

Previous No. «f1» Authority Ref. No. B1216PRW121818 Certificate No. «f2»

e-MD™/MEDEFENSE™ PLUS POLICY

THIS CERTIFICATE IS WRITTEN ON A CLAIMS-MADE AND REPORTED BASIS. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD, IF APPLICABLE, AND REPORTED TO UNDERWRITERS NO LATER THAN SIXTY (60) DAYS AFTER THE CLAIM IS FIRST MADE. ALL CLAIMS ARE SUBJECT TO THE APPLICABLE LIMITS OF LIABILITY AND THE APPLICABLE RETENTION(S). PLEASE NOTE THAT THE LIMITS OF LIABILITY FOR NAMED COVERAGES I, II, III AND VIII INCLUDE CLAIM EXPENSES. PLEASE REVIEW THE COVERAGE AFFORDED UNDER THIS INSURANCE POLICY CAREFULLY AND DISCUSS THE COVERAGE HEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

Item 1. **Named Insured:** «f3» «f4»
Principal Address: «f5»
 «f-6»
 «f7», «f8» «f9»

Item 2. **Policy Period:** «f12» to «f13»
 both days at 12:01 a.m. standard time at the Principal Address stated in Item 1.

Item 3. **Named Coverage(s) Purchased (☒):**
 You have purchased some or all of the following Named Coverages. Only those Named Coverage(s) that specify a Limit of Liability in Item 4. of this Declarations have been purchased. If a Named Coverage has not been purchased that portion of this Policy is not applicable.

- I. Multimedia Liability
- II. Security and Privacy Liability
- III. Privacy Regulatory Defense and Penalties
- IV. Privacy Breach Response Costs, Customer Notification Expenses, and Customer Support and Credit Monitoring Expenses
- V. Network Asset Protection
- VI. Cyber Extortion
- VII. Cyber Terrorism
- VIII. MEDEFENSE™ Plus

Item 4. **Limits of Liability**

A. Limits of Liability for Named Coverage(s) Purchased:

	Each Claim	Aggregate
I. Multimedia Liability	\$ «f39»	\$ «f40»
II. Security and Privacy Liability	\$ «f41»	\$ «f42»
III. Privacy Regulatory Defense and Penalties	\$ «f43»	\$ «f44»
IV. Privacy Breach Response Costs, Customer Notification Expenses, and Customer Support and Credit Monitoring Expenses	\$ «f45»	\$ «f46»
V. Network Asset Protection	\$ «f47»	\$ «f48»
VI. Cyber Extortion	\$ «f49»	\$ «f50»
VII. Cyber Terrorism	\$ «f51»	\$ «f52»
VIII. MEDEFENSE™ Plus	\$ «f53»	\$ «f54»

B. Maximum Policy Aggregate Limit of Liability: \$ «f55»

Item 5. **Retention, Co-insurance and Waiting Period:**

- I. Multimedia Liability \$ «f56» each **Claim**
- II. Security and Privacy Liability \$ «f57» each **Claim**
- III. Privacy Regulatory Defense and Penalties \$ «f58» each **Claim**
- IV. Privacy Breach Response Costs, Customer Notification Expenses, and Customer Support and Credit Monitoring Expenses \$ «f59» each **Claim**
- V. Network Asset Protection
Loss of Digital Assets \$ «f60» each **Claim**
Special Expenses ___% co-insurance each and every loss
Non-Physical Business Interruption and Extra Expense 8 hour Waiting Period
- VI. Cyber Extortion \$ «f61» each **Claim**
- VII. Cyber Terrorism \$ «f62» each **Claim** and 8 hour Waiting Period
- VIII. MEDEFENSE™ Plus \$«f63» each **Claim** and 25% co-insurance, waived for use of panel counsel

Item 6. **Retroactive Date:**

- I. Multimedia Liability «f65»
- II. Security and Privacy Liability «f66»
- III. Privacy Regulatory Defense and Penalties «f67»
- IV. Privacy Breach Response Costs, Customer Notification Expenses, and Customer Support and Credit Monitoring Expenses «f68»
- V. Network Asset Protection «f69»
- VI. Cyber Extortion «f70»
- VII. Cyber Terrorism «f71»
- VIII. MEDEFENSE™ Plus «f72»

Item 7. **Premium:** «f80»

Item 8. **Endorsements:** Nuclear Incident Exclusion Clause (E1818NIE-0111)

Item 9. **Notification under the Certificate shall be given to:**

NAS Insurance Services, Inc.
16501 Ventura Blvd., Suite 200
Encino, CA 91436
(818) 382-2030

Item 10. Policy form **P1818CE-1111** and Application form and Warranty dated «f11» are hereby attached and made a part of this Policy. **Wherever in any of the forms, clauses or conditions of this insurance the word "Policy" appears, this shall be deemed to be "Certificate".**

Insurance is effected with certain UNDERWRITERS AT LLOYD'S, LONDON (100%)

Item 11. **Service of Suit:**

Mendes & Mount, LLP
750 Seventh Avenue
New York, NY 10019-6829

Dated «f10»

NAS INSURANCE SERVICES, INC.

By: _____ **SPECIMEN**
Correspondent

SPECIMEN

e-MD™ /MEDEFENSE™ Plus Policy

SPECIMEN

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Important Notice

This Policy contains one or more coverages. This is a **claims** made and reported policy. Except as otherwise provided herein, this Policy will only cover **claims** first made during the **policy period** or any extended reporting period, if applicable, and reported to Underwriters in accordance with Section 11 of this Policy. All **claims** are subject to the applicable Limits of Liability and the applicable **retention(s)** as set forth in the Declarations. Note that the Limits of Liability for Named Coverages I, II, III and VIII include **claim expenses**.

Claims expenses, shadow audit expenses, regulatory fines and penalties, damages, privacy breach response costs, customer notification expenses and customer support and credit monitoring expenses shall reduce the applicable Limits of Liability, subject to the applicable **retention(s)**.

Throughout this Policy, the words "we", "us", and "our" refer to the Underwriters providing this insurance. The words "you" and "your" refer to the **Named Insured**. The word "Insured" means any person or organization qualifying as such in Section 6 of this Policy (Who is Insured). Terms that appear in bold face type are defined in Section 7 of this Policy (Definitions). Please read this Policy carefully.

Please review the coverage afforded under this Policy carefully and discuss said coverage hereunder with your insurance agent or broker.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished by you to the Underwriters, including all statements made in the **application**, its attachments and the material incorporated therein, which is made part of and deemed to be a part of this Policy, the Underwriters agree as follows:

1. Named Coverages

The **Named Insured** has purchased some or all of the following Named Coverages. Please refer to Item 3 of the Declarations, which shows the Named Coverage(s) the **Named Insured** has purchased. If a Named Coverage(s) has not been purchased, that portion of this Policy is not applicable.

Named Coverage I: Multimedia Liability

The Underwriters shall pay on behalf of an **Insured** all sums, in excess of the **retention** and within the applicable Limits of Liability, that such **Insured** becomes legally obligated to pay as **damages**, including liability **assumed under contract**, and related **claim expenses**, resulting from a **claim** first made against the **Insured** during the **policy period** or any **extended reporting period**, if applicable, and reported to Underwriters in writing in accordance with Section 11 of this Policy, for **multimedia perils** committed or allegedly committed on or after the applicable **retroactive date**.

Named Coverage II: Security and Privacy Liability

The Underwriters shall pay on behalf of an **Insured** all sums, in excess of the **retention** and within the applicable Limits of Liability, that such **Insured** becomes legally obligated to pay as **damages**, and related **claim expenses**, resulting from a **claim** first made against the **Insured** during the **policy period** or any **extended reporting period**, if applicable, and reported to Underwriters in writing in accordance with Section 11 of this Policy, for a **security and privacy wrongful act** committed or allegedly committed by an **Insured** and which results from a **security breach**, or a **privacy breach** or breach of **privacy regulations** by the **Named Insured**, by any **Subsidiary**, or by others acting on behalf of the **Named Insured** or any **Subsidiary** and for whom the **Named Insured** or such **Subsidiary** is legally responsible, including **BPO Service Providers** and **Outsourced IT Service Providers**; provided that such **security breach**, **privacy breach** or breach of **privacy regulations** and the resulting **security and privacy wrongful act** occur or allegedly occur on or after the applicable **retroactive date**.

Named Coverage III: Privacy Regulatory Defense and Penalties

The Underwriters shall pay on behalf of an **Insured** all sums, in excess of the **retention** and within the applicable Limits of Liability, that such **Insured** becomes legally obligated to pay as a **regulatory compensatory award** or **regulatory fines and penalties** (to the extent insurable by law), and related **claims expenses**, resulting from a **privacy regulatory proceeding** first instituted against the **Insured** during the **policy period** or any **extended reporting period**, if applicable, and reported to Underwriters in writing in accordance with Section 11 of this Policy, for a **security breach**, or a **privacy breach** or breach of **privacy regulations** by the **Named Insured**, by any **Subsidiary**, or by others acting on behalf of the **Named Insured** or any **Subsidiary** and for whom the **Named Insured** or such **Subsidiary** is legally responsible, including **BPO Service Providers** and **Outsourced IT Service Providers**; provided that such **privacy breach**, **security breach**, or breach of **privacy regulations** occurs or allegedly occurs on or after the applicable **retroactive date**.

Named Coverage IV: Privacy Breach Responses Costs, Customer Notification Expenses, and Customer Support and Credit Monitoring Expenses

The Underwriters shall indemnify the **Named Insured** or any **Subsidiary** for all sums, in excess of the **retention** and within the applicable Limits of Liability, that such **Named Insured** or **Subsidiary** incurs as **privacy breach response costs**, **customer notification expenses**, and **customer support and credit monitoring expenses** resulting from a **security breach**, or a **privacy breach** or breach of **privacy regulations** by the **Named Insured**, by any **Subsidiary**, or by others acting on behalf of the **Named Insured** or any **Subsidiary** and for whom the **Named Insured** or such **Subsidiary** is legally responsible, including **BPO Service Providers** and **Outsourced IT Service Providers**; provided that such **security breach**, **privacy breach** or breach of **privacy regulations** occurs or allegedly occurs on or after the applicable **retroactive date** and is reported to Underwriters in writing in accordance with Section 11 of this Policy.

Named Coverage V: Network Asset Protection

A. *Loss of Digital Assets*

The Underwriters will reimburse the **Named Insured** or any **Subsidiary** for all sums, in excess of the **retention** and within the applicable Limits of Liability, that such **Named Insured** or **Subsidiary** incurs as **digital assets loss** and **special expenses** as a direct result of damage, alteration, corruption, distortion, theft, misuse, or destruction of the

Named Insured's or Subsidiary's digital assets, directly caused by a **covered cause of loss**. Such **covered cause of loss** must first occur, and be discovered by the Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager, or General Counsel of the **Named Insured or Subsidiary** during the **policy period** and must be reported to the Underwriters in writing no later than sixty days (60) after the date the **covered cause of loss** is discovered. **Digital assets loss** and **special expenses** will be reimbursed for a period of up to twelve (12) months following the discovery of the damage, alteration, corruption, distortion, theft, misuse, or destruction of the **Named Insured's or Subsidiary's digital assets**, unless specified otherwise by endorsement to this Policy. Indemnification will only be paid for **digital assets loss** and **special expenses** where there is clear evidence provided by the **Insured** that such **digital assets loss** and **special expenses** resulted from a **covered cause of loss** that occurred or allegedly occurred on or after the applicable **retroactive date**.

Digital assets loss and **special expenses** shall not mean, and the Underwriters shall have no duty to reimburse the **Named Insured** or any **Subsidiary** for:

- a. Restoring, updating, or replacing **digital assets** to a level beyond that which existed prior to the **covered cause of loss**;
- b. Physical damage to the **computer hardware** or data center, other than that covered under **Covered Cause of Loss 1. a**;
- c. Contractual penalties or consequential damages;
- d. Any liability to third parties for whatever reason, including legal costs and expenses of any type;
- e. Fines or penalties imposed by law;
- f. Economic or market value of **digital assets**, unless specifically endorsed as an agreed value to this Policy. Based upon an evaluation of the **Named Insured's** information provided with the **application**, the Underwriters may agree by endorsement to reimburse the **Named Insured** or any **Subsidiary** based upon an agreed value amount for defined categories or specific **digital assets**;
- g. Costs or expenses incurred to identify, patch, or remediate software program errors or **computer system** vulnerabilities;
- h. Costs to upgrade, redesign, reconfigure, or maintain the **Named Insured's computer system** to a level of functionality beyond that which existed prior to the **covered cause of loss**; or
- i. Any losses paid under Named Coverage V. B

Loss Determination

Digital assets loss will be determined as follows:

- a. If the impacted **digital asset** was purchased from a third party, the Underwriters will pay only the lesser of the original purchase price of the **digital asset** or the reasonable and necessary **digital assets loss**.
- b. If it is determined that the **digital assets** cannot be replaced, restored or recreated, then Underwriters will only reimburse the actual and necessary **digital assets loss** incurred up to such determination.

B. Non-Physical Business Interruption and Extra Expense

The Underwriters will reimburse the **Named Insured** or any **Subsidiary** for all sums, in excess of the **retention** and within the applicable Limits of Liability, that such **Named Insured or Subsidiary** incurs as **income loss, interruption expenses, and special expenses** during the **period of restoration** directly as a result of the total or partial interruption, degradation in service, or failure of the **Named Insured's computer system** that exceeds the **time retention**, and which is caused directly by a **covered cause of loss**.

Such **covered cause of loss** must first occur and be discovered by the Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager, or General Counsel of the **Named Insured or Subsidiary** during the **policy period**, and reported to Underwriters no later than sixty days (60) after the date the **covered cause of loss** is discovered.

Income loss, interruption expenses, and special expenses shall not mean, and Underwriters shall have no duty to reimburse the **Named Insured** or any **Subsidiary** for:

- a. Any loss arising out of a physical cause or natural peril, including but not limited to fire, wind, water, flood, subsidence, or earthquake, that results in physical damage to **computer hardware** and/or the **data** center;
- b. Any loss expense arising out of updating or replacing **digital assets** to a level beyond that which existed prior to the **covered cause of loss**;
- c. Contractual penalties or consequential damages;
- d. Any liability to third parties for whatever reason, including legal costs and expenses of any type;
- e. Fines or penalties imposed by law;
- f. Costs or expenses incurred to identify, patch, or remediate software program errors or **computer system** vulnerabilities;
- g. Loss of goodwill and reputational harm;
- h. Costs to upgrade, redesign, reconfigure, or maintain the **Named Insured's computer system** to a level of functionality beyond that which existed prior to the **covered cause of loss**;
- i. Any losses paid under Named Coverage V.A.

Loss Determination

Income loss will be determined by Method 1 below, unless Method 2 has been agreed by the Underwriters and stated by endorsement to this Policy:

Method 1 - Reduction of the **Named Insured's** or **Subsidiary's** income during the **period of restoration**, which is:

- a. The **Named Insured's** or **Subsidiary's** net income (net profit or loss before income taxes) that would have been reasonably projected but which has been lost directly as a result of total or partial interruption, degradation in service, or failure of the **Named Insured's computer system** caused directly by a **covered cause of loss**. The revenue projection will take into account the prior experience of the **Named Insured's** or **Subsidiary's** business during the previous twelve months immediately before the date of the **covered cause of loss** and the probable experience had no **covered cause of loss** occurred. Revenues include the amount of money paid or payable to the **Named Insured** or any **Subsidiary** for goods, products, or services sold, delivered, or rendered in the normal course of the **Named Insured's** or **Subsidiary's** business. Revenue projection will be reduced by the extent to which the **Named Insured** or **Subsidiary** uses substitute methods, facilities, or personnel to maintain its revenue stream. The Underwriters will take into consideration the **Named Insured's** or **Subsidiary's** documentation of the trends in the business and for variations in or other circumstances affecting the business before or after the **covered cause of loss** which would have affected the **Named Insured's** or **Subsidiary's** business had no **covered cause of loss** occurred;

And:

- b. Any fixed operating expenses (including ordinary payroll) incurred, but only to the extent that such operating expenses must continue during the **period of restoration**,

Method 2 – Agreed Amount

Based upon evaluation of the **Named Insured's** or **Subsidiary's** information provided with the **application**, the Underwriters may accept and agree to reimburse the **Named Insured** or any **Subsidiary** based upon an agreed hourly income loss amount stated by endorsement to this Policy, which will be used as the basis of payment under Coverage V. B. Further, the Underwriters may agree by endorsement to apply a peak season factor to the agreed hourly income loss limit for specific months as necessary to reflect seasonality of the **Named Insured's** or **Subsidiary's** revenues.

Named Coverage VI: Cyber Extortion

The Underwriters will indemnify the **Named Insured** or any **Subsidiary** for the **cyber extortion expenses** and **cyber extortion monies**, in excess of the applicable **retention** and within the Limits of Liability, paid by such **Named Insured** or **Subsidiary** as a direct result of a **cyber extortion threat** or series of **cyber extortion threats**, including a demand for **cyber extortion monies**, that is first made during the **policy period** against the **Named Insured** or any **Subsidiary** and is reported to Underwriters in writing in accordance with Section 11 of this Policy.

Cyber extortion expenses and **cyber extortion monies** shall not be paid without prior consultation with Underwriters and written authorization. The **Insureds** must make every reasonable effort to notify the local law enforcement authorities and the Federal Bureau of Investigation or similar equivalent foreign agency before surrendering any **cyber extortion monies** in response to a **cyber extortion threat**.

Named Coverage VII: Cyber Terrorism Coverage

The Underwriters will reimburse the **Named Insured** or any **Subsidiary** for all sums, in excess of the **retention** and within the applicable Limits of Liability, that such **Named Insured** or **Subsidiary** incurs as **income loss**, **interruption expenses** and **special expenses** during the **period of restoration** directly as a result of total or partial interruption, degradation in service, or failure of the **Named Insured's computer system** that exceeds the **time retention** and which is directly caused by an **act of terrorism** that occurs during the **policy period** and is reported to Underwriters in writing in accordance with Section 11 of this Policy.

Named Coverage VIII: MEDEFENSE™ Plus

The Underwriters will reimburse the **Named Insured** or any **Subsidiary** for all sums, in excess of the **retention** and within the applicable Limits of Liability, that such **Named Insured** or **Subsidiary** becomes legally obligated to pay as **regulatory fines and penalties** (to the extent insurable by law), **claims expenses** and **shadow audit expenses** (where applicable) resulting from a **regulatory proceeding** first instituted against the **Named Insured** or **Subsidiary** during the **policy period** or any **extended reporting period** (if applicable) and reported to us in writing in accordance with Section 11 of this Policy; provided that the wrongful act, error or omission giving rise to the **regulatory proceeding** occurs or allegedly occurs on or after the applicable **retroactive date**. We have no duty to defend under Named Coverage VIII, but only to reimburse for covered **claim expenses**, **shadow audit expenses**, and/or **regulatory fines and penalties**.

Upon receiving notice from you of a **claim**, we will provide you with the name(s) of panel counsel. If you retain panel counsel to defend you in connection with a **claim** under Named Coverage VIII, we will, subject to the other provisions of this Policy, pay 100% of covered **claim expenses**, **shadow audit Expenses** and **regulatory fines and penalties** in excess of the applicable **retention**, up to the maximum Limits of Liability under Named Coverage VIII. If you retain non-panel counsel to defend you in connection with a **claim** under Named Coverage VIII, we will pay 75% of covered **claim expenses**, **shadow audit Expenses** and **regulatory fines and penalties** in excess of the applicable **retention**, and you must pay a co-insurance of 25%. Rates for non-panel counsel will be limited to a maximum per hour of \$250. All counsel, panel or non-panel, must comply with the Underwriters' defense counsel guidelines. However, you shall have complete freedom of choice with respect to the selection of the licensed attorney who provides legal services in connection with any **claim** covered under Named Coverage VIII.

2. Defense, Settlement and Investigation of Claims

- a. With respect to Named Coverages I, II, and III (if purchased), the Underwriters shall have the right and duty to defend any **claim** by a third party seeking **damages** against an **Insured** under the terms of this Policy, even if any of the allegations of the **claim** are groundless, false, or fraudulent, and subject to the applicable Limit of Liability, **retention**, exclusions, and other terms and conditions of this Policy. Underwriters have the right to appoint an attorney to defend any **claim** against the **Insureds**.
- b. The Limit of liability available to pay **damages** shall be reduced, and may be completely exhausted, by payment of **claims expenses** or any other amounts covered under the Policy. **Damages**, **claims expenses**, and any other amounts covered under the Policy shall be applied against the applicable **retention** (or co-insurance percentage payable by the **Insureds**).
- c. No **Insured** will incur any **damages**, **claims expenses** and other payments or settle any **claim**, assume any contractual obligation, admit liability, voluntarily make any payment or otherwise consent to any damages or judgments with respect to any **claims** without the Underwriters' prior written consent, which will not be

unreasonably withheld. The Underwriters will not be liable for any **damages, claims expenses**, other amounts, settlement or judgment to which they have not consented.

- d. The Underwriters shall have the right to make any investigation they deem necessary including, without limitation, any investigation with respect to the **application**, statements made in the **application**, and with respect to coverage.
- e. With respect to Named Coverages I, II and III (if purchased), if an **Insured** refuses to consent to any settlement or compromise recommended by the Underwriters or their representatives that is acceptable to the claimant and the **Insured** elects to contest the **claim**, or continue any legal proceedings in connection with such **claim**, then Underwriters' total liability for any **damages, claims expenses**, and other payments shall not exceed:
 - i. The amount for which the **claim** could have been settled, less the remaining **retention**, plus **claims expenses** incurred as of the date the **Insured** withheld consent to such settlement, plus
 - ii. Twenty-five percent (25%) of any **damages and claims expenses** or other amounts incurred after the date the **Insured** withheld consent to such settlement or compromise. The remaining seventy five percent (75%) of such **damages and claims expenses**, or other payments, are to be borne by the **Insured** at the **Insured's** own risk and uninsured under this Policy.
- f. It is further provided that the Underwriters shall not be obligated to pay any **damages, claims expenses**, or any other amounts covered under the Policy, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **damages, claims expenses**, or other amounts covered under this Policy and that upon such payment, the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

3. Limits of Liability

- a. The Limits of Liability set forth in Item 4(A) of the Declarations shall be Underwriters' total Limit of Liability for each **claim** first made against an **Insured** during the **policy period**, and in the aggregate under each Named Coverage purchased, including **claims expenses**, where applicable under this Policy.

Neither the inclusion of more than one **insured** under this Policy, nor the making of **claims** by more than one person or entity, shall increase the Limit of Liability for any one Named Coverage purchased.

- b. The Limits of Liability set forth in Item 4(B) of the Declarations shall be our Maximum Policy Aggregate Limit of Liability, including **claim expenses** where applicable, regardless of the number of Named Coverages that apply.
- c. Notwithstanding the aggregate Limit of Liability under each Named Coverage as set forth in Item 4(A) of the Declarations, all payments made under the Policy, regardless of the number of Named Coverages that apply, will reduce the Maximum Policy Aggregate Limit of Liability set forth in Item 4(B) of the Declarations. In no event will the Underwriters pay more than the Maximum Policy Aggregate Limit of Liability as set forth in Item 4(B) of the Declarations.
- d. All **claims** under any one Named Coverage arising out of the same, related, or continuing acts, facts or circumstances shall be considered a single **claim** and only one Limit of Liability, as set forth in Item 4(A) of the Declarations, shall apply to such **claim**, without regard to the number of **Insureds, claims**, or claimants. All such **claims** shall be deemed to have been first made on the date the earliest of such **claims** is made.
- e. In the event that a **claim** is notified by the **Insured**, consistent with the terms of this Policy, and such **claim** attaches to more than one Named Coverage, only one Limit of Liability as set forth in Item 4(A) of the Declarations shall apply. In such event, at most, only the highest of the applicable Limits of Liability shall apply to such **claim**. The Underwriters have the sole discretion to allocate **claims** paid, if any, against the appropriate applicable Limit of Liability. With regard to such **claim**, in no event shall the amount paid by the Underwriters under any Named Coverage be greater than the Limit of Liability set forth in Item 4(A) of the Declarations.
- f. The Limit of Liability for the **extended reporting period**, if applicable, shall be part of and not in addition to the Limit of Liability for the **policy period**, as set forth in Item 4(B) of the Declarations.

4. Retention

- a. The applicable **retention** amount for each Named Coverage, as set forth in Item 5 of the Declarations shall apply separately to each **claim**. The **retention** shall be satisfied by the **Insured's** monetary payments of **damages, claims expenses, shadow audit expenses, regulatory fines and penalties, privacy breach response costs, customer notification expenses and customer support and credit monitoring expenses** and any other amounts covered under this Policy. If a **claim** attaches to more than one Named Coverage, only the highest **retention** applies.
- b. The **Insured's** payment of the applicable **retention** is a condition precedent to payment by the Underwriters of any amounts covered under the Policy, and the Underwriters shall only be liable for the amount in excess of such **retention**, not to exceed the total applicable Limit of Liability as stated in Item 4 of the Declarations. The **Insured** shall make direct payments within the **retention** to the appropriate parties designated by the Underwriters.
- c. All **claims** arising out of the same, related, or continuing acts, facts, or circumstances, without regard to the number of **Insureds, claims**, or claimants shall be considered a single **claim** and only one **retention** shall apply to such **claim**. All such **claims** shall be deemed to have been first made on the date the earliest of such **claims** is made.
- d. With respect to Named Coverage V.B. and Named Coverage VII only, the **time retention** listed in Item 5 of the Declarations shall apply to covered amounts. The **time retention** applies to each **period of restoration**. Once the **time retention** is met, the **Insured** will be responsible to pay any co-insurance percentage or **retention** shown in Item 5 of the Declarations as applicable to Named Coverage V.B. or Named Coverage VII.

5. Territorial Limits

This insurance applies to **claims** made and wrongful acts (as detailed under the relevant Named Coverage) committed or allegedly committed anywhere in the world, except countries where the United States of America has declared or imposed sanctions or trade embargoes.

6. Who is Insured

- a. The **Named Insured**;
- b. If the **Named Insured** is a legal entity, any **subsidiary** of the **Named Insured**, but only with respect to wrongful acts, as detailed under the relevant Named Coverage, which occur while it is a **subsidiary** of the **Named Insured** and otherwise covered by this Policy;
- c. Any past, present, or future officer, director, trustee, or **employee** of any party described in 6 (a) or (b) above, but only while acting solely within the scope of their duties as such;
- d. In the event that any party described in 6 (a) or (b) above is a partnership, limited liability partnership, or limited liability company, then any general or managing partner, principal, stockholder, or owner thereof, but only while acting solely within the scope of their duties as such; and
- e. Any agent or independent contractor, including distributors, licensees, and sub-licensees, but only while acting on behalf of, at the direction of, and under the control of any party described in 6 (a) or (b) above.

7. Definitions

Act of Terrorism means an act, including but not limited to, the use of force or violence and/or the threat thereof, by any person or group(s) of persons, whether acting alone or on behalf of, or in connection with any organization(s) or government(s), which is committed for political, religious, ideological, or similar purposes including the intention to influence any government and/or put the public, or any section of the public, in fear.

Adverse media report means a report or communication of an actual or potential **security breach**, or a **privacy breach** or breach of **privacy regulations** by the **Named Insured** or by any **Subsidiary** or by others on the **Named Insured's** or **Subsidiary's** behalf for whom the **Named Insured** or **Subsidiary** is legally responsible, which has been

publicized through any media channel including, but not limited to, television, **print media**, radio or electronic networks, the **internet**, and/or electronic mail.

Application means all applications, including any attachments thereto, and all other information and materials submitted to the Underwriters by the **Named Insured** or on the **Named Insured's** behalf in connection with the underwriting and issuance of this Policy or for which this Policy is a renewal or replacement. All such applications, attachments, information, and materials are deemed attached to and incorporated into this Policy.

Assumed under contract means liability for **damages** resulting from a **multimedia peril** where such liability has been assumed by an **Insured** in the form of a written hold harmless or indemnity agreement that predates the first **multimedia peril**.

Billing Errors Proceeding means:

- i. a civil lawsuit filed by a **qui tam plaintiff**, or
- ii. a formal investigation undertaken or written demand made by a **government entity** or **commercial payer**

alleging the presentation of, causing or allowing to be presented, or being liable for the presentation of any erroneous billings by the **Named Insured** or any **Subsidiary** to a government health benefit payer or **commercial payer** from which the **Named Insured** or any **Subsidiary** seeks and/or has received payment or reimbursement for medical services or items provided or prescribed by the **Named Insured** or any **Subsidiary**. A **billing errors proceeding** does not include: 1) a routine audit conducted by a **government entity** or **commercial payer**, or 2) a **criminal proceeding**.

All actions taken by a **government entity** or **commercial payer** arising out of the same or a similar billing error shall be deemed to constitute a single **billing errors proceeding**, regardless of the number and identity of claimants, the number and identity of **Insureds** involved, or whether further action arising out of the same or a similar billing error is taken during the effective period of a subsequent policy issued by Underwriters. Such **billing errors proceeding** shall be deemed to have been first instituted at the earlier of the following times:

- i. When the **Named Insured** or any **Subsidiary** first receives notice of an action taken by a **government entity** or **commercial payer** because of an actual or alleged billing error by the **Named Insured** or any **Subsidiary**, or
- ii. When Underwriters first receive notice, in accordance with Section 11, paragraph c. of this Policy, of an action taken by a **government entity** or **commercial payer** because of an actual or alleged billing error by the **Named Insured** or any **Subsidiary**.

BPO Service Provider means any third party independent contractor that provides business process outsourcing services for the benefit of the **Named Insured** or any **Subsidiary** under a written contract with the **Named Insured** or **Subsidiary**, including but not limited to, call center services, fulfillment services, and logistical support.

Bodily injury means physical injury, sickness, disease, or death sustained by any person and, where resulting from such physical injuries only, mental anguish, mental injury, shock, humiliation, or emotional distress.

Claim means:

- i. With respect to Named Coverage I and II;
 - a. A written demand received by an **Insured** for monetary damages or non-monetary relief against any **Insured**;
 - b. a written request to toll or waive a statute of limitations relating to a potential **claim** against an **Insured**;
 - c. the service of a civil suit or the institution of arbitration proceedings against an **Insured** seeking **damages** or a temporary restraining order or a preliminary or permanent injunction against an **Insured**;
- ii. With respect to Named Coverage III, a **privacy regulatory proceeding** instituted against an **Insured**;
- iii. With respect to Named Coverage IV, a **crisis management event** or the incurring of **customer notification expenses** or **customer support and credit monitoring expenses**;
- iv. With respect to Named Coverage V and VII, a **first party insured event**;

- v. With respect to Named Coverage VI, a **cyber extortion threat**; and
- vi. With respect to Named Coverage VIII, a **regulatory proceeding** instituted against an **insured**.

Claims expenses means:

- i. Reasonable and necessary fees incurred with the Underwriters' consent and charged by an attorney(s) designated by the Underwriters to defend a **claim**; and
- ii. All other reasonable and necessary fees, costs, and expenses resulting from the investigation, adjustment, defense, and appeal of a **claim**, if incurred by the Underwriters, or by an **Insured** with our prior written consent.

Claims expenses do not include any wages, salaries, fees, overhead, or other charges incurred by, or paid to, any **Insured** for any time spent in cooperating in the defense and investigation of any **claim** or any circumstance which might lead to a **claim** notified under this Policy. With respect to Named Coverage VIII, **claim expenses** do not include the costs associated with the adoption and implementation of any corporate integrity agreement, compliance program or similar provision regarding the operations of the **Named Insured's** or any **Subsidiary's** business, negotiated as part of a settlement with or by order of a **Government Entity**.

Commercial payer means any private health insurance company.

Computer Hardware means the physical components of any computer system including CPU's, memory, storage devices, storage media, and input/output devices and other peripheral devices and components including but not limited to cable, connectors, fiber optics, wire, power supply units, keyboards, display monitors and audio speakers.

Computer Program(s) means an organized set of instructions that, when executed, causes a computer to behave in a predetermined manner. **Computer program(s)** include but are not limited to communications, networking, operating system and related **computer programs** used to create, maintain, process, retrieve, store, and/or transmit electronic **data**.

Computer system(s) means interconnected electronic, wireless, web, or similar systems (including all **computer hardware** and software) used to process and store **data** or information in an analogue, digital, electronic or wireless format including, but not limited to, computer programs, electronic data, operating systems, **firmware**, servers, media libraries, associated input and output devices, mobile devices, networking equipment, websites, extranets, off line storage facilities (to the extent that they hold electronic **data**), and electronic backup equipment.

Computer virus means a program that possesses the ability to create replicas of itself (commonly known as 'auto-reproduction' program) within other programs or operating system areas, or which is capable of spreading copies of itself wholly or partly to other **computer systems**.

Covered Causes of Loss means and is limited to the following:

1. Accidental Damage or Destruction
 - a. Accidental physical damage or destruction of **electronic media**, so that stored **digital assets** are no longer machine-readable;
 - b. Accidental damage or destruction of **computer hardware**, so that stored **data** is no longer machine-readable;
 - c. Failure in power supply or under/over voltage only if such power supply is under the direct operational control of the **Named Insured** or a **Subsidiary**. Direct operational control includes back-up generators;
 - d. **Programming error of delivered programs**;
 - e. Electrostatic build-up and static electricity.
2. Administrative or Operational Mistakes

An accidental, unintentional, or negligent act, mistake, error or omission in:

- a. the entry, or modification of the **Named Insured's** or any **Subsidiary's** electronic **data**, which causes damage to such **data**; or
- b. the creation, handling, development, modification, or maintenance of the **Named Insured's** or any **Subsidiary's digital assets**; or
- c. on-going operation or maintenance of the **Named Insured's computer system**, excluding the design, architecture, or configuration of the **Named Insured's computer system**;

by an **employee** of the **Named Insured**, an **employee** of any **Subsidiary**, a **BPO Service Provider** or **Outsourced IT Service Provider**.

3. Computer Crime and Computer Attacks

An act, mistake, negligent error or omission in the operation of the **Named Insured's computer system** or handling of the **Named Insured's** or any **Subsidiary's digital assets** by an **employee** of the **Named Insured**, an **employee** of any **Subsidiary**, a **BPO Service Provider** or **Outsourced IT Service Provider**, that fails to prevent or hinder any of the following attacks which was intended to maliciously cause harm to the **Named Insured's computer system**:

- a. a **Denial of service attack**;
- b. **Malicious code**;
- c. **Unauthorized access**; or
- d. **Unauthorized use**.

Criminal Proceeding means any governmental action or investigation for the enforcement of criminal laws, including offenses for which conviction could result in imprisonment and/or criminal fine(s).

Crisis management event means any unpredictable **adverse media report** that threatens material damage to the reputation of the **Named Insured** or any **Subsidiary** or to any of the **Named Insured's** or **Subsidiary's** brands, which results in the **Named Insured** or **Subsidiary** incurring **privacy breach response costs**.

Customer notification expenses means those reasonable and necessary legal expenses, forensic and investigation fees, public relations expenses, postage expenses, and related advertising expenses the **Named Insured** or any **Subsidiary** incurs, with the Underwriters' prior written consent, to comply with governmental privacy legislation mandating customer notification in the event of a **security breach**, **privacy breach**, or breach of **privacy regulations**.

Customer support and credit monitoring expenses means those reasonable and necessary expenses the **Named Insured** or any **Subsidiary** incurs, with the Underwriters' prior written consent, for the provision of customer support activity, including the provision of credit file monitoring services and identity theft education and assistance for up to a period of twelve (12) months from the date of enrollment in such credit file monitoring services, in the event of a **privacy breach**.

Cyber extortion expenses means all reasonable and necessary costs and expenses the **Named Insured** or any **Subsidiary** incurs, with the Underwriters' prior written consent, as a direct result of a **cyber extortion threat**, other than **cyber extortion monies**.

Cyber extortion monies means any funds or property paid by the **Named Insured** or any **Subsidiary**, with the Underwriters' prior written consent, to a person(s) or entity(ies) reasonably believed to be responsible for a **cyber extortion threat** insured under Named Coverage VI, for the purpose of terminating such a **cyber extortion threat**.

Cyber extortion threat means a credible threat or series of related credible threats, including but not limited to a demand for **cyber extortion monies**, directed at the **Named Insured** or any **Subsidiary** to:

- i. Release, divulge, disseminate, destroy or use the confidential information of a third party taken from an **Insured** as a result of **unauthorized access** to, or **unauthorized use** of, the **Named Insured's computer system**;
- ii. Introduce **malicious code** into the **Named Insured's computer system**;
- iii. Corrupt, damage or destroy the **Named Insured's computer system**;
- iv. Restrict or hinder access to the **Named Insured's computer system**, including, but not limited to the threat of a **denial of service attack**; or

- v. Electronically communicate with the **Named Insured's** or a **Subsidiary's** customers and falsely claim to be the **Named Insured** or **Subsidiary** or to be acting under the **Named Insured's** or **Subsidiary's** direction in order to falsely obtain personal confidential information of the **Named Insured's** or **Subsidiary's** customers (also known as "pharming," "phishing," or other types of false communications).

Damages means a monetary judgment, award, or settlement, including prejudgment and post judgment interest and punitive **damages** to the extent insurable under the law pursuant to which this Policy is construed.

Damages do not include:

- i. Any **Insured's** future profits or royalties, restitution, or disgorgement of any **Insured's** profits;
- ii. The costs to comply with orders granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief;
- iii. Loss of any **Insured's** fees or profits, return or offset of any **Insured's** fees or charges, or any **Insured's** commissions or royalties provided or contracted to be provided;
- iv. Taxes, fines or penalties or sanctions;
- v. The multiple portion of any multiplied **damages**;
- vi. Liquidated **damages**;
- vii. Any amount which an **Insured** is not financially or legally obligated to pay;
- viii. Disgorgement of any remuneration or financial advantage to which an **Insured** was not legally entitled;
- ix. Settlements negotiated without the Underwriters' consent; or
- x. Monetary judgments, awards, settlements or any other amounts which are uninsurable under the law pursuant to which this Policy is construed or any legal fees and costs awarded pursuant to such judgments, awards or settlements.

Data means any machine readable information, including ready for use programs, applications, account, customer, health and medical information or electronic information subject to back up procedures, irrespective of the way it is used and rendered including, but not limited to, text or digital media.

Delivered programs means programs, applications, and software where the development stage has been finalized, having passed all test-runs and been proven successful in a live environment.

Denial of service attack means an event caused by unauthorized or unexpected interference or a malicious attack intended by the perpetrator to overwhelm the capacity of a **computer system** by sending an excessive volume of electronic **data** to such **computer system** in order to prevent authorized access to such **computer system**.

Digital Assets mean **data** and **computer programs** that exist in a **computer system**. **Digital assets** do not include **computer hardware**.

Digital Assets Loss means reasonable and necessary expenses and costs the **Named Insured** or any **Subsidiary** incurs to replace, recreate or restore **digital assets** to the same state and with the same contents immediately before it was damaged, destroyed, altered, misused, or stolen, including expenses for materials and machine time, as well as costs associated with restoration, recreation and replacement. **Digital Assets Loss** also includes amounts representing employee work time to replace, recreate or restore **digital assets** which shall be determined on a predefined billable hours or per hour basis as based upon the **Named Insured's** or **Subsidiaries'** schedule of **employee** billable hours.

Electronic media means floppy disks, CD ROM's, hard drives, magnetic tapes, magnetic discs, or any other media on which electronic **data** is recorded or stored.

Employee(s) means any individual in the service of the **Named Insured** or any **Subsidiary**, including any part-time, seasonal, and temporary **employee** who is under a contract of service with the **Named Insured** or any **Subsidiary**, or any individual who is working on the **Named Insured's** or any **Subsidiary's** behalf, or at the **Named Insured's** or **Subsidiary's** direction, and under the **Named Insured's** or **Subsidiary's** direct control. **Employee** does not include any partner or director of the **Named Insured** or any **Subsidiary**.

EMTALA Proceeding means proceedings instituted against the **Named Insured** or any **Subsidiary** by a **Government Entity** alleging violations of the Emergency Medical Treatment and Labor Act (EMTALA).

Extended reporting period means the period of time after the end of the **policy period** for reporting **claims** as provided in Section 10 of this Policy.

Firmware means the fixed programs that internally control basic low-level operations in a device.

First party costs and expenses means and is limited to the following:

- i. **Digital assets loss** and **special expenses** insured under Named Coverage V.A.;
- ii. **Income loss, interruption expenses, and special expenses** insured under Named Coverage V.B.;
- iii. **Income loss, interruption expenses, and special expenses** insured under Named Coverage VII

First party insured event means **first party costs and expenses** incurred by the **Named Insured** or any **Subsidiary** as a result of:

- i. With respect to Named Coverage V, a **covered cause of loss**; or
- ii. With respect to Named Coverage VII, an **act of terrorism**;

First party insured event only pertains to loss sustained by the **Named Insured** or any **Subsidiary** and shall not include coverage for any **claim** made by a third party.

Government Entity means:

- i. any department, agency, task force or other organization created by any U.S. federal or state law, regulation, rule or executive order; or
- ii. any department, agency, task force or other organization operated, funded or staffed, in whole or in part, by the U.S. federal government or any state government;
- iii. any organization operating as a Medicare Integrity Program Contractor.

HIPAA Proceeding means proceedings instituted against the **Named Insured** or any **Subsidiary** by a **Government Entity** alleging violation of the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations.

Income Loss means financial loss sustained by the **Named Insured** or any **Subsidiary**, as determined in accordance with the provisions of Named Coverage V B.

Insured means any of the individuals or entities specified in Section 6 of this Policy.

Internet means the worldwide public network of computers which enables the transmission of electronic **data** between different users, including a private communications network existing within a shared or public network platform.

Interruption Expenses means those expenses, excluding **special expenses**, incurred by the **Named Insured** or any **Subsidiary**, in accordance with the provisions of Named Coverage V. B, to:

- i. avoid or minimize the suspension of business as a result of the total or partial interruption, degradation in service, or failure of the **Named Insured's computer system** caused directly by a **covered cause of loss**, which the **Named Insured** or **Subsidiary** would not have incurred had no loss occurred including, but not limited to, the use of rented/leased external equipment, substitution of other work or production procedures, use of third party services; or additional staff expenditures or labor costs; and

- ii. minimize or avoid a **covered cause of loss** and continue the **Named Insured's** or **Subsidiary's** business.

The amount of **interruption expenses** recoverable under subparagraph i. above shall in no case exceed the amount by which the covered **income loss** is reduced by such incurred expenses.

Malicious code means software intentionally designed to insert itself and damage a **computer system** without the owner's informed consent by a variety of forms including, but not limited to, virus, worm, Trojan horses, spyware, dishonest adware, and crimeware.

Multimedia Perils means the release of, or display of, any electronic media on the **Named Insured's** or any **Subsidiary's internet** site or **print media** for which the **Named Insured** or **Subsidiary** is solely responsible, which directly results in any of the following:

- i. any form of defamation or other tort related to the disparagement or harm to the reputation or character of any person or organization, including libel, slander, product disparagement or trade libel, and infliction of emotional distress, mental anguish, outrage or outrageous conduct, if directly resulting from any of the foregoing;
- ii. Invasion, infringement or interference with an individual's right of privacy or publicity, including false light, intrusion upon seclusion, commercial misappropriation of name, person, or likeness, and public disclosure of private facts;
- iii. Plagiarism, piracy or misappropriation of ideas under an implied contract;
- iv. Infringement of copyright, trademark, trade name, trade dress, title, slogan, service mark or service name; or
- v. Domain name infringement or improper deep-linking or framing.

Named Insured means the entity(ies) or individual(s) specified as such in Item 1 of the Declarations.

Named Insured's Computer System means:

- i. a **Computer System** operated by and either owned by, or leased to the **Named Insured** or any **Subsidiary**.
- ii. With respect to Named Coverage II only, a **computer system** operated by a **BPO Service Provider** or **Outsourced IT Service Provider** and used for the purpose of providing hosted computer application services to the **Named Insured** or any **Subsidiary**, or for processing, maintaining, hosting, or storing the **Named Insured's** or any **Subsidiary's** electronic **data**, pursuant to a written contract with the **Named Insured** or **Subsidiary** for such services.

Operational programs means programs and software which are ready for operational use, having been fully developed, tested, and accepted by the **Named Insured** or any **Subsidiary**.

Outsourced IT Service Provider means a third party independent contractor that provides information technology services for the benefit of the **Named Insured** or any **Subsidiary** under a written contract with the **Named Insured** or **Subsidiary**. Outsourced services include but are not limited to hosting, security management, co-location, and **data** storage.

Period of Restoration means the period of time that commences on the date when the interruption, degradation or failure of the **Named Insured's computer system** began and ends on the later of:

- i. The date when the **Named Insured's computer system** is restored or could have been repaired or restored with reasonable speed to the same condition, functionality and level of service that existed prior to the loss plus no more than thirty (30) consecutive days after the restoration of the **Named Insured's computer system** to allow for restoration of the business; or
- ii. One hundred and twenty (120) consecutive days after the notice of loss.

Policy period means the period of time from the inception date to the expiration date as specified in Item 2 of the Declarations, or any earlier termination or cancellation date.

Print media means newspapers, newsletters, magazines, books and literary works in any form, brochures or other types of publications, and advertising materials, including packaging, photographs, and digital images.

Privacy breach means a common law breach of confidentiality, infringement, or violation of any right to privacy including, but not limited to, a breach of the **Named Insured's** or any **Subsidiary's** privacy policy, breach of a person's right of publicity, false light, intrusion upon a person's seclusion, public disclosure of a person's private information.

Privacy breach response costs means those reasonable and necessary fees the **Named Insured** or any **Subsidiary** incurs, with the Underwriters' prior written consent, for the employment of a public relations consultant if the **Named Insured** or **Subsidiary** reasonably considers that action is needed in order to avert or mitigate any material damage to the reputation of the **Named Insured** or **Subsidiary** or to any of the **Named Insured's** or **Subsidiary's** brands that results or reasonably will result from an **adverse media report** that has been notified to the Underwriters and has arisen due to a **claim**.

Privacy regulations means any of the following, as well as similar statutes and regulations, as they currently exist and as amended, associated with the confidentiality, access, control, and use of personally identifiable, non-public information:

- i. Health Insurance Portability and Accountability Act of 1996 (Public Law 104- 191), known as HIPAA, and related state medical privacy laws;
- ii. Gramm-Leach-Bliley Act of 1999 (G-L-B), also known as the Financial Services Modernization Act of 1999;
- iii. State and Federal statutes and regulations regarding the security and privacy of consumer information;
- iv. Governmental privacy protection regulations or laws associated with the control and use of personal information;
- v. Privacy provisions of consumer protection laws, including the Federal Fair Credit Reporting Act (FCRA) and similar state laws;
- vi. Children's Online Privacy Protection Act or similar laws; and
- vii. The EU Data Protection Act or other similar privacy laws worldwide.

Privacy regulatory proceeding means a formal civil administrative proceeding or regulatory action instituted against an **Insured** by a federal, state or local governmental regulatory body for a **security breach**, or a **privacy breach** or breach of **privacy regulations** by the **Named Insured** or any **Subsidiary**, or by others acting on the **Named Insured's** or **Subsidiary's** behalf, for whom the **Named Insured** or **Subsidiary** is legally responsible, including **BPO Service Providers** and **Outsourced IT Service Providers**.

Programming error means an error which occurs during the development or encoding of a computer program, software, or application, which would, when in operation, result in a malfunction or incorrect operation of a **computer system**.

Property damage means physical injury to, impairment, destruction, or corruption of any tangible property, including the loss thereof. **Data** is not considered tangible property.

Qui Tam Plaintiff means a private plaintiff under the U.S. False Claims Act.

Regulatory compensatory award means a sum of money which an **Insured** is legally obligated to pay as an award or fund for affected individuals, including a regulatory agency's monetary award to a third party, due to an adverse judgment or settlement arising out of a **privacy regulatory proceeding**. **Regulatory compensatory award** does not include a criminal penalty or fine issued by a regulatory agency of any kind, including federal, state, or local governmental agencies.

Regulatory fines and penalties means civil fines or penalties imposed by a **Government Entity** as a result of a **privacy regulatory proceeding** or **regulatory proceeding**.

Regulatory Proceeding means, and is limited to, any of the following instituted against the **Named Insured** or any **Subsidiary** during the **policy period**:

- i. **Billing Errors Proceeding;**
- ii. **EMTALA Proceeding;**
- iii. **Stark Proceeding;** or
- iv. **HIPAA Proceeding.**

A **Regulatory Proceeding** shall be deemed to be instituted when the **Named Insured** or **Subsidiary** receives formal written notice of any of the foregoing.

Restitution means repayment of fees, reimbursement, profits, charges or other benefit payments:

- i. Received by an **Insured** from:
 - a. A governmental health benefit payer or program, carrier or intermediary making payments as part of, or in connection with, any such program; or
 - b. A **commercial payer**; or
 - c. Any patient
- ii. To which such **Insured** was not legally entitled by reason of a billing error or errors, the return of which is sought in a **Billing Errors Proceeding**.

Retention means the amount specified as such in Item 5 of the Declarations.

Retroactive date means the date specified as such in Item 6 of the Declarations on or after which wrongful acts (as detailed under the relevant Named Coverage) must have taken place in order to be considered for coverage under this Policy.

Security and privacy wrongful act means any of the below, whether actual or alleged, but only if committed or alleged committed by an **Insured** in their capacity as such:

- i. the failure to prevent or hinder **unauthorized access** to or **unauthorized use** of the **Named Insured's computer system**; security failures; or social engineering techniques devised to trick the user into surrendering personal information ('phishing' or 'pharming') that in turn results in:
 - a. the alteration, copying, corruption, destruction, deletion, or damage to electronic **data** stored on the **Named Insured's computer system**;
 - b. theft, loss or unauthorized disclosure of electronic and non-electronic confidential commercial, corporate, personally identifiable, or private information that is in the care, custody or control of the **Named Insured** or any **Subsidiary**;
 - c. theft, loss or unauthorized disclosure of electronic and non electronic confidential commercial, corporate, personally identifiable, or private information that is in the care, custody or control of a **BPO Service Provider** or **Outsourced IT Service Provider** that is holding, processing or transferring such information on behalf of the **Named Insured** or any **Subsidiary**; provided, however, that the theft, loss or unauthorized disclosure occurs while the **Named Insured's** or **Subsidiary's** written contract with such **BPO Service Provider** or **Outsourced IT Service Provider** is still in effect;
 - d. **unauthorized use** of or **unauthorized access** to a **computer system** other than the **Named Insured's computer system**.
- ii. the **Named Insured's** failure to timely disclose a **security breach** affecting personally identifiable, nonpublic information, or the failure to dispose of personally identifiable information within the required time period, in violation of **privacy regulations** in effect now or in the future;
- iii. the failure to prevent the transmission of **malicious code** or **computer virus** from the **Named Insured's computer system** to the **computer system** of a third party;
- iv. a **Privacy breach** or breach of **privacy regulations**;
- v. the failure to prevent or hinder participation by the **Named Insured's computer system** in a **denial of service attack** directed against **internet** sites or the **computer system** of a third party; or

- vi. Loss of **employee** information.

Security breach means:

- i. **Unauthorized access** to or **unauthorized use** of the **Named Insured's computer systems**, including **unauthorized access** or **unauthorized use** resulting from the theft of a password from the **Named Insured's computer system** or from any **Insured**;
- ii. A **denial of service attack** against the **Named Insured's computer system**; or
- iii. Infection of the **Named Insured's computer system** by **malicious code** or the transmission of **malicious code** from the **Named Insured's computer system**,

whether any of the foregoing is a specifically targeted attack or a generally distributed attack. A series of continuing **security breaches**, related or repeated **security breaches**, or multiple **security breaches** resulting from a continuing failure of computer security, shall be considered a single **security breach** and be deemed to have occurred at the time of the first such **security breach**.

Shadow Audit means an audit performed by a qualified professional, which examines the same billing records and related documents as those subject to an ongoing **Billing Errors Proceeding**, with the intent of providing an **Insured** with a private expert opinion. Such **shadow audits** are subject to our prior approval.

Shadow Audit Expenses means the fees for the services of a qualified audit professional and associated expenses incurred by the **Named Insured** or any **Subsidiary** in the course of a **Shadow Audit**.

Special Expenses means reasonable and necessary costs and expenses the **Named Insured** or any **Subsidiary** incurs to:

- i. Prevent, preserve, minimize, or mitigate any further damage to the **Named Insured's** or **Subsidiary's digital assets**, including the reasonable and necessary fees and expenses of specialists, outside consultants or forensic experts the **Named Insured** or **Subsidiary** retains;
- ii. Preserve critical evidence of any criminal or malicious wrongdoing;
- iii. Purchase replacement licenses for **computer programs** because the copy protection system and/or access control software was damaged or destroyed by a **covered cause of loss**; or
- iv. Notify customers of a total or partial interruption, degradation in service, or failure of the **Named Insured's computer system** resulting from a **covered cause of loss**.

Stark Proceeding means proceedings instituted against the **Named Insured** or any **Subsidiary** by a **Government Entity** alleging violation of any federal, state or local anti-kickback or self-referral laws.

Subsidiary(ies) means any legal entity in which the **Named Insured** owns, directly or indirectly, more than fifty percent (50%) of the issued or outstanding voting securities, provided that such entity:

- i. was so owned prior to the inception date of this Policy and was insured under a policy issued by Underwriters of which this Policy is a renewal; or
- ii. was so owned on the inception date of this Policy; or
- iii. was created or acquired after the inception date of this Policy, as described in Section 20, Changes in Exposure, of this Policy.

Time Retention means the number of hours that must elapse as provided in Item 5 of the Declarations before the recovery of loss under Named Coverage V.B. or Named Coverage VII can be considered.

Unauthorized access means the gaining of access to a **computer system** by an unauthorized person or persons.

Unauthorized use means the use of a **computer system** by an unauthorized person or persons or an authorized person in an unauthorized manner.

Voluntary Self Disclosure means an **Insured** discloses information, without inquiry, to:

- i. any **Government Entity** or **commercial payer**, which may serve as grounds for a **Billing Errors Proceeding** against the **Named Insured** or any **Subsidiary**; or
- ii. any **Government Entity**, which may serve as grounds for a **HIPAA Proceeding** against the **Named Insured** or any **Subsidiary**.

The information disclosed must have become known to the **Insured** fortuitously and subsequent to the initial effective date of this insurance.

8. Exclusions

With respect to all Named Coverages, the Underwriters shall not be liable for any **claim** for, based upon, arising out of, directly or indirectly resulting from, or in any way involving or attributable to:

1. Any **claim** or circumstance arising from:
 - i. any wrongful acts under Named Coverage(s) I, II, or III;
 - ii. any **crisis management event, security breach, privacy breach** or breach of **privacy regulations** under Named Coverage IV;
 - iii. any **covered cause of loss** under Named Coverage V;
 - iv. any **cyber extortion threat** under Named Coverage VI;
 - v. an **act of terrorism** under Named Coverage VII; or
 - vi. any acts, errors or omissions under Named Coverage VIII

which was committed, allegedly committed, or that occurred in whole or in part prior to the applicable **retroactive date**;

2. Any **claim** or circumstance arising from:
 - i. any wrongful acts under Named Coverage(s) I, II, or III;
 - ii. any **crisis management event, security breach, privacy breach** or breach of **privacy regulations** under Named Coverage IV;
 - iii. any **covered cause of loss** under Named Coverage V;
 - iv. any **cyber extortion threat** under Named Coverage VI;
 - v. an **act of terrorism** under Named Coverage VII; or
 - vi. any acts, errors or omissions under Named Coverage VIII

which took place in whole or in part prior to the inception date of this Policy and which any **Insured** knew or could have reasonably foreseen such acts, facts, or circumstances could be the basis of a **claim** or circumstance under this Policy;

3. Any **claim** or circumstance notified to a previous insurer prior to the inception date of this Policy;
4. Any **claim** made by an **Insured** against another **Insured**; provided, however, this exclusion shall not apply to: 1) an otherwise covered **claim** under Named Coverage II made by any past, present or future **employee** for a **security and privacy wrongful act** but only if such **employee** or any past or present officer, director, or trustee of the **Named Insured** or any **Subsidiary** did not commit, participate in or contribute to such **security and privacy wrongful act** or **security breach, privacy breach**, or breach of **privacy regulations**; or 2) any **billing errors proceeding** instituted against the **Named Insured** or any **Subsidiary** by a **qui tam plaintiff** or brought under the United States False Claims Act.
5. Any **claim** alleging or arising out of any willful, deliberate, malicious, fraudulent, dishonest, or criminal act, error or omission, or any intentional violation of the law or of your privacy policy, or gaining of any profit or advantage to which you or any **Insured** is not legally entitled, if any of the aforementioned is committed by an **Insured**, whether acting alone or in collusion with other persons. Notwithstanding the foregoing, the insurance afforded by this Policy shall apply to **claims expenses** incurred in defending any such **claim**, but shall not apply to any **damages, regulatory fines and penalties** or other loss that the **Insured** might become legally obligated to pay. The Underwriters will have the right to recover those **claims expenses** incurred from those parties found to have committed criminal, dishonest, fraudulent, or malicious acts, errors or omissions by a court, jury, or arbitrator. However, only with respect to a **first party insured event** under

Named Coverage V, this exclusion does not bar coverage for **employee** sabotage;

6. Any **claim** arising out of any **Insured's** activities as a trustee, partner, officer, director, or employee of any employee trust, charitable organization, corporation, company, or business other than that of the **Named Insured** or any **Subsidiary**;
7. The **Named Insured's** insolvency or bankruptcy or the insolvency or bankruptcy of any other entity including, but not limited to, the failure, inability, or unwillingness to make payments because of the insolvency, liquidation, or bankruptcy of any individual or entity;
8. **Bodily injury**, except that this exclusion shall not apply to wrongful infliction of emotional distress or mental anguish arising out of any actual or alleged **multimedia perils, privacy breach, security breach**, or breach of **privacy regulations**;
9. **Property damage**;
10. Satellite failures; electrical or mechanical failures and/or interruption including, but not limited to, electrical disturbance, spike, brownout, or blackout; and outages to gas, water, telephone, cable, telecommunications, or other infrastructure, unless such infrastructure is under the **Named Insured's** or any **Subsidiary's** operational control and unless such **claim** forms part of a **first party insured event**;
11. The wear and tear, drop in performance, progressive deterioration, or aging of electronic equipment and other property or **computer hardware** used by the **Named Insured** or any **Subsidiary**;
12. Failure of overhead transmission and distribution lines;
13. Gradual deterioration of subterranean insulation;
14. Fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, force majeure, or any other physical event however caused, unless such **claim** is part of a **first party insured event**;
15. Coupons, prize discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;
16. The actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products, or services;
17. The **Named Insured's** or any **Subsidiary's** cost guarantees, cost representations, contract price, or cost estimates being exceeded;
18. The violation of any economic or trade sanctions by the United States government including, but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ('OFAC');
19. Any breach of any express, implied, actual, or constructive contract, warranty, guarantee, or promise, but this exclusion shall not apply to:
 - i. Any liability or obligation the **Named Insured** or any **Subsidiary** would have in the absence of such contract or agreement;
 - ii. Unintentional breach of contract; or
 - iii. A breach of the **Named Insured's** or any **Subsidiary's** privacy policy;
20. The liability of others assumed by the **Named Insured** or by any **Subsidiary** under any contract or agreement, either oral or written, except this exclusion shall not apply:
 - i. to the extent the **Named Insured** or **Subsidiary** would have been liable in the absence of such contract or agreement;
 - ii. With respect to a **multimedia peril, security breach, privacy breach**, or breach of **privacy regulations**, to the extent the **Named Insured** or **Subsidiary** has assumed such liability in the form of a written hold harmless or indemnity agreement that predates the first multimedia peril, **security breach, privacy breach**, or breach of **privacy regulations**.

21.
 - i. Any presence of pollutants or contamination of any kind;
 - ii. Any actual, alleged, or threatened discharge, dispersal, release, or escape of pollutants or contamination of any kind including, but not limited to, solid, liquid, gaseous, or thermal irritants or contaminants including asbestos, smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste (waste includes materials to be recycled, reconditioned, or reclaimed), wherever such occurs, whether or not such results from an **Insured's** activities or the activities of others, is sudden or gradual, and is accidental, intended, foreseeable, expected, fortuitous, or inevitable;
 - iii. Any governmental or regulatory directive or request that the **Named Insured** or any **Subsidiary** or anyone acting under the **Named Insured's** or **Subsidiary's** direction or control test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize said 'pollutants'; or
 - iv. Any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants or in any way respond to or assess the effects of pollutants or contamination of any kind.
22. The actual or alleged loss of value of any securities;
23. Any **claim** or **income loss** caused by or resulting from unauthorized trading. "Unauthorized trading" means trading by an **Insured**, which at the time of the trade is:
 - i. In excess of permitted financial limits, or
 - ii. Outside of permitted product lines;
24. The actual or alleged purchase, sale, offer of, or solicitation of an offer to purchase or sell securities, or violation of any securities law including, but not limited to, the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002, or any regulation promulgated under the foregoing statutes, or any federal, state, local, or foreign laws similar to the foregoing statutes, including 'Blue Sky' laws, whether such law is statutory, regulatory, or common law;
25. The actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as 'Racketeer Influenced And Corrupt Organizations Act' or 'RICO'), as amended, or any regulation promulgated under the foregoing statutes, or any similar federal, state, local or foreign laws, whether such law is statutory, regulatory or common law;
26. The actual or alleged government enforcement of any state or federal regulation including, but not limited to, regulations promulgated by the United States Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission; however this exclusion does not apply to the extent that a **claim** falls under Named Coverage III.
27. Any employer-**employee** relations, policies, practices, acts, or omissions, any actual or alleged refusal to employ any person, or any misconduct with respect to **employees**;
28. Any **claims** arising under workers' compensation or similar laws, such as the Federal Employers Liability Act;
29. Any actual or alleged harassment or discrimination of any kind including, but not limited to, age, color, race, gender, creed, national origin, marital status, sexual preferences, disability, or pregnancy;
30. The violation of any pension, healthcare, welfare, profit sharing, mutual, or investment plans, funds, or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974 and its amendments and/or the Pension Protection Act of 2006 and its amendments, or any regulation, ruling, or order issued pursuant thereto;
31. Strikes or similar labor actions, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular uprising, military uprising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions. This exclusion also excludes coverage for any **damages** or **claim expenses** arising out of confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority. This exclusion also excludes **damages** or **claims expenses** directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing, or in any way relating to the above. However, this exclusion shall not apply to an **act of terrorism**;
32. The **Named Insured's** or any **Subsidiary's** commercial decision to cease providing a particular product or service, but only if the **Named Insured** or **Subsidiary** is contractually obligated to continue providing such

products or services;

33. Gambling, pornography, prizes, awards, coupons, or the sale or provision of prohibited, restricted, or regulated Items including, but not limited to, alcoholic beverages, tobacco, or drugs;
34. Any fine or penalty arising out of any agreement by the **Named Insured** or by any **Subsidiary** to comply with or follow the Payment Card Industry Standard 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 merchant bank or payment processor that the **Named Insured** or **Subsidiary** has paid or agreed to reimburse or indemnify. However, this exclusion shall not apply to civil penalties and fines to the extent insurable by law arising out of an otherwise covered **claim** under Named Coverage III;
35. Any actual or alleged unfair competition, price fixing, antitrust violations, deceptive trade practices, or restraint of trade or antitrust statute, legislation, or regulation;
36. The actual or alleged infringement of any patent or the misappropriation, theft, copying, display or publication of any trade secret by, or with the active cooperation, participation, or assistance of any **Insured**, any of the **Named Insured's** former **employees**, any **Subsidiary**, any **Subsidiary's** former **employees**, directors, executive officers, partners, principals, trustees of the **Named Insured** or any **Subsidiary**, or any of the **Named Insured's** or **Subsidiary's** successors or assignees;
37. Any wear or tear, latent or time-delayed damage arising from services the **Named Insured** or any **Subsidiary** provided prior to the **policy period**; gradual deterioration of the **Named Insured's computer system**; or the **Named Insured's** or **Subsidiary's** failure, or the failure of those acting on the **Named Insured's** or **Subsidiary's** behalf, to maintain any computer, **computer system**, or network, computer software, or any other equipment;
38. The manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos or asbestos fibers or dust or any **claim** alleging **bodily injury** or **property damage** arising out of asbestos or asbestos containing materials including, but not limited to:
 - i. Inhaling, ingesting, or being physically exposed to asbestos or goods or products containing asbestos;
 - ii. The use of asbestos in constructing or manufacturing any goods, products, or structures;
 - iii. The removal of asbestos from any goods, products, or structures; or the manufacture, encapsulation, transportation, storage, handling, distribution, sale, application, mining, consumption, or disposal of asbestos or goods or products containing asbestos;
 - iv. Any governmental direction or request that the insured or any other party, test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize asbestos or asbestos containing products; or
 - v. Manufacturing or mining or the use, sale, installation, removal, distribution of or exposure to asbestos, materials, or products containing asbestos, asbestos fibers, or dust;
39. The use of programs that are not **operational programs**;
40. The use of programs that are not **delivered programs**;
41. Any **Insured's** intentional use of illegal or unlicensed programs that are in violation of the provisions or laws referring to software protection;
42. The confiscation, commandeering, requisition, destruction of or damage to, **computer hardware** by order of a government de jure or de facto, or by any public authority for whatever reason;
43. Injury, sickness, disease, death, or destruction:
 - i. With respect to which an **Insured** under this insurance is also an insured under a nuclear energy liability insurance policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada or would be an insured under any such insurance but for its termination upon exhaustion of its limits of liability; or
 - ii. Resulting from the hazardous properties of nuclear material and with respect to which: (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law amendatory thereof; or (2) the **Insured** is, or had this insurance not been issued would be, entitled to indemnity from the United States, or any agency thereof under any agreement entered into by the United States, or any agency thereof, with

- any person or organization; or
- iii. Under any Medical Payments Coverage or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to **bodily injury**, sickness, disease, or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization; or
- iv. Under any liability coverage resulting from the hazardous properties of nuclear material, if:
 - a. The nuclear material: (1) is at any nuclear facility owned by, or operated by or on behalf of, an **Insured**; or (2) has been discharged or dispersed therefrom;
 - b. The nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an **Insured**; or
 - c. The injury, sickness, disease, death, or destruction arises out of the furnishing by an **Insured** of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation, or use of any nuclear facility, but if such facility is located within the United States, its territories or possessions or Canada, this exclusion applies only to injury to or destruction of property at such nuclear facility;

With respect to this exclusion: 'hazardous properties' means radioactive, toxic, or explosive properties; 'nuclear material' means source material, special nuclear material, or byproduct material; 'source material,' 'special nuclear material,' and 'byproduct material' have the meanings given to them in the Atomic Energy Act of 1954 or in any law amendatory thereof; 'spent fuel' means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; 'waste' means any waste material: (1) containing byproduct material; and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph i or ii (below) thereof; 'nuclear facility' means:

- i. Any nuclear reactor;
 - ii. Any equipment or device designed or used for: (1) separating the isotopes of uranium or plutonium; (2) processing or utilizing spent fuel; or (3) handling, processing, or packaging waste;
 - iii. Any equipment or device used for the processing, fabricating, or alloying of special nuclear material if at any time the total amount of such material in the custody of the **Insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination therefore, or more than 250 grams of uranium 235; or
 - iv. Any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of waste; and includes the premises on which any of the foregoing is located, all operations conducted on such premises, and all premises used for such operations; 'nuclear reactor' means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the terms 'injury' or 'destruction' includes all forms of radioactive contamination of property.
44. Any **claim** alleging **bodily injury** or **property damage** resulting from exposure to or the manifestation, release, dispersal, seepage, migration, discharge, appearance, presence, reproduction or growth of mold, mildew, spores, mycotoxins, fungi, organic pathogens, or other micro organisms of any type, nature, or description, including:
- i. Any cost, expense, or charge to test, monitor, clean up, remediate, remove contain, treat, detoxify, neutralize, rehabilitate, or in any way respond to or assess the effects of mold, mildew, spores, mycotoxins, fungi, organic pathogens, or other micro organisms of any type, nature, or description; and
 - ii. Any resulting cost, expense, charge, fine or penalty, incurred, sustained, or imposed by order, direction, request, or agreement of any court, governmental agency, or any civil, public, or military authority.

With respect to this exclusion, 'organic pathogens' means any organic irritant or contaminant including, but not limited to, mold, fungus, bacteria, virus, or their byproducts such as mycotoxins, mildew, or biogenic aerosol. 'Organic pathogens' include, but are not limited to, Aspergillus, Penicillium, Stachybotrys Chartarum, Stachybotrys Atra, Trichodema, and Fusarium Memnoniella;

- 45. The existence, emission, or discharge of any electromagnetic field, electromagnetic radiation, or electromagnetism that actually or allegedly affects the health, safety, or condition of any person or the environment or that affects the value, marketability, condition, or use of any property.
- 46. Any legal liability directly or indirectly caused by, involving, attributed to, arising from:
 - i. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel

- ii. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
47. Billing errors for medical services or items which are not provided or prescribed by the **Named Insured** or any **Subsidiary**;
48. With respect to Named Coverage VIII, the Underwriters shall not be obligated to pay:
- i. any amounts incurred in connection with a **Shadow audit** not previously approved by the Underwriters;
 - ii. any amounts intended to serve as **restitution** or repayment of monies received by an **Insured**, to which the **Insured** was not entitled as a result of billing errors made by such **Insured**;
 - iii. any amounts incurred by a consulting professional whose services were not previously approved by the Underwriters;

9. Innocent Insured Provision

- a. Whenever coverage under this insurance would be excluded, suspended, or lost because of non-compliance with Section 11, relating to the giving of notice of **claim** to the Underwriters, with respect to which any other **Insured** shall be in default solely because of the failure to give such notice or concealment of such failure by one or more **Insureds** responsible for the loss or damage otherwise insured hereunder, then such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to any **Insureds** who did not personally commit, personally participate in committing, or personally acquiesce to such failure to give notice, provided that the **Insured** entitled to the benefit of this provision shall comply with Section 11 promptly after obtaining knowledge of the failure of any other **Insured** to comply therewith.
- b. Any insurance as afforded by this provision shall not cover a **claim** against the **Insured** if a current executive officer or director failed to give notice as required by Section 11 for a **claim** or circumstance that could reasonably be the basis of a **claim**, which was known to a current executive officer or director.
- c. Whenever coverage under this insurance would be excluded, suspended, or lost because of Exclusion 5 relating to willful, deliberate, malicious, fraudulent, dishonest, or criminal acts by any **Insured**, then such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Insureds** who did not personally commit, personally participate in committing, personally acquiesce, or remain passive after having personal knowledge of such willful, deliberate, malicious, fraudulent, dishonest, or criminal acts.

10. Extended Reporting Provisions

- a. Extended Reporting Period Endorsement: If this Policy is cancelled or non-renewed by the **Named Insured**, or if we refuse to renew this Policy for reasons other than non-payment of premium or non-compliance with the terms and conditions of this Policy, then the **Named Insured** shall have the right to purchase an **extended reporting period**. The additional premium for the **extended reporting period** will be 100% of the full annual policy premium, as measured by the level of premium in effect immediately prior to the end of the **policy period**, including any additional premium for endorsements. In order for the **Named Insured** to purchase the **extended reporting period** endorsement, the written notice, together with full payment of the premium for the **extended reporting period** must be received by Underwriters within thirty (30) days after the effective date of the non-renewal or cancellation. If such notice and premium payment is not so given to Underwriters, all of the **Insureds'** rights to this coverage extension shall terminate.
- b. If purchased, the **extended reporting period** will extend coverage provided by this Policy for a period of up to one (1) year immediately following the termination of the Policy, but only for a **claim** first made during the **extended reporting period** for any actual or alleged wrongful acts under Named Coverage(s) I, II or III; any **crisis management event**, **security breach**, **privacy breach** or breach of **privacy regulations** under Named Coverage IV; any **covered cause of loss** under Named Coverage V; any **cyber extortion threat** under Named Coverage VI; any **act or terrorism** under Named Coverage VII; or any act, error or omission under Named Coverage VIII committed, allegedly committed, or that occurred before the effective date of cancellation or non-renewal, provided that such **claim** is otherwise covered by this Policy. The **claim** must be reported to the Underwriters in accordance with Section 11 of this Policy, subject to the conditions set forth with regard to the **extended reporting period** herein.

- c. The **extended reporting period** in (a) above only applies to those Named Coverage(s) purchased as shown in the Declarations.
- d. The Limit of Liability for the **extended reporting period** shall be part of, and not in addition to, the Limit of Liability for the **policy period**.
- e. The quotation by the Underwriters of a different premium, **retention**, Limit of Liability or changes in Policy language for the purpose of renewal shall not constitute a refusal to renew by the Underwriters.
- f. The right to the **extended reporting period** shall not be available to the **Named Insured** where cancellation or non-renewal by the Underwriters is because of non-payment of premium or the **Insured's** failure to pay amounts within the applicable **retention** or co-insurance percentage.
- g. All notices and premium payments with respect to the **extended reporting period** option shall be directed to the Underwriters through the entity named in Item 9 of the Declarations.
- h. At the commencement of the **extended reporting period**, the entire premium shall be deemed earned, and in the event the **Named Insured** terminates the **extended reporting period** for any reason prior to its natural expiration, the Underwriters will not be liable to return any premium paid for the **extended reporting period**.
- i. Change of Control Extended Reporting Period: In the event of the **Named Insured's** acquisition or merger into another entity, or the **Named Insured's** liquidation or dissolution, or the sale or disposition of substantially all of the **Named Insured's** assets, all of which collectively and alternatively constitute a 'change of control', the **Named Insured** may notify the Underwriters within thirty (30) days of the change of control of the **Named Insured's** election for an **extended reporting period** of twelve (12) months from the date of such change of control, provided that the **Named Insured** has otherwise complied with the terms and conditions of this Policy. Such change of control **extended reporting period** shall extend the coverage granted by this Policy with respect to any **claim** first made during the **extended reporting period**, but only for: 1) any actual or alleged wrongful acts under Named Coverage(s) I, II or III; 2) any **crisis management event**, **security breach**, **privacy breach** or breach of **privacy regulations** under Named Coverage IV; 3) any **covered cause of loss** under Named Coverage V; 4) any **cyber extortion threat** under Named Coverage VI; 5) any **act of terrorism** under Named Coverage VII; or 6) any act, error or omission under Named Coverage VIII committed, allegedly committed, or that occurred prior to the effective date of such change of control. As a further condition precedent to coverage, the **claim** must be reported to the Underwriters in accordance with Section 11 of this Policy.

11. Notice of Claim or Circumstance that might lead to a Claim

- a. If any **claim** under Named Coverage(s) I, II, III or VIII is made against any Insured, the **Named Insured's** risk manager, General Counsel, senior officer, or director shall provide written notice to the Underwriters, through persons named in Item 9 of the Declarations, of such **claim** no later than sixty (60) days after the date such **claim** is first made. A **claim** under Named Coverage(s) I, II, III or VIII shall be deemed to be first made when it is received by an **Insured**.
- b. If the **Named Insured** or any **Subsidiary** has any **claim(s)** under Named Coverage(s) IV, V, VI, or VII the **Named Insured's** risk manager, General Counsel, senior officer, or director shall provide written notice to the Underwriters, through persons named in Item 9 of the Declarations, of such **claim** no later than sixty (60) days after the event or incident giving rise to such **claim** is discovered. A **claim** under Named Coverage(s) IV, V, VI or VII shall be deemed to be first made when such written report is received by the Underwriters.
- c. If during the **policy period**, any **Insured** becomes aware of any acts, facts, or circumstances that could reasonably be a basis for a **claim**, the **Named Insured's** risk manager, General Counsel, executive officer, or director must give written notice of the following information to the Underwriters, through persons named in Item 9 of the Declarations, during the **policy period**:
 - i. Specific details of the acts, facts, or circumstances that could reasonably be the basis for a **claim**;
 - ii. Possible **damages**, penalties, or other amounts potentially covered under this Policy that may result or has resulted from the facts or circumstances;
 - iii. Details regarding how the **Insured** first became aware of the acts, facts, or circumstances; and
 - iv. The **computer system** security and event logs, which provide evidence of the alleged incident.

Any subsequent **claim** arising out of such acts, facts, or circumstances which is the subject of the written notice will be deemed to be a **claim** at the time written notice complying with the above requirements was first given to the Underwriters.

- d. A **claim** shall be considered to be reported to the Underwriters when notice is first given to the Underwriters through persons named in Item 9 of the Declarations.

12. Assistance and Cooperation

- a. The **Named Insureds** shall cooperate with the Underwriters in all investigations. The **Insureds** shall execute or cause to be executed all papers and render all assistance as requested by the Underwriters. Part of this assistance may require the **Insureds** to provide copies of a third party's system security and event logs.
- b. At Underwriters' request, the **Insureds** shall assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** with respect to which insurance is afforded under this Policy. The **Insureds** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses at the **Insureds'** own cost.
- c. No **Insured** shall admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award, or dispose of any **claim** without the Underwriters' written consent, unless otherwise provided under any Named Coverage. However, the prompt public admission of a **security breach** potentially impacting non-public personally identifiable information of **employees** or third parties, as required by governmental privacy legislation or credit card association operating requirements, will not be considered as an admission of liability requiring the Underwriters' prior consent; however the Underwriters are to be provided notice, in accordance with Section 11(c) of the Policy, of such public admission, if such public admission is a circumstance that could lead to a **claim**.
- d. The Underwriters shall have the right to make any investigation the Underwriters deem necessary with respect to coverage including, but not limited to, any investigation with respect to the **application**, statements made in the **application** and any supplemental material submitted therewith.
- e. The **Insureds** shall submit for examination under oath by our representatives, if requested, in connection with all matters relating to this Policy.

13. Inspection and Audit

The Underwriters shall be permitted, but not obligated, to inspect any **Insured's** property, operations, or records and take copies of same at any time.

14. Subrogation

If any payment is made under this Policy and there is available to the Underwriters any of the **Insureds'** rights of recovery against any third party, then the Underwriters shall maintain all such rights of recovery. The **Insureds** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insureds** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **damages, claims expenses**, or any other amounts paid by the Underwriters, and lastly to the **retention**. Any additional amounts recovered shall be paid to the **Insured**.

15. Other Insurance

This insurance shall apply in excess of any other valid and collectible insurance available to the **Insureds**, including any **retention** or deductible portion thereof, unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

16. Entire Agreement

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

17. Assignment

The interest hereunder is not assignable by the **Named Insured** or the **Named Insured's Subsidiaries**. If an **Insured** shall die or be adjudged incompetent, this insurance shall cover such **Insured's** legal representative as the **Insured** would be covered under this Policy.

18. Cancellation by the Named Insured

The **Named Insured** may cancel this Policy by mailing or delivering to the Underwriters advance, written notice stating when thereafter cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation shall become the end of the **policy period**. Delivery of such written notice shall be equivalent to mailing. If this Policy is canceled by the **Named Insured**, the earned premium will be computed on a short rate basis subject to a minimum earned of twenty-five percent (25%) of the total annual premium. Payment or tender of any unearned premium by Underwriters shall not be a condition precedent to the effectiveness of cancellation. No premium will be refunded where any **claims** or circumstances have been notified under this Policy.

19. Cancellation by Underwriters

Underwriters may cancel this Policy for non-payment of premium or **retention** by providing the **Named Insured** ten (10) days' written notice prior to the cancellation by mailing or delivering such notice to the last known mailing address of the **Named Insured**. If Underwriters cancel this Policy for any reason other than non-payment of premium or **retention**, Underwriters will give the **Named Insured** thirty (30) days' notice written notice prior to cancellation.

20. Changes in Exposure

- a) If, during the **policy period**, the **Named Insured** is acquired, or control assumed by another entity, coverage under this Policy will continue but only with respect to any **claim** for any actual or alleged wrongful acts under Named Coverage(s) I, II, III or VIII; any **crisis management event, security breach, privacy breach** or breach of **privacy regulations** under Named Coverage IV; any **covered cause of loss** under Named Coverage V; any **cyber extortion threat** under Named Coverage VI; or any **act of terrorism** under Named Coverage VII committed, allegedly committed, or that occurs prior to the effective date of the acquisition or change of control. The **Named Insured** must give us notice as soon as practicable, but in any event within thirty (30) days of such change. The Policy may not be cancelled after the effective date of the acquisition or change of control, and the premium will be deemed fully earned on such date.
- b) If, after the inception of the **policy period**, the **Named Insured** acquires or creates a **Subsidiary**, then for a period of sixty (60) days after the effective date of the transaction, the **Subsidiary** shall be included within the definition of **Insured**, but only with respect to any **claim** for any actual or alleged wrongful acts under Named Coverage(s) I, II, III or VIII; any **crisis management event, security breach, privacy breach** or breach of **privacy regulations** under Named Coverage IV; any **covered cause of loss** under Named Coverage V; any **cyber extortion threat** under Named Coverage VI; or any **act of terrorism** under Named Coverage VII that occurs after the creation or acquisition of such **Subsidiary**. Written notice of such event shall be given to us within sixty (60) days of the effective date of the transaction, together with such information as we may require. In the event that the revenues of the new **Subsidiary** exceed ten percent (10%) of the annual revenues of the **Named Insured** prior to the creation or acquisition, as reflected in the most recent **application** for this insurance, there may be an additional premium charged, which must be paid in order for coverage for the new **Subsidiary** to continue beyond the initial sixty (60) day period.
- c) If, after the inception of the **policy period**, the **Named Insured** sells a **Subsidiary**, that **Subsidiary** shall be an

Insured, but only with respect to any **claim** for any actual or alleged wrongful acts under Named Coverage(s) I, II, III or VIII; any **crisis management event**, **security breach**, **privacy breach** or breach of **privacy regulations** under Named Coverage IV; any **covered cause of loss** under Named Coverage V; any **cyber extortion threat** under Named Coverage VI; or any **act of terrorism** under Named Coverage VII that occurs before such date. Written notice of such sale shall be given to us within sixty (60) days of the sale. There will be no return premium.

21. Words and Titles of Paragraphs

The titles of paragraphs, section, provisions, or endorsements of or to this Policy are intended solely for convenience and reference and are not deemed in any way to limit or expand the provisions to which they relate and are not part of the Policy. Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

22. Dispute Resolution

- a. No action shall lie against the Underwriters unless, as a condition precedent thereto, there shall have been full compliance with all terms of this insurance, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment or award against the **Insured** after actual trial or arbitration or by written agreement of the **Insured**, the claimant, and the Underwriters.
- b. Any person or organization or the legal representative thereof who has secured such judgment, award, or written agreement shall thereafter be entitled to make a **claim** under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this insurance to join the Underwriters as a party to an action or other proceeding against any **Insured** to determine the **Insured's** liability, nor shall the Underwriters be impleaded by the **Insured** or the **Insured's** legal representative. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Underwriters of their obligations hereunder.
- c. Mediation. If any dispute arises between any **Insured** and the Underwriters involving this Policy and/or a **claim** hereunder, it is hereby mutually agreed by the **Named Insured** and the Underwriters that such dispute shall be referred to a qualified mediator in a good faith effort to negotiate a resolution of the dispute, prior to the initiation of any arbitration or other proceedings. The party electing to mediate shall provide written notice to the other party setting forth its request to mediate and a brief statement regarding the issue to be mediated. The persons named in Item 11 of the Declarations are authorized and directed to accept the Notice of Mediation on behalf of the Underwriters. The **Named Insured** is authorized and directed to accept the Notice of Mediation on behalf of any **Insured**.
- d. Arbitration. As a condition precedent to any right of action hereunder, in the event that a good faith effort to mediate pursuant to paragraph c. above cannot resolve a dispute between any **Insured** and the Underwriters involving this Policy or a **claim** or circumstance hereunder, it is hereby mutually agreed that such dispute shall be determined by final and binding arbitration before a single arbitrator. If the parties cannot mutually select the arbitrator, the parties will refer the selection of the arbitrator to the American Arbitration Association.

23. Service of Suit Clause (U.S.A.)

- a. Subject to the application of Section 21, it is agreed that in the event of the Underwriters failure to pay any amount claimed to be due under this insurance, the Underwriters herein, at the **Named Insured's** request, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this clause constitutes or should be understood to constitute a waiver of the Underwriters rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or seek a transfer of a case to another court as permitted by the laws of the United States or any state in the United States. It is further agreed that service of process in such suit may be made upon the Underwriters representative, designated in Item 11 of the Declarations, and that in any suit instituted against any one of them upon this contract; the Underwriters will abide by the final decision of such court, or of any appellate court in the event of an appeal.
- b. The Underwriters representative designated in Item 11 of the Declarations is authorized and directed to accept service of process on the Underwriters behalf in any such suit and/or upon the **Named Insured's** request to give a written undertaking to the **Named Insured** that they will enter a general appearance upon the Underwriters behalf in the event such a suit shall be instituted.

- c. Pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the Underwriters hereby designate the Superintendent, Commissioner, or Director of Insurance or other officer specified for that purpose in the statute, or his successor in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on the **Named Insured's** behalf or any beneficiary hereunder arising out of this Policy, and the Underwriters hereby designate the Underwriters representative listed in Item 11 of the Declarations as the person to whom said officer is authorized to mail such process or a true copy thereof.

24. Warranty by the Named Insured

By acceptance of this Policy, all **Insureds** agree that the statements contained in the **application**, any application for insurance if this Policy is a renewal, and any supplemental materials submitted therewith are their agreements and representations, which shall be deemed material to the risk assumed by the Underwriters, and that this Policy is issued in reliance upon the truth thereof.

The misrepresentation or non-disclosure of any matter by the **Named Insured** or the **Named Insured's** agent in the **application**, any **application** for insurance if this Policy is a renewal, or any supplemental materials submitted to the Underwriters, will render the Policy null and void and relieve the Underwriters from all liability under the Policy.

The **application** and any application for insurance if this Policy is a renewal, and any supplemental materials submitted to the Underwriters are deemed incorporated into and made a part of this Policy.

25. Forfeiture

Any:

1. action or failure to act by the **Named Insured** with the intent to defraud the Underwriters; or
2. material misrepresentation or non-disclosure of any material fact or **claims** by the **Named Insured** in the **application** or in any supplemental materials submitted to the Underwriters;

shall render this Policy null and void, and all coverage hereunder shall be forfeited.

NAS INSURANCE SERVICES, INC.

By **S P E C I M E N**
On behalf of the Underwriters
providing this insurance.

P1818CE-1111
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U.S.A.

NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT – E1818NIE-0111

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

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

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

This Policy* does not apply:

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

All other terms and conditions of the Policy remain unchanged

- (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in this Endorsement:

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

"nuclear facility" means

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

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; **"nuclear reactor"** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

With respect to injury to or destruction of property, the word **"injury"** or **"destruction"** includes all forms of radioactive contamination of property.

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

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

17/3/60

N.M.A. 1256

SPECIMEN

This endorsement is to take effect on «f12».

Policy No.: «f2»

Name: «f3» «f4»

Policy Effective Date: «f12» Expiration: «f13»

Endorsement No.: 1

All other terms and conditions of the Policy remain unchanged