

# **2022**

# **Cyber Liability and Data Breach Response Coverage Document**



**VLCT**  
**Property And Casualty Intermunicipal Fund, Inc.**  
**(PACIF)**

## CYBER LIABILITY & BREACH RESPONSE COVERAGE DOCUMENT

**THIS COVERAGE DOCUMENT'S LIABILITY INSURING AGREEMENTS PROVIDE COVERAGE ON A CLAIMS MADE AND REPORTED BASIS AND APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE MEMBER DURING THE COVERAGE PERIOD OR THE OPTIONAL EXTENSION PERIOD (IF APPLICABLE) AND REPORTED TO THE FUND IN ACCORDANCE WITH THE TERMS OF THIS COVERAGE DOCUMENT. COVERAGE FOR EXPENSES OR LOSS MAY REQUIRE OUR PRIOR CONSENT OR APPROVAL. PLEASE READ THIS POLICY CAREFULLY.**

We agree with the **Named Member**, in consideration of the payment of the contribution and reliance upon the statements contained in the information and materials provided to The **Fund** in connection with the underwriting and issuance of this Coverage Document and subject to all the provisions, terms and conditions of this Coverage Document:

### I. COVERAGE AGREEMENTS

#### 1. Breach Response

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

#### 2. First Party Loss

To indemnify the **Member** for:

- a. Business Interruption Loss - **Business Interruption Loss** that the **Member** sustains as a result of a **Security Breach** that the **Member** first discovers during the **Coverage Period**.
- b. Cyber Extortion Loss - **Cyber Extortion Loss** that the **Member** incurs as a result of an **Extortion Threat** first made against the **Member** during the **Coverage Period**.
- c. Data Recovery Costs - **Data Recovery Costs** that the **Member** incurs as a direct result of a **Security Breach** that the **Member** first discovers during the **Coverage Period**.
- d. Reputational Loss - **Reputational Loss** that the **Member** incurs during the **Notification Period** as a result of (i) an actual or reasonably suspected **Data Breach** or **Security Breach** that the **Member** first discovers during the **Coverage Period** and (ii) for which individuals have been notified pursuant to part 4. of the **Breach Response Services** definition.

#### 3. Liability

##### a. Data & Network Liability

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

- (1) a **Data Breach**;
- (2) a **Security Breach**;
- (3) the **Member's** failure to timely disclose a **Data Breach** or **Security Breach**;

(4) failure by the **Member** to comply with that part of a **Privacy Policy** that specifically:

- (a) prohibits or restricts the **Member's** disclosure, sharing or selling of **Personally Identifiable Information**;
- (b) requires the **Member** to provide an individual access to **Personally Identifiable Information** or to correct incomplete or inaccurate **Personally Identifiable Information** after a request is made; or
- (c) mandates procedures and requirements to prevent the loss of **Personally Identifiable Information**;

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

b. Regulatory Defense & Penalties

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

c. Payment Card Liabilities & Costs

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

d. Media Liability

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

4. eCrime

To indemnify the **Member** for any direct financial loss sustained resulting from:

- a. **Fraudulent Instruction**;
- b. **Funds Transfer Fraud**; or
- c. **Telephone Fraud**;

that the **Member** first discovers during the **Coverage Period** or to indemnify the **Member** for **Criminal Reward Funds**.

## II. DEFINITIONS

**Breach Notice Law** means any statute or regulation that requires notice to persons whose personal information was accessed or reasonably may have been accessed by an unauthorized person. **Breach**

**Notice Law** also includes any statute or regulation requiring notice of a **Data Breach** to be provided to governmental or regulatory authorities.

**Breach Response Services** means the following fees and costs in response to an actual or reasonably suspected **Data Breach** or **Security Breach**:

1. for an attorney to provide necessary legal advice to the **Member** to evaluate its obligations pursuant to **Breach Notice Laws** or a **Merchant Services Agreement** and in connection with providing the **Breach Response Services** described below;
2. for a computer security expert to determine the existence, cause and scope of an actual or reasonably suspected **Data Breach**, and if such **Data Breach** is actively in progress on the **Member's Computer Systems**, to assist in containing it;
3. for a PCI Forensic Investigator to investigate the existence and extent of an actual or reasonably suspected **Data Breach** involving payment card data and for a Qualified Security Assessor to certify and assist in attesting to the **Member's** PCI compliance, as required by a **Merchant Services Agreement**;
4. to notify those individuals whose **Personally Identifiable Information** was potentially impacted by a **Data Breach**;
5. to provide a call center to respond to inquiries about a **Data Breach**;
6. to provide a credit monitoring, identity monitoring or other solution approved by the **Fund** to individuals whose **Personally Identifiable Information** was potentially impacted by a **Data Breach**; and
7. public relations and crisis management costs directly related to mitigating harm to the **Member** which are approved in advance by the **Fund** in its discretion.

**Breach Response Services** will be provided by providers chosen by the **Fund**, from its panel, in consultation with the **Member**, will be subject to the terms and conditions of this Coverage Document, and will not include any internal salary or overhead expenses of the **Member**.

**Business Interruption Loss** means:

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

actually sustained during the **Period of Restoration** as a result of the actual interruption of the **Member's** business operations caused by a **Security Breach**. Coverage for **Business Interruption Loss** will apply only after the **Waiting Period** has elapsed.

**Business Interruption Loss** will not include:

1. loss arising out of any liability to any third party;
2. legal costs or legal expenses;
3. loss incurred as a result of unfavorable business conditions;

4. loss of market or any other consequential loss; or
5. **Data Recovery Costs.**

**Claim** means:

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

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

**Claims Expenses** means:

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

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

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

1. operated by and either owned by or leased to the **Member**; or
2. with respect to coverage under the Breach Response and Liability insuring agreements, operated by a third party pursuant to written contract with the **Member** and used for the purpose of providing hosted computer application services to the **Member** or for processing, maintaining, hosting or storing the **Member's** electronic data.

**Control Group** means any principal, partner, corporate officer, director, general counsel (or most senior legal counsel) or risk manager of the **Member** and also includes any Municipal Manager, Administrator, selectperson or member of the municipal governing body, municipal legal counsel, and any individual in a substantially similar position.

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

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

**Cyber Extortion Loss** means:

1. any **Extortion Payment** that has been made by or on behalf of the **Member** with our prior written consent to prevent or terminate an **Extortion Threat**; and
2. reasonable and necessary expenses incurred by the **Member** with our prior written consent to prevent or respond to an **Extortion Threat**.

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

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

**Data** means any software or electronic data that exists in **Computer Systems** and that is subject to regular back-up procedures.

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

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

**Data Recovery Costs** will not include:

1. the monetary value of profits, royalties, or lost market share related to **Data**, including but not limited to trade secrets or other proprietary information or any other amount pertaining to the value of **Data**;
2. legal costs or legal expenses;
3. loss arising out of any liability to any third party;
4. **Cyber Extortion Loss** or,
5. any of the **Member's** internal salary or overhead expenses.

**Digital Currency** means a type of digital currency that:

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

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

**Extortion Threat** means a threat to:

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

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

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

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

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

**Fraudulent Instruction** means the transfer, payment or delivery of **Money** or **Securities** by a **Member** as a result of fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions provided by a third party, that is intended to mislead a **Member** through the misrepresentation of a material fact which is relied upon in good faith by such **Member**.

**Fraudulent Instruction** will not include loss arising out of:

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

**Fund** means the VLCT Property and Casualty Intermunicipal Fund.

**Funds Transfer Fraud** means the loss of **Money** or **Securities** contained in a **Transfer Account** at a **Financial Institution** resulting from fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions by a third party issued to a **Financial Institution** directing such institution to transfer, pay or deliver **Money** or **Securities** from any account maintained by the **Member** at such institution, without the **Member's** knowledge or consent.

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

1. the type or kind covered by the **Member's** financial institution bond or commercial crime policy;
2. any actual or alleged fraudulent, dishonest or criminal act or omission by, or involving, any natural person **Member**;
3. any indirect or consequential loss of any kind;
4. punitive, exemplary or multiplied damages of any kind or any fines, penalties or loss of any tax benefit;



5. any liability to any third party, except for direct compensatory damages arising directly from **Funds Transfer Fraud**;
6. any legal costs or legal expenses; or proving or establishing the existence of **Funds Transfer Fraud**;
7. the theft, disappearance, destruction of, unauthorized access to, or unauthorized use of confidential information, including a PIN or security code;
8. any forged, altered or fraudulent negotiable instruments, securities, documents or instructions; or
9. any actual or alleged use of credit, debit, charge, access, convenience or other cards or the information contained on such cards.

**Income Loss** means an amount equal to:

1. net profit or loss before interest and tax that the **Member** would have earned or incurred; and
2. continuing normal operating expenses incurred by the **Member** (including payroll), but only to the extent that such operating expenses must necessarily continue during the **Period of Restoration**.

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

**Member** means:

The unqualified word Member wherever used in this Coverage Document includes not only the Named Member specified on the Declarations Page but also the following:

1. Any official, trustee, or employee of the Named Member while acting within the scope of that person's duties as such;
2. Volunteer Workers of the Named Member while acting within the scope of their duties as authorized by the Named Member.

**Loss** means **Breach Response Services, Business Interruption Loss, Claims Expenses, Criminal Reward Funds, Cyber Extortion Loss, Damages, Data Recovery Costs, PCI Fines, Expenses and Costs, Penalties, Reputational Loss**, loss covered under the eCrime insuring agreement and any other amounts covered under this Coverage Document.

1. Multiple **Losses** arising from the same or a series of related, repeated or continuing acts, errors, omissions or events will be considered a single **Loss** for the purposes of this Coverage Document.
2. With respect to the Breach Response and First Party Loss insuring agreements, all acts, errors, omissions or events (or series of related, repeated or continuing acts, errors, omissions or events) giving rise to a **Loss** or multiple **Losses** in connection with such insuring agreements will be deemed to have been discovered at the time the first such act, error, omission or event is discovered.

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

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

**Media Material** means any information, including words, sounds, numbers, images or graphics, but will not include computer software or the actual goods, products or services described, illustrated or displayed in such **Media Material**.

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

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

**Named Member** means the governmental entity which is a present participant in the **Fund** and shown in the Declarations of the Coverage Document and Member as is defined in Section II - Definitions Member.

**Notification Period** means the 30-day period that begins on the specific date on which **Notified Individuals** first receive notification of the incident for which **Notification Services** are provided.

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

**Penalties** means:

1. any monetary civil fine or penalty payable to a governmental entity that was imposed in a **Regulatory Proceeding**; and
2. amounts which the **Member** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment or settlement of a **Regulatory Proceeding** (including such amounts required to be paid into a Consumer Redress Fund);
3. but will not include: (a) costs to remediate or improve **Computer Systems**; (b) costs to establish, implement, maintain, improve or remediate security or privacy practices, procedures, programs or policies; (c) audit, assessment, compliance or reporting costs; or (d) costs to protect the confidentiality, integrity and/or security of **Personally Identifiable Information** or other information.

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

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

**Personally Identifiable Information** means:

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

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

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

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

**Reputational Income Loss** means the net profit resulting directly from the **Member's** business operations, before income taxes, that the **Member** is prevented from earning as a direct result of damage to the **Member's** reputation caused by an actual or reasonably suspected **Data Breach** or **Security Breach**. In determining **Reputational Income Loss**, due consideration shall be given to the prior experience of the **Member's** business operations before the beginning of the **Notification Period** and to the reasonable and probable business operations the **Member** could have performed had the actual or reasonably suspected **Data Breach** or **Security Breach** not occurred.

**Reputational Income Loss** does not include any internal salary, costs or overhead expenses of the **Member**.

**Reputational Loss** means the **Reputational Income Loss** during the **Notification Period**; provided that **Reputational Loss** shall not mean and no coverage shall be available under this Coverage Document for any of the following: loss arising out of any liability to any third party for whatever reason; legal costs or legal expenses of any type; loss incurred as a result of unfavorable business conditions, loss of market or any other consequential loss; or costs or expenses the **Member** incurs to identify, investigate, respond to or remediate an actual or reasonably suspected **Data Breach** or **Security Breach**.

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

**Security Breach** means a failure of computer security to prevent:

1. **Unauthorized Access or Use of Computer Systems**, including **Unauthorized Access or Use** resulting from the theft of a password from a **Computer System** or from any **Member**;
2. a denial of service attack affecting **Computer Systems**;
3. with respect to coverage under the Liability insuring agreements, a denial of service attack affecting computer systems that are not owned, operated or controlled by an **Member**; or
4. infection of **Computer Systems** by malicious code or transmission of malicious code from **Computer Systems**.

**Subsidiary** means any entity:

1. which, on or prior to the inception date of this Coverage Document, the **Named Member** owns, directly or indirectly, more than 50% of the outstanding voting securities ("Management Control"); and
2. which the **Named Member** acquires Management Control after the inception date of this Coverage Document; provided that:
  - a. the revenues of such entity do not exceed 15% of the **Named Member's** annual revenues; or
  - b. if the revenues of such entity exceed 15% of the **Named Member's** annual revenues, then coverage under this Coverage Document will be afforded for a period of 60 days, but only for any **Claim** that arises out of any act, error, omission, incident or event first occurring after the entity becomes so owned. Coverage beyond such 60 day period will only be available if the **Named Member** gives the **Fund** written notice of the acquisition, obtains our written consent to extend coverage to the entity beyond such 60 day period and agrees to pay any additional contribution required by the **Fund**.

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

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

**Third Party Information** means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of

information of a third party not Member under this Coverage Document which is not available to the general public.

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

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

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

**Waiting Period** means the period of time that begins upon the actual interruption of the **Member's** business operations caused by a **Security Breach**, and ends after the elapse of twelve (12) hours.

### III. EXCLUSIONS

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

#### 1. Bodily Injury or Property Damage

- a. physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting from such physical injury, sickness, disease or death; or
- b. physical injury to or destruction of any tangible property, including the loss of use thereof; but electronic data will not be considered tangible property;

#### 2. Trade Practices and Antitrust

- a. any actual or alleged false, deceptive or unfair trade practices, antitrust violation, restraint of trade, unfair competition (except as provided in the Media Liability insuring agreement), or false or deceptive or misleading advertising or violation of the Sherman Antitrust Act, the Clayton Act, or the Robinson-Patman Act; but this exclusion will not apply to:
  - (1) the Breach Response insuring agreement; or
  - (2) coverage for a **Data Breach** or **Security Breach**, provided no member of the **Control Group** participated or colluded in such **Data Breach** or **Security Breach**;

#### 3. Gathering or Distribution of Information

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

wire tapping, recording or telemarketing is done by or on behalf of the **Member**; but this exclusion will not apply to **Claims Expenses** incurred in defending the **Member** against allegations of unlawful audio or video recording;

#### 4. **Prior Known Acts & Prior Noticed Claims**

- a. any act, error, omission, incident or event committed or occurring prior to the inception date of this Coverage Document if any member of the **Control Group** on or before the inception date of this Coverage Document knew or could have reasonably foreseen that such act, error or omission, incident or event might be expected to be the basis of a **Claim** or **Loss**;
- b. any **Claim, Loss**, incident or circumstance for which notice has been provided under any prior policy or Coverage Document of which this Coverage Document is a renewal or replacement;

#### 5. **Racketeering, Benefit Plans, Employment Liability & Discrimination**

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

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

#### 6. **Sale or Ownership of Securities & Violation of Securities Laws**

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

#### 7. **Criminal, Intentional or Fraudulent Acts**

- a. any criminal, dishonest, fraudulent, or malicious act or omission, or intentional or knowing violation of the law, if committed by an Member, or by others if the Member colluded or participated in any such conduct or activity; but this exclusion will not apply to:
  - (1) Claims Expenses incurred in defending any Claim alleging the foregoing until there is a final non-appealable adjudication establishing such conduct; or
  - (2) with respect to a natural person Member, if such Member did not personally commit, participate in or know about any act, error, omission, incident or event giving rise to such Claim or Loss.

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

## 8. Patent, Software Copyright, Misappropriation of Information

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

## 9. Governmental Actions

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

## 10. Other Members & Related Enterprises

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

## 11. Trading Losses, Loss of Money & Discounts

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

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

## 12. Media-Related Exposures

With respect to the Media Liability insuring agreement:

- a. any contractual liability or obligation; but this exclusion will not apply to a **Claim** for misappropriation of ideas under implied contract;
- b. the actual or alleged obligation to make licensing fee or royalty payments;

- c. any costs or expenses incurred or to be incurred by the **Member** or others for the reprinting, reposting, recall, removal or disposal of any **Media Material** or any other information, content or media, including any media or products containing such **Media Material**, information, content or media;
- d. any Claim brought by or on behalf of any intellectual property licensing bodies or organizations;
- e. the actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services, cost guarantees, cost representations, contract price estimates, or the failure of any goods or services to conform with any represented quality or performance;
- f. any actual or alleged gambling, contest, lottery, promotional game or other game of chance; or
- g. any Claim made by or on behalf of any independent contractor, joint venturer or venture partner arising out of or resulting from disputes over ownership of rights in Media Material or services provided by such independent contractor, joint venturer or venture partner;

### 13. First Party Loss

With respect to the First Party Loss insuring agreements:

- a. seizure, nationalization, confiscation, or destruction of property or data by order of any governmental or public authority;
- b. costs or expenses incurred by the **Member** to identify or remediate software program errors or vulnerabilities or update, replace, restore, assemble, reproduce, recollect or enhance data or **Computer Systems** to a level beyond that which existed prior to a **Security Breach** or **Extortion Threat**;
- c. failure or malfunction of satellites or of power, utility, mechanical or telecommunications (including internet) infrastructure or services that are not under the **Member's** direct operational control; or
- d. fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, act of God or other physical event.

### 14. War and Civil War

- a. For, resulting from, directly or indirectly occasioned by, happening through or in consequence of: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority; provided, that this exclusion will not apply to **Cyber Terrorism**. For purposes of this exclusion, **Cyber Terrorism** means the premeditated use of disruptive activities, or threat to use disruptive activities, against a **Computer System** or network with the intention to cause harm, further social, ideological, religious, political or similar objectives, or to intimidate any person(s) in furtherance of such objectives.

### 15. Radioactive Contamination

- a. In relation to liability arising outside the U.S.A., its territories or possessions, Puerto Rico or the Canal Zone, this Coverage Document does not cover any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionizing radiations or contamination



by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

## 16. Sanction Limitation

- a. The Fund shall not be liable to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose the Fund to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, law or regulations of the European Union, United Kingdom or United States of America.

## IV. LIMIT OF LIABILITY AND COVERAGE

### 1. Limits of Liability

- a. The Coverage Aggregate Limit of Liability listed in the Declarations (the “**Coverage Aggregate Limit of Liability**”) is our combined total limit of liability for all **Loss**, other than **Breach Response Services** and **Claims Expenses**, payable under this Coverage Document.
- b. The limit of liability payable under each insuring agreement will be an amount equal to the **Coverage Aggregate Limit of Liability** unless another amount is listed in the Declarations. Such amount is the aggregate amount payable under this Coverage Document pursuant to such insuring agreement and is part of, and not in addition to, the **Coverage Aggregate Limit of Liability**.
- c. Coverage for **Claims Expenses** under this Coverage Document are in addition to the **Coverage Aggregate Limit of Liability**. The Claims Expenses Aggregate Limit of Liability listed in the Declarations (the “**Claims Expenses Aggregate Limit of Liability**”) is our combined total limit of liability for all **Claims Expenses** payable under this Coverage Document.
- d. We will not be obligated to pay any **Damages, Penalties, PCI Fines, Expenses and Costs** or **Claims Expenses**, or to defend any **Claim**, after the **Coverage Aggregate Limit of Liability** or the **Claims Expenses Aggregate Limit of Liability**, whichever is applicable, has been exhausted, or after deposit of the **Coverage Aggregate Limit of Liability** and the **Claims Expenses Aggregate Limit of Liability** in a court of competent jurisdiction.

### 2. Breach Response Limits

- a. Coverage for **Breach Response Services** under this Coverage Document is in addition to the **Coverage Aggregate Limit of Liability** and the **Claims Expenses Aggregate Limit of Liability**. The Breach Response Aggregate Limit of Coverage listed in the Declarations (the “**Breach Response Services Aggregate Limit of Coverage**”) is our combined total limit of coverage for all legal, forensic, public relations and crisis management, notification, call center and credit or identity monitoring services payable under this Coverage Document.

## V. RETENTIONS

- a. The Retention listed in the Declarations applies separately to each incident, event or related incidents or events giving rise to a **Claim** or **Loss**. The Retention will be satisfied by monetary payments by the **Named Member** of covered **Loss** under each insuring agreement. If any **Loss** arising out of an incident or **Claim** is subject to more than one Retention, the Retention for each

applicable insuring agreement will apply to such **Loss**, provided that the sum of such Retention amounts will not exceed the largest applicable Retention amount.

- b. Coverage for **Business Interruption Loss** will apply after the **Waiting Period** has elapsed and we will then indemnify the **Named Member** for all **Business Interruption Loss** sustained during the **Period of Restoration** in excess of the Retention.
- c. Satisfaction of the applicable Retention is a condition precedent to the payment of any **Loss** under this Coverage Document, and we will be liable only for the amounts in excess of such Retention.

## SECTION VI – OPTIONAL EXTENSION PERIOD

- a. Upon non-renewal or cancellation of this Coverage Document for any reason except the non-payment of contribution, the **Named Member** will have the right to purchase, for additional contribution, an Optional Extension Period of twelve (12) months. Coverage provided by such Optional Extension Period will only apply to **Claims** first made against any **Member** during the Optional Extension Period and reported to the **Fund** during the Optional Extension Period, and arising out of any act, error or omission committed before the end of the **Coverage Period**. In order for the **Named Member** to invoke the Optional Extension Period option, the payment of the additional contribution for the Optional Extension Period must be paid to the **Fund** within 60 days of the termination of this Coverage Document.
- b. The Limit of Liability for the Optional Extension Period shall be equal to the coverage aggregate limit of liability as stated in of the Declarations in effect at the time of termination. At the commencement of the Optional Extension Period the entire contribution will be deemed earned, and in the event the **Named Member** terminates the Optional Extension Period for any reason prior to its natural expiration, we will not be liable to return any contribution paid for the Optional Extension Period.

## VII. GENERAL CONDITIONS

### 1. Notice of Claim or Loss

- a. The **Member** must notify the **Fund** of any **Claim** as soon as practicable, but in no event later than: (i) 60 days after the end of the **Coverage Period**; or (ii) the end of the Optional Extension Period (if applicable).
- b. With respect to **Breach Response Services**, the **Member** must notify the **Fund** of any actual or reasonably suspected **Data Breach** or **Security Breach** as soon as practicable after discovery by the **Member**, but in no event later than 60 days after the end of the **Coverage Period**. Notice of an actual or reasonably suspected **Data Breach** or **Security Breach** in conformance with this paragraph will also constitute notice of a circumstance that could reasonably be the basis for a **Claim**.
- c. With respect to **Cyber Extortion Loss**, the **Named Member** must notify the **Fund** as soon as practicable after discovery of an **Extortion Threat** but no later than 60 days after the end of the **Coverage Period**. The **Named Member** must obtain our consent prior to incurring **Cyber Extortion Loss**.
- d. With respect to **Data Recovery Costs** and **Business Interruption Loss**, the **Named Member** must notify the **Fund** as soon as practicable after discovery of the circumstance, incident or event giving rise to such loss. The **Named Member** will provide the **Fund** a proof of **Data Recovery Costs** and **Business Interruption Loss**. All loss described in this paragraph must be reported, and

all proofs of loss must be provided, to the **Fund** no later than 6 months after the end of the **Coverage Period**.

- e. The **Named Member** must notify the **Fund** of any loss covered under the eCrime insuring agreement as soon as practicable, but in no event later than 60 days after the end of the **Coverage Period**.
- f. With respect to **Reputational Loss**, the **Named Member** must notify the **Fund** as soon as practicable after discovery of the circumstance, incident or event giving rise to such loss. The **Named Member** will provide the **Fund** a proof of **Reputational Loss**. All loss described in this paragraph must be reported, and all proofs of loss must be provided, to the **Fund** no later than six (6) months after the end of the **Coverage Period**. The costs and expenses of preparing and submitting a proof of loss, and establishing or proving **Reputational Loss** shall be the **Member's** obligation, and are not covered under this Coverage Document.
- g. Any **Claim** arising out of a **Loss** that is covered under the Breach Response, First Party Loss or eCrime insuring agreements and that is reported to the **Fund** in conformance with the foregoing will be considered to have been made during the **Coverage Period**.

## 2. Notice of Circumstance

- a. With respect to any circumstance that could reasonably be the basis for a **Claim** (other than a **Data Breach** or **Security Breach** noticed under the Breach Response insuring agreement) the **Member** may give written notice of such circumstance to the **Fund** as soon as practicable during the **Coverage Period**. Such notice must include:
  - (1) the specific details of the act, error, omission or event that could reasonably be the basis for a **Claim**;
  - (2) the injury or damage which may result or has resulted from the circumstance; and
  - (3) the facts by which the **Member** first became aware of the act, error, omission or event.
- b. Any subsequent **Claim** made against the **Member** arising out of any circumstance reported to the **Fund** in conformance with the foregoing will be considered to have been made at the time written notice complying with the above requirements was first given to the **Fund** during the **Coverage Period**.

## 3. Defense of Claims

- a. Except with respect to coverage under the Payment Card Liabilities & Costs insuring agreement, We have the right and duty to defend any covered **Claim** or **Regulatory Proceeding**. Defense counsel will be mutually agreed by the **Named Member** and the **Fund** but, in the absence of such agreement, our decision will be final.
- b. With respect to the Payment Card Liabilities & Costs insuring agreement, coverage will be provided on an indemnity basis and legal counsel will be mutually agreed by the **Named Member** and the **Fund** and will be selected from one of the firms on our panel.

#### 4. Settlement of Claims

- a. If the **Member** refuses to consent to any settlement recommended by the **Fund** and acceptable to the claimant, our liability for such **Claim** will not exceed:
  - (1) the amount for which the Claim could have been settled, less the remaining Retention, plus the Claims Expenses incurred up to the time of such refusal; plus
  - (2) sixty percent (60%) of any Claims Expenses incurred after the date such settlement or compromise was recommended to the Member plus sixty percent (60%) of any Damages, Penalties and PCI Fines, Expenses and Costs above the amount for which the Claim could have been settled;and we will have the right to withdraw from the further defense of such **Claim**.
- b. The Member may settle any Claim where the Damages, Penalties, PCI Fines, Expenses and Costs and Claims Expenses do not exceed the Retention, provided that the entire Claim is resolved and the Member obtains a full release on behalf of all Members from all claimants.

#### 5. Assistance and Cooperation

- a. We will have the right to make any investigation we deem necessary, and the **Member** will cooperate with the **Fund** in all investigations, including investigations regarding coverage under this Coverage Document and the information and materials provided to the **Fund** in connection with the underwriting and issuance of this Coverage Document. The **Member** will execute or cause to be executed all papers and render all assistance as is requested by the **Fund**. The **Member** agrees not to take any action which in any way increases our exposure under this Coverage Document. Expenses incurred by the **Member** in assisting and cooperating with the **Fund** do not constitute **Claims Expenses** under the Coverage Document.
- b. The **Member** will not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without our written consent, except as specifically provided in the Settlement of Claims clause above. Compliance with a **Breach Notice Law** will not be considered an admission of liability.

#### 6. Subrogation

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

## 7. Other Insurance

- a. The insurance under this Coverage Document will apply in excess of any other valid and collectible insurance available to any **Member** unless such other insurance is written only as specific excess insurance over this Coverage Document.

## 8. Action Against The Fund

- a. The insurance under this Coverage Document will apply in excess of any other valid and collectible insurance available to any **Member** unless such other insurance is written only as specific excess insurance over this Coverage Document.
- b. No action will lie against the **Fund** or our representatives unless and until, as a condition precedent thereto, the **Member** has fully complied with all provisions, terms and conditions of this Coverage Document and the amount of the **Member's** obligation to pay has been finally determined either by judgment or award against the Member after trial, regulatory proceeding, arbitration or by written agreement of the **Member**, the claimant, and the **Fund**.
- c. No person or organization will have the right under this Coverage Document to join the **Fund** as a party to an action or other proceeding against the **Member** to determine the **Member's** liability, nor will we be impleaded by the **Member** or the **Member's** legal representative.
- d. The **Member's** bankruptcy or insolvency of the **Member's** estate will not relieve the **Fund** of our obligations hereunder.

## 9. Entire Agreement

- a. By acceptance of the Coverage Document, all Members agree that this Coverage Document embodies all agreements between the Fund and the Member relating to this Coverage Document. Notice to any agent, or knowledge possessed by any agent or by any other person, will not affect a waiver or a change in any part of this Coverage Document or stop the Fund from asserting any right under the terms of this Coverage Document; nor will the terms of this Coverage Document be waived or changed, except by Coverage Document issued to form a part of this Coverage Document signed by the Fund.

## 10. Assignment

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

## 11. Singular Form of a Word

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

## 12. Headings

- a. The titles of paragraphs, clauses, provisions or Coverage Documents of or to this Coverage Document 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 Coverage Document.

### 13. Representation by the Member

- a. All **Members** agree that the statements contained in the information and materials provided to the **Fund** in connection with the underwriting and issuance of this Coverage Document are true, accurate and are not misleading, and that we issued this Coverage Document, and assume the risks hereunder, in reliance upon the truth thereof.
- b. All **Members** agree that the statements contained in the information and materials provided to the **Fund** in connection with the underwriting and issuance of this Coverage Document are true, accurate and are not misleading, and that we issued this Coverage Document, and assume the risks hereunder, in reliance upon the truth thereof.

### 14. Named Member as Agent

- a. The **Member** will be considered the agent of all **Members**, and will act on behalf of all **Members** with respect to the giving of or receipt of all notices pertaining to this Coverage Document, and the acceptance of any Coverage Documents to this Coverage Document. The **Named Member** is responsible for the payment of all contributions and Retentions and for receiving any return contributions.

### 15. Territory

- a. This Insurance applies to **Claims** made, acts committed, or **Loss** occurring anywhere in the world.

### 16. Antistacking

- a. In consideration of the contribution charged for the Coverage Document, it is hereby understood and agreed that notwithstanding anything to the contrary contained in this Coverage Document, in the event any incident, event or related incidents or events, giving rise to a **Claim** or an obligation to provide **Breach Response Services** triggers coverage under this Coverage Document and any other Coverage Document issued by the **Fund**, our liability under this Coverage Document and such other Coverage Documents combined shall not exceed the amount of the largest **Coverage Aggregate Limit of Liability** or applicable sublimits of liability.

### 17. Cancellation & Non-Renewal

- a. Cancellation for Nonpayment of Contribution

If the Named Member fails to pay any contribution when due, the Fund shall have the right to cancel the Named Member's Coverage under this Coverage Document. The Fund shall provide the Named Member notice of cancellation by certified mail not less than fifteen (15) days prior to the effective date of cancellation together with the reason thereof.

- b. Cancellation For Other Reasons

(1) The Fund may also cancel the Named Member's coverage for the following reasons, the factual basis of which shall be determined solely by the Fund.

- (a) Fraud or material misrepresentation in any dealings with the Fund; or
- (b) Violation of any of the terms or conditions of the Coverage Document; or
- (c) Violation of the terms of the Member Agreement; or

(d) Substantial increase in hazard.

(2) Notice of Cancellation for Other Reasons

The Fund shall provide the Named Member notice of the cancellation by certified mail not less than sixty (60) days prior to the effective date of cancellation. The reason or reasons for cancellation shall accompany the notice of cancellation.

(3) Cancellation for substantial increase in hazard shall be effective only after prior approval of the Vermont Commissioner of the Department of Financial Regulation.

c. Non-Renewal

(1) The Named Member may elect to non-renew this Coverage only at the end of a Period of Coverage. The Named Member must both:

(a) Provide the Fund with sixty (60) days' advance written conditional notice of non-renewal, and

(b) Provide the Fund with written actual notice of non-renewal before the close of business of the last business day of the Period of Coverage.

(2) If the Fund decides not to renew this Coverage, the Fund will mail or deliver to the Named Member written notice of the non-renewal not less than sixty (60) days before the end of the Period of Coverage.

Draft for DFR Approval