation or harm to the character or reputation of any person or entity;
- (2) invasion or infringement of the right of privacy or publicity, including the torts of intrusion upon seclusion, publication of private facts, false light or misappropriation of name or likeness;
- (3) outrage or infliction of emotional distress;
- (4) dilution or infringement of title, slogan, trademark, trade name, trade dress, service mark or service name;
- (5) copyright infringement, plagiarism, or misappropriation of information, ideas or other similar property rights; or
- (6) piracy or unfair competition, but only if arising out of (1) through (5) above;

resulting from any **Multimedia Activity**.

**DD. Network Disruption** shall mean:

- (1) **Security Event Related Outage**; or
- (2) **Vendor Error Related Outage**;

provided, however, **Network Disruption** shall not mean an outage related to a **Third Party Network** unless this Policy is specifically endorsed to cover such outage.

**EE. Network Security Wrongful Act** shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Company's** business that causes or fails to prevent:

- (1) **Unauthorized Access** to or **Unauthorized Use** of the **Covered Network**;

- (2) the transmission of any **Malicious Code** from the **Covered Network** to a third party's computer systems;
- (3) **Business Impersonation**; and/or
- (4) a **Network Disruption**.

**FF. PCI Compliance Violation** shall mean alleged or actual violation of the applicable Payment Card Industry Data Security Standards (PCI-DSS) in effect when such violation is first discovered.

**GG. Policy Period** shall mean the period from the Inception Date to the Expiration Date, as set forth in Item 2. of the Declarations, or the earlier termination if applicable.

**HH. Privacy Wrongful Act** shall mean any actual or alleged:

- (1) negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Company's** business that actually or allegedly causes or fails to prevent **Unauthorized Access** to, **Unauthorized Use** of, loss of control over (including but not limited to the loss of any laptop, smartphone or other portable device that contains **Protected Information**), or disclosure of, **Protected Information** in the care, custody, or control of the **Insured** or an independent contractor of the **Insured** that is holding, processing or transferring such information on behalf of the **Insured**;
- (2) violation of any federal, provincial, territorial, state, local or foreign law or regulation regarding the maintenance, protection, use or disclosure of **Protected Information**; or
- (3) violation of any publicly stated policy of the **Company** relating to **Protected Information**.

**II. Protected Information** shall mean:

- (1) any personally identifiable information (including but not limited to personal health information), whether in electronic form or otherwise, which is protected from **Unauthorized Access**, **Unauthorized Use**, or disclosure by any federal, provincial, territorial, state, local or foreign law or regulation or by any publicly stated policy of the **Company**; and
- (2) any confidential business information of a third party that is the subject of a confidentiality agreement between the **Company** and such third party.

**JJ. Regulatory Action** shall mean a written request for information, civil investigation or administrative proceeding or civil proceeding brought by any local, state, federal, provincial, territorial or regulatory agency, or by any complainant seeking investigation or adjudication by any such regulatory agency, for any **Privacy Wrongful Act** in connection with a **Data Breach**. However, **Regulatory Action** shall not include any written request, investigation, or proceeding of any kind brought by or on behalf of the U.S. Securities and Exchange Commission, the Ontario Securities Commission, or their functional equivalents in any Canadian or foreign jurisdiction.

**KK. Related Claims** shall mean all **Claims** arising from any of the same **Wrongful Acts** or **Related Wrongful Acts**, regardless of the number of claimants, **Insureds** or underlying transactions or events.

**LL. Related Events** shall mean all **Data Compromises** which are based upon, arise out of, directly or indirectly result from, in consequence of, or in any way involve the same or a related series of facts, circumstances, situations, transactions or events, whether related logically, causally, or in any other way.

**MM. Related Wrongful Acts** shall mean **Wrongful Acts** which are based upon, arise out of, directly or indirectly result from, in consequence of, or in any way involve the same or a related series of facts, circumstances, situations, transactions or events, whether related logically, causally, or in any other way.

**NN. Reputational Damage Loss** shall mean the net profit or loss before income taxes the **Company** is prevented from earning due to **Reputational Harm** and resulting in a measureable reduction of the **Company's** sales. In determining the amount of net profit or loss, the **Insurer** will give due consideration to the net profit or loss earned by the **Company** before the **Reputational Harm** and the **Company's** probable net profit or loss if no **Reputational Harm** had occurred. The calculation of **Reputational Damage Loss** shall be limited by the earlier of:

- (1) the date the **Company's** gross revenues are restored to the level they had been prior **Reputational Harm**; or
- (2) ninety (90) days from the date of the earliest **Reputational Harm**.

**Reputational Damage Loss** shall not include **Loss**; **Fraud Loss**; **Business Income Loss**; goodwill impairment; contractual penalties; liability to a third party; break-up fees; any other consequential losses or damages not mentioned above; or any related legal costs or expenses.

**OO. Reputational Harm** shall mean adverse media reporting related to a **Data Compromise** or **Claim** covered under Insuring Agreements. I.A. or I.B. **Reputational Harm** shall not mean the media's ordinary dissemination of substitute notice of a **Data Breach**.

**PP. Restoration Costs** shall mean reasonable and necessary:

- (1) legal, security, or forensic fees, costs, and expenses to determine the **scope and cause of Data Asset Damage**; or
- (2) costs incurred to restore control over **Data Assets** or to replace, restore or recollect **Data Assets** from written records or partially or fully matching **Data Assets** due to their corruption or destruction from **Data Asset Damage**.

**Restoration Costs** shall not include any consequential losses or damages resulting from **Data Asset Damage**.

**QQ. Restoration Period** shall mean the period of time which begins with the first instance of a **Network Disruption** and ends with the earlier of:

- (1) the point in time when the **Covered Network** returns to, or could have been restored with reasonable efforts to, substantially the level of operation that existed prior to such **Network Disruption**; or
- (2) exactly thirty (30) days from the first instance of the **Network Disruption** provided, however, **Restoration Period** shall not include the **Waiting Period Retention**.

**RR. Securities** shall mean negotiable and nonnegotiable instruments or contracts representing **Money** and includes:

- (1) tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
- (2) evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Company**;

provided, however, **Securities** shall not mean **Money**.

**SS. Security Event Related Outage** shall mean actual and measurable interruption, failure, degradation or delay in the performance of the **Covered Network** due to:

- (1) **Data Asset Damage** resulting from **Malicious Code** introduced into the **Covered Network** by **Unauthorized Access** or **Unauthorized Use**;
- (2) a denial of service attack upon the **Covered Network**; and/or
- (3) the **Company's** suspension of its normal business activities conducted via the **Covered Network** for the purpose of avoiding or mitigating a **Data Compromise** or the possibility of transmitting **Malicious Code** to a third party.

**TT. Subsidiary** shall mean:

- (1) any entity in which the **Corporation** owns, directly or indirectly, more than fifty percent (50%) of the voting stock on or before this Policy's Inception Date or subsequent to this Policy's Inception Date pursuant to Section X.N.(2) of this Policy; and/or

- (2) in the event the **Corporation** is a non-profit organization, any other non-profit organization over which the **Corporation**, on or before this Policy's Inception Date, exercises managerial control or has the ability to appoint more than half the members of such entity's Board of Directors or functional equivalent.

- UU. Telecommunications Hacking** shall mean infiltration and manipulation of the telephone or fax system used by the **Company** in connection with its normal business activities.
- VV. Third Party Network** shall mean all the computer hardware, software, and networking equipment owned, leased, or operated by an entity or individual other than an **Insured**, and, who is operating under contract with the **Company** or other entity to provide business process outsourcing services (including but not limited to call center services, database administration, and fulfillment services) and/or information technology services (including but not limited to hosting, co-location, software-as-a-service, infrastructure-as-a-service, and data storage) in support of the **Company's** business operations.
- WW. Unauthorized Access** shall mean access, whether physical or electronic, by a person or entity without permission.
- XX. Unauthorized Use** shall mean:
- (1) any manner of use by an unauthorized person or entity; and
  - (2) use in an unauthorized manner by an authorized person or entity.
- YY. Vendor Error Related Outage** shall mean an accidental, unintentional, or negligent, act, error or omission by an entity or individual other than an **Insured** who is operating under contract with the **Company** to provide programming services (including but not limited to configuration, customization, data entry, development, deployment, modification, or maintenance) in support of the **Covered Network**, which directly results in an actual and measurable interruption, failure, degradation or delay in the performance of the **Covered Network**. **Vendor Error Related Outage** shall not mean the architecture, configuration, or design of any element of the **Covered Network** that has not proven stable in a live environment for more than thirty (30) days.
- ZZ. Waiting Period Retention** shall mean the Waiting Period stated in Item 3. of the Declarations.
- AAA. Wrongful Act** shall mean any **Network Security Wrongful Act, Privacy Wrongful Act or Multimedia Wrongful Act**.

#### Section IV. Exclusions

The **Insurer** shall not pay **Loss** or make any other payment under any Insuring Agreement if such **Loss** or payment is:

- A.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:
- (1) any **Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding of which any **Insured** had received notice before the Prior and Pending Litigation Exclusion Date as set forth in Item 4. of the Declarations;
  - (2) a **Data Compromise** first discovered prior to the earlier of the:
    - (a) Inception Date as set forth in Item 2. of the Declarations; or
    - (b) inception date of the first insurance policy issued to the **Corporation** of which this Policy, in whole or in part, is a direct or indirect renewal or replacement;
  - (3) any **Wrongful Act(s)** of which any **Executive** had knowledge prior to the earlier of the:
    - (a) Inception Date as set forth in Item 2. of the Declarations; or

- (b) inception date of the first insurance policy issued to the **Corporation** of which this Policy, in whole or in part, is a direct or indirect renewal or replacement;
- (4) any **Wrongful Act** or **Data Compromise** which, before the Inception Date as set forth in Item 2. of the Declarations, was the subject of any notice given by or on behalf of any **Insured** under any other insurance policy;
- (5) any actual or alleged violation of the U.S. Telephone Consumer Protection Act, Canadian Anti-Spam Legislation, including the Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, S.C. 2010, c. 23 or any other similar state, provincial, local, foreign (including but not limited to CAN-SPAM) or federal statutes or regulations relating to unsolicited facsimile transmissions, email transmissions, text message transmissions and/or telephone communications to any person or entity;
- (6) any actual or alleged price fixing, restraint of trade, or monopolization;
- (7) any actual or alleged bodily injury or damage to or destruction of tangible property;
- (8) any **Wrongful Acts** committed by any **Subsidiary** or its **Insured Persons**, or any **Data Compromises** involving a **Subsidiary** discovered, subsequent to the date such entity ceased to be a **Subsidiary**;
- (9) any actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products, or services;
- (10) any actual or alleged loss of or drop in the value of any financial instruments or contracts representing money or other property;
- (11) any actual or alleged harassment or discrimination of any kind;
- (12) any **Content** deemed pornographic by the **Insurer**;
- (13) any actual or alleged:
- (a) dishonest, fraudulent or intentional act(s) of any **Insured**; or
  - (b) gain of any profit, remuneration or advantage to which such **Insured** is not legally entitled;
- provided, however:
- (c) solely with respect to Section IV.A.(13)(a), such act(s) by an **Employee** shall not be imputed to any other **Insureds**; and
  - (d) Sections IV.A.(13)(a) and (b) shall not apply to **Defence Costs** unless and until there is either an admission by an **Insured** as to such conduct or there is a final adjudication or adverse finding of fact against an **Insured** as to such conduct, at which time, the **Insurer** shall be entitled to reimbursement of any **Defence Costs**;
- (14) any actual or alleged breach of any express or implied contract, agreement, warranty or guarantee, including any express or implied contract or agreement to pay royalties or to account for same; provided, however, this exclusion shall not apply to:
- (a) any liability that an **Insured** would have incurred in the absence of such contract, agreement, warranty or guarantee;
  - (b) a **Network Security Wrongful Act** or **Privacy Wrongful Act** when the actual or alleged breach of contract or agreement is to secure or maintain **Protected Information**;

- (c) any **Assessment** the **Company** incurs as a result of a **PCI Compliance Violation**; or
  - (d) a **Multimedia Wrongful Act**, if the breach of a written, oral or implied-in-fact indemnification or hold harmless agreement between the **Insured** and any party disseminating **Content** by or on behalf of the **Insured** arises out of the dissemination of such **Content**;
- (15) any chargebacks of payment card transactions made or processed by the **Company**, provided, however, this exclusion shall not apply to **Assessments** in connection with **PCI Compliance Violations**;
- (16) any investigation or proceeding by a federal, provincial, territorial, state, foreign or local regulatory agency or other governmental body concerning a potential violation of any federal, provincial, territorial, state, foreign or local law or regulation; provided, however, this exclusion shall not apply to a **Regulatory Action**;
- (17) any fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail or act of God or any other physical event, however caused; provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act** or a **Network Security Wrongful Act**;
- (18) (a) the mechanical failure of a **Computer System** as a result of routine wear and tear; or  
(b) the interruption or disruption of any infrastructure service or utility supplied by a third party (including but not limited to power, water, gas, communications or connectivity);  
provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act** or a **Network Security Wrongful Act**;
- (19) any lawful or unlawful seizure, confiscation, nationalization or other expropriation undertaken by a governmental authority, whether foreign or domestic, provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act** or a **Network Security Wrongful Act**;
- (20) any actual or alleged misappropriation, infringement or theft, or inducement of any misappropriation, infringement or theft, of any patent or trade secret belonging to an individual or entity other than an **Insured**; provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act**; or
- (21) any awards, coupons, gambling, or prizes; provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act**.

**B.** based upon or arising out of any **Claim** brought by or on behalf of:

- (1) any other **Insured**, or any other natural person or entity for whom or which an **Insured** is legally liable; provided this exclusion shall not apply to an otherwise covered **Claim** by an **Insured Person** alleging a **Network Security Wrongful Act** or **Privacy Wrongful Act**;
- (2) any entity which is a parent, affiliate, joint venture, co-venturer, or partner of any **Insured**; or
- (3) any entity directly or indirectly controlled, operated or managed by an **Insured**;

**C.** any of the following:

- (1) any amounts incurred by any **Insured** prior to the date a **Claim** or **Data Compromise** is reported to the **Insurer** pursuant to Section VIII.;
- (2) any of the **Company's** overhead expenses (including but not limited to compensation or benefits); provided, however, this exclusion IV.C.(2) shall not apply to **Business Income Loss** otherwise covered pursuant to Insuring Agreement I.A.(3);

- (3) any expenses to improve, restore, replace or update the **Computer System** and/or **Data Asset(s)** to a level beyond that which existed prior to any **Data Compromise** or **Wrongful Act**, or to identify, correct or remediate any software errors, vulnerabilities, or deficiencies;
- (4) any expense incurred to research and develop **Data Assets**;
- (5) the economic or market value of a **Data Asset**, including trade secrets; or
- (6) any **Business Income Loss** arising in whole or in part from any **Vendor Error Related Outage** first discovered:
  - (a) prior to the **Policy Period**; or
  - (b) within ninety (90) days of the policy's effective date.

The exclusions set out in Section IV of this Policy operate to exclude all coverage even if an excluded peril is contributing concurrently, consecutively, or in any other sequence with an insured peril to the loss, and regardless of whether the excluded peril is a direct or indirect cause of loss or damage.

## Section V. Limits of Liability

- A. If a Shared Aggregate Limit of Liability is indicated in Item 3. of the Declarations, other than the Fees identified in Section V.D.(1) below:
  - (1) the Shared Aggregate Limit of Liability shall be the **Insurer's** maximum liability under Insuring Agreements A., B. and C. combined, regardless of the number of **Claims**, claimants, **Data Compromises**, **Wrongful Acts** or **Insureds**; and
  - (2) the **Insurer's** obligations under all Insuring Agreements of this Policy shall be deemed completely fulfilled and extinguished if the Shared Aggregate Limit of Liability is exhausted by payment of **Loss**(which includes **Defence Costs**) or other payments regardless of the time of payment or the number of **Claims** or **Data Compromises**.
- B. If a Shared Aggregate Limit of Liability is not indicated in Item 3. of the Declarations, other than the costs identified in Section V.D. and V.E. below:
  - (1) separate Limits of Liability are applicable to Insuring Agreements A. and C. collectively and Insuring Agreement B;
  - (2) the amount set forth in Item 3.A. of the Declarations for Insuring Agreements A. and C. is the **Insurer's** maximum Limit of Liability for all payments under Insuring Agreements A. and C. collectively;
  - (3) the amount set forth in Item 3.B. of the Declarations for Insuring Agreement B. is the **Insurer's** maximum Limit of Liability for all **Loss** (which includes **Defence Costs**) from all **Claims** and **Related Claims** covered under Insuring Agreement B; and
  - (4) the **Insurer's** obligations under:
    - (a) Insuring Agreements A. and C. shall be deemed completely fulfilled and extinguished if the Separate Limit of Liability stated in Item 3.A. of the Declarations is exhausted by payments pursuant to either Insuring Agreements A. or C., regardless of the time of payment or the number of **Data Compromises**; and
    - (b) Insuring Agreement B. shall be deemed completely fulfilled and extinguished if the Separate Limit of Liability stated in Item 3.B. of the Declarations is exhausted by payment of **Loss** (which includes **Defence Costs**) pursuant to Insuring Agreement B., regardless of the time of payment or the number of **Claims**.
- C. **Defence Costs** shall be part of, and not in addition to, the applicable Limit of Liability, and **Defence Costs** shall serve to reduce the applicable Limit of Liability. Once the applicable Limit of Liability has been exhausted by the payment of **Loss** (which includes **Defence Costs**) and/or other payments, the **Insurer's** duty to defend any **Claim** or **Related Claims** subject to such Limit of Liability shall cease.

- D. Costs charged by an **Incident Response Expert** appointed pursuant to Section VII.A. below shall be in addition to, and not part of the applicable Limit of Liability, but fees charged by an **Incident Response Expert** appointed pursuant to Section VII.B. below shall be part of, and not in addition to, the applicable Limit of Liability and shall serve to reduce the applicable Limit of Liability. Regardless of whether an **Incident Response Expert** is appointed pursuant to Section VII.A. or Section VII.B. below, once the applicable Limit of Liability has been exhausted, the **Insurer's** obligations hereunder shall cease.
- E. In the event the Policy provides for Separate Limits of Liability pursuant to Section V.B. above, the cost of notification as provided for pursuant to Section I.A.(1)(c)(i) shall be in addition to, and not part of the Limit of Liability applicable to Insuring Agreements A. and C.

#### Section VI. Retentions

- A. The Retentions for all Insuring Agreements are set forth in Item 3. of the Declarations. Only one Retention shall be applicable to any **Claim** (or **Related Claims**) or any **Data Compromise** (or **Related Events**). The **Insurer** shall only be obligated to pay **Loss** (which includes **Defence Costs**) or any other costs or amounts covered under this Policy in excess of the applicable Retention, which shall be borne by the **Insured** and cannot be insured or transferred to another party.
- B. If more than one Insuring Agreement applies to any **Claim** (or **Related Claims**) or any **Data Compromise** (or **Related Events**), the highest Retention shall apply. However, in the event the **Insurer** consents to **Business Impersonation** related payments pursuant to Section I.C., in the absence of a **Claim**, the lowest Retention shall apply.
- C. Notwithstanding Sections A. and B. above, the **Waiting Period Retention** shall apply to a **Network Disruption**.
- D. Notwithstanding Sections A. and B. above, the Retention, other than any **Waiting Period Retention**, shall not apply:
- (1) to fees charged by an **Incident Response Expert** appointed pursuant to Section VII.A. below.
  - (2) in the event of the **Financial Insolvency**; or
  - (3) to costs of notification provided for pursuant to Section V.E. of this Policy.

#### Section VII. Data Compromise Response and Defence and Settlement

- A. With respect to a **Data Compromise**, unless the **Insured** makes an election pursuant to VII.B. below the **Insurer** shall have the right to select the **Incident Response Expert** and any other experts (including but not limited to forensic examiners) or providers (including mail houses and call centers) to conduct the **Data Compromise** investigation and response.
- B. With respect to a **Data Compromise**, the **Insured** shall have the right to select the **Incident Response Expert** and other experts (including but not limited to forensic examiners) or providers (including mail houses and call centers) to conduct the **Data Compromise** investigation and response, provided:
- (1) the **Insureds** satisfy their reporting obligations pursuant to VIII.A. below;
  - (2) the **Insured** shall not incur any fees connection with any **Data Compromise** without the express prior written consent of the **Insurer**, which shall not be unreasonably withheld;
  - (3) the **Insured** shall only select vendors with the express prior written consent of the **Insurer**, which shall not be unreasonably withheld;
  - (4) the **Insured** provides the **Insurer** with a written incident response plan that was created and tested prior to the discovery of the **Data Compromise**; and
  - (5) the **Insurer** shall at all times have the right, but not the duty, to associate with the **Insureds** in the investigation, defence, response, or settlement of any **Data Compromise** to which coverage under this Policy may apply.



- C. In the event the **Insured** selects the **Incident Response Expert** or other providers or experts pursuant to Section VII.B. above, the **Insurer** shall advance payment of such **Incident Response Expert's**, provider's or expert's fees within ninety (90) days after receipt of written evidence such fees have been incurred. Any advancement shall be based on the following conditions:
- (1) the appropriate Retention has been satisfied; and
  - (2) the **Insureds** and the **Insurer** have agreed such related services are both reasonable and necessary elements of the management and response related to the **Data Compromise**.
- D. With respect to **Claims**:
- (1) the **Insurer** shall have the right and duty to defend any **Claim** covered by this Policy and to select counsel, including any experts, for such defence;
  - (2) in addition to furnishing notice of any **Claim** as provided in Section VIII.B. below, the **Insured** shall give to the **Insurer** any such assistance, cooperation and information as the **Insurer** may reasonably require, including copies of reports, investigations, pleadings and other papers in connection therewith;
  - (3) the **Insurer** has the right to settle any **Claim** with the consent of the **Insured**, such consent shall not be unreasonably withheld; and
  - (4) the **Insured** shall not incur **Defence Costs**, admit liability, or offer to settle or agree to any consent judgment in connection with any **Claim** without the express prior written consent of the **Insurer**, which shall not be unreasonably withheld. The **Insured** shall provide the **Insurer** with all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** incurred as the result of any admission of liability or any offer or agreement to settle prior to the **Insurer's** consent shall not be covered.

## Section VIII. Notice to the Insurer

### A. Notice of Data Compromise

- (1) As a condition precedent to coverage, the **Insured** shall:
  - (a) notify the **Insurer** at the Hotline Number set forth in Item 8.(a) of the Declarations of any **Data Compromise** as soon as practicable but in no event more than five (5) business days after such **Data Compromise** is first discovered;
  - (b) not take any measures with respect to such **Data Compromise**, except for measures directed or authorized by the **Incident Response Expert** or that are minimally and reasonably necessary to stop such **Data Compromise** or avoid further loss or harm from such **Data Compromise**;
  - (c) give the **Insurer**, upon request, a detailed proof of the damage caused by any **Data Compromise**. With respect to a **Network Disruption, Reputational Harm, and Cyber Crime**, the **Insured** must furnish the **Insurer** with written proof of the **Company's** claimed **Business Income Loss, Reputational Damage Loss, or Fraud Loss** duly sworn to, with full particulars, within six (6) months after such **Data Compromise** is first discovered;
  - (d) submit, upon request, to examination under oath at the request of the **Insurer** and give the **Insurer** a signed statement of the **Insured's** answers; and
  - (e) cooperate with the **Insurer** in the investigation and resolution of any matter submitted under the Policy and provide the **Insurer** with access to all relevant sources of information, including the **Company's** financial records, tax returns, accounting procedures, bills, invoices, vouchers, deeds, liens and contracts.

- (2) A **Data Compromise** will be deemed first discovered under this Policy on the earlier of the date an **Executive**:
- (a) first becomes aware of facts that would cause a reasonable person to assume a **Data Compromise** has occurred or might have occurred, even though the exact details of the **Data Compromise** may not then be known; or
  - (b) first receives a **Claim** involving facts or a specific **Wrongful Act** that, if true, would indicate a **Data Compromise**.

**B. Notice of Claim**

As a condition precedent to coverage under the Policy, the **Insured** must give written notice to the **Insurer** of any **Claim** as soon as practicable after such **Claim** is first received by an **Executive**, but in no event later than sixty (60) days after the end of the **Policy Period** or any **Extended Reporting Period**.

**C. Notice of Circumstances**

If, during the **Policy Period** or **Extended Reporting Period**, any **Insured** first becomes aware of a specific **Wrongful Act** or **Data Compromise** and gives written notice to the **Insurer** of:

- (1) the specific **Wrongful Act** or **Data Compromise**;
- (2) the parties involved;
- (3) the injury or damage that has or may result therefrom; and
- (4) the circumstances by which the **Insured** first became aware thereof;

then any **Claim** arising out of such **Wrongful Act** or **Data Compromise** that is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured**.

The **Insured** shall provide such written notice as required under Section VIII. B. and VIII.C. to the **Insurer** either to the mailing or email address set forth in Item 8.(b) of the Declarations.

**Section IX. Cancellation and Non-Renewal**

**A. Cancellation**

- (1) This Policy may be canceled by the **Corporation** at any time by written notice to the **Insurer**. Upon cancellation, the **Insurer** shall retain the customary short-rate portion of the premium, unless otherwise provided by endorsement and as permitted by law; and
- (2) This Policy may be canceled by the **Insurer** only if the **Corporation** does not pay the premium when due. The **Insurer** shall provide written notice to the **Corporation** at the address shown in the Declarations stating when, not less than twenty (20) days thereafter, such cancellation shall be effective;

The mailing of such written notice shall be sufficient notice, and the effective date of cancellation shall be the date the **Insurer** or **Insured** received such notice or any later date specified in the notice, and such effective date shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.

**B. Non-Renewal**

If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide written notice thereof to the **Corporation** at the address shown in the Declarations no less than sixty (60) days in advance.

## Section X. General Conditions

### A. Application, Representations and Severability

The **Insured** represents that the particulars and statements contained within the **Application** are true, complete, accurate, and agrees that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute part of this Policy, are the basis of this Policy. In the event of any material misrepresentations, untruth, or other omission in connection with any of the statements or facts in the **Application**, the knowledge of one **Insured** will not be imputed to another **Insured**; provided, however, this Policy will be void with respect to:

- (1) any **Insured Person** who knew of such misrepresentation, untruth, or omission; and
- (2) the **Company**, but only if an **Executive**, trustee, or member of the **Company's** Board of Directors knew of such misrepresentation, untruth or omission.

### B. Bankruptcy

The **Financial Insolvency** of an **Insured** does not relieve the **Insurer** of its obligations under this Policy.

### C. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insured's** rights of recovery including but not limited to:

- (1) the **Insured's** right to challenge or seek recovery for any **Assessment** resulting from a **PCI Compliance Violation**;
- (2) **Business Income Loss** resulting from **Vendor Error Related Outage**;
- (3) **Fraud Loss** reimbursable by a financial institution; and
- (4) payments under other valid and collectable insurance policies.

The **Insured** shall execute all documents required and shall do everything necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured**.

### D. Other Insurance

If any covered **Claim** or **Data Compromise** is insured by any other valid and collectable policy with a sublimit applicable to such **Claim** or **Data Compromise** that is lower than the available limit of liability under this Policy, then this Policy shall apply as the primary policy.

If any covered **Claim** or **Data Compromise** is insured by any other valid and collectable policy with an available limit of liability that greater than or equal to the available limit of liability under this Policy, then this Policy shall apply only in excess of the amount of any deductible, retention and limit of insurance under such other policy whether such other policy is stated to be primary, contributory, excess, contingent or otherwise, unless such other policy is written specifically excess of this Policy.

When this Policy is excess, the **Insurer** shall have no duty under this Policy to defend the **Insured** against any **Claim** if any other insurer has a duty to defend the **Insured** against that **Claim**. If no other insurer defends, the **Insurer** will undertake to do so, but the **Insurer** will be entitled to the **Insured's** rights against those other insurers.

When this Policy is primary, the **Insurer** shall be subrogated, pursuant to Section X.C. above, to all of the **Insured's** rights under any other policy.

**E. Coverage Extensions**

(1) Spousal Provision

The coverage provided by this Policy shall also apply to the spouse, domestic partner or dependent of an **Insured Person**, but only for **Claims** arising out of that **Insured Person's** own **Wrongful Acts**.

(2) Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, and legal representatives of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of that **Insured Person's** own **Wrongful Acts**.

**F. Territory**

The coverage provided under this Policy shall apply worldwide.

**G. Assignment**

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

**H. Conformity to Law**

Any terms of this Policy in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

**I. Representative of the Insured**

By acceptance of this Policy, the **Corporation** shall be designated to act on behalf of all **Insureds** for all purposes including the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums and the receipt of any return premiums that may be due under this Policy.

**J. Representative of the Insurer**

**Great American Insurance Group, Executive Liability Division, Post Office Box 66943, Chicago, Illinois, 60666** shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence.

**K. Dispute Resolution**

It is agreed that any disputes or disagreements that arise in connection with this Policy and cannot be resolved through informal negotiation shall be resolved according to the dispute resolution process set forth herein. The party asserting a dispute or disagreement shall notify the other party in writing of such dispute or disagreement. The other party shall respond to such notice in writing within ten (10) days after receiving it, and the parties shall hold at least one telephone conference or meeting within twenty (20) days after the date of the original written notice asserting the dispute or disagreement. If the parties have not resolved the dispute or disagreement to their mutual satisfaction within thirty (30) days after the original written notice asserting such dispute or disagreement, the parties shall submit the dispute or disagreement to mediation pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc., with the mediator's expenses and fees to be shared equally by the parties. Unless otherwise agreed between the parties, the place of mediation shall be the capital city of the jurisdiction of the principal address of the Corporation as shown in the Declarations. If the dispute or disagreement has not been resolved to the mutual satisfaction of the parties upon conclusion of the mediation process, then either party may file suit in any court having jurisdiction over the parties and the subject matter of the dispute or disagreement.

**L. Legal Action Against the Insurer**

Except as provided in Section X.K., no action shall lie against the **Insurer**. No person or entity shall have any right under this Policy to join the **Insurer** as a party to any action against the **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives.

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the Insurance Act.

## M. Entire Agreement

This Policy (including the Declarations, **Application** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written Endorsement.

## N. Material Change

### (1) Acquisition of **Corporation**:

If, during the **Policy Period**, either of the following occur:

- (a) the acquisition of the **Corporation** or a majority of its assets or voting rights by another entity or the merger or consolidation of the **Corporation** with another entity where the **Corporation** is not the surviving entity; or
- (b) the appointment of a receiver, trustee, liquidator, rehabilitator, conservator, monitor or similar function, for or with respect to the **Corporation**;

then the premium for the Policy is deemed to be fully earned, and the Policy will continue in full force and effect but only with respect to **Claims** for **Wrongful Acts** that first occurred before such event and **Data Compromises** that were discovered before such event.

### (2) **Company's** Acquisition of Another Entity

If during the **Policy Period**, the **Company** acquires a majority of the voting rights of another entity, then, without premium adjustment and/or coverage revisions, such entity will be a **Subsidiary** under this Policy but only with respect to **Wrongful Acts** and **Data Compromises** of such **Subsidiary** and its **Insured Persons** that first occur after the effective date of the acquisition or creation, provided that:

- (a) the acquisition or creation is disclosed to the **insurer** within thirty (30) days of such acquisition or creation;
- (b) the entity operates in the same business as the **Company** or is a usual and customary business for the **Company's** industry ("the same vertical market"); and
- (c) the entities annual revenues at the time of the acquisition are less than or equal to twenty-five percent (25%) of the **Company's** revenues at the beginning of the **Policy Period**.

In the event the acquired entity does not operate in the same vertical market as the **Company** or the annual revenues of the acquired entity at the time of the acquisition are greater than twenty-five percent (25%) of the **Company's** annual revenues at the beginning of the **Policy Period**, the **Insurer** reserves the right to require premium adjustment and/or coverage revision prior to endorsing the policy to include such entity as a **Subsidiary**. Any coverage extended for such entity will only be with respect to **Wrongful Acts** and **Data Compromises** of such new **Subsidiary** and its **Insured Persons** that first occur after the effective date of the acquisition.

- ### (3) Neither the sale of a **Subsidiary** nor the establishment of a new entity in which the **Company** owns more than fifty percent (50%) of the voting stock shall be deemed a **Material Change** under the Policy provided any aforementioned newly created entity operates in the same vertical market as the **Company**. In the event the newly created entity does not operate in the same vertical market as the **Company**, the **Insurer** reserves the right to require premium adjustment and/or coverage revision prior to endorsing the Policy to include such entity as a **Subsidiary**.

In witness whereof the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer**.

**GREAT AMERICAN INSURANCE COMPANY**

*Leo J. Aruba*

*President*

*Aue C. Erhart*

*Secretary*

SPECIMEN