

## Privacy Breach Expense Endorsement

### INSURING AGREEMENT A – PRIVACY BREACH EXPENSES and INSURING AGREEMENT B – BUSINESS INTERRUPTION

This Endorsement changes the policy. Please read it carefully.

Certain words and phrases in bold font have special meaning as defined in the DEFINITIONS section.

The titles of sections or paragraphs listed below should not be considered for purposes of interpreting the intent of this Endorsement. These titles have only been inserted for ease of reading.

This Endorsement applies to all locations insured under the property section of the policy and is subject to the terms, conditions, limitations and exclusions that are applicable to the commercial property insurance form to which this Endorsement is attached.

Coverage as extended by each Insuring Agreement of this Endorsement may also be provided elsewhere in the policy or by another policy issued to the **Named Insured** by the Insurer. In the event of any such coverage duplication or overlap, only the coverage as extended by this Endorsement will apply.

This Endorsement applies regardless of anything contained to the contrary in a policy Data Exclusion. Except to the extent of coverage under this Endorsement, the terms of such Data Exclusion remain in full force and effect.

#### Amounts of Insurance:

The amounts of insurance for coverage as extended by this Endorsement under Insuring Agreements A and B are specified in the Declaration Page(s).

The maximum amount of insurance under this Endorsement during any one policy period shall not exceed in the aggregate, the amounts of insurance specified in the Declaration Page(s) for this Endorsement, regardless of the number of occurrences or claims, the number of breaches or the number of **Named Insureds**.

Multiple claims that arise from the same **privacy breach** will be regarded as one claim provided that occurrences giving rise to such multiple claims are discovered at the same time. An occurrence(s) giving rise to a claim and discovered at a later time within the policy period of this Endorsement, whether arising from the same cause or not, will be considered a separate claim.

#### Deductible – Insuring Agreement A:

Each claim shall be adjusted separately and the deductible amount shown in the Declaration Page(s) shall be deducted from the amount of each such adjusted claim.

**Waiting Period Deductible – Insuring Agreement B:** The twenty-four (24) hour waiting period specified for **business interruption loss** (if any such insured loss occurs) shall apply with respect to each claim. Each such claim for **business interruption loss** shall be adjusted separately.

Coverage under the following Insuring Agreements applies to **remediation expenses** and **business interruption loss**, due to **privacy breach** that:

1. first takes place, or is first activated, during the policy period of this Endorsement; and
2. is discovered by the **Named Insured** or by an employee or volunteer worker of the **Named Insured**, during the policy period of this Endorsement.

### INSURING AGREEMENT A - PRIVACY BREACH EXPENSES COVERAGE

The Insurer will reimburse the **Named Insured** for **remediation expenses** that are incurred by the **Named Insured** in relation to the **Named Insured's** business activities. The amount of coverage for such expenses is included within (and is not in addition to) the Amount of Insurance that is specified in the Declaration Page(s).

### INSURING AGREEMENT B - BUSINESS INTERRUPTION COVERAGE

1. Coverage under this Endorsement applies, subject to Additional Condition B, to **business interruption loss** that is:
  - 1.1. related directly to and caused by a **privacy breach** to which coverage under Insuring Agreement A applies; and
  - 1.2. incurred no sooner than twenty-four (24) consecutive hours after such a **privacy breach** is first discovered.
2. Business interruption coverage includes, without increasing the amount of insurance for Insuring Agreement B, necessary extra expenses (excluding **remediation expenses** other than **computer forensic services**) for which the Insurer shall reimburse the **Named Insured** and that are required for the reduction of actual loss of net income when such extra expenses:
  - 2.1. are in excess of the **Named Insured's** normal operating expenses; and
  - 2.2. would not have been required had no **privacy breach** occurred; and
  - 2.3. are not otherwise excluded under this Endorsement.
3. The Insurer's liability for such necessary extra expenses shall not exceed the amount of said reduction. Such necessary extra expenses are not subject to the waiting period deductible that is specified above for Insuring Agreement B provided that such actual loss sustained of net income exceeds the specified twenty-four (24) hour waiting period.
4. The duration of coverage for **business interruption loss** ends at the earliest of the following times:
  - 4.1. after sixty (60) consecutive days beginning on the day that a **privacy breach** to which coverage under Insuring Agreement A applies is first discovered; or
  - 4.2. at the time that the **Named Insured's** declared business operations are returned to the same state or the same level of operation that existed immediately before the **privacy breach**.
5. The **Named Insured** shall with due diligence do, and shall agree to do and give permission to do all things that are reasonably practicable to minimize or check any interruption of or interference with the business or to avoid or diminish the loss.

### EXCLUSIONS (applicable to Insuring Agreements A and B unless otherwise specified)

Insurance granted by this Endorsement shall not apply to:

#### 1. Prior Knowledge

Expenses or other loss arising from any fact or circumstance known to the **Named Insured** or to any Insured (or about which the **Named Insured** or any Insured should reasonably have known) prior to the effective date of this Endorsement.

2. **Employees' Own Computers**  
Expenses or other loss arising from unauthorized use of, unauthorized access to, loss of or damage to **data** or information on a personal mobile device or any other computer equipment owned by an employee, volunteer or authorized representative of the **Named Insured**, except to the extent specified in EXTENSIONS OF COVERAGE section, item 2.
3. **Unexplained Loss**  
Unexplained deletion, disappearance, loss or diminution of **data** or of non-computer data.
4. **Fines and Penalties**  
Fines, penalties, sanctions, taxes, levies or assessments of any nature, including:
  - 4.1. fines, fees or damages for breach of contract or for late or non-completion of orders or payments; or
  - 4.2. levies or assessments that are related to payment cards or to Payment Card Industry Standards.
5. **Wear and Tear, Latent Defect, Inherent Vice**  
Wear and tear, gradual deterioration, hidden or latent defect or any quality in **data**, in computer media or in non-computer data that causes it to damage or destroy itself.
6. **Information Technology Security**
  - 6.1. A **privacy breach**, except for theft of non-computer data, arising from failure of the **Named Insured** (or of an employee, volunteer or authorized representative of the **Named Insured**) to diligently deploy updated functional security software including anti-malware software, anti-ransomware software, security patches, smart phone operating system and software updates and including a functional hardware firewall and, for each computer, a functional software firewall. Such deployment should be completed in accordance with a standard of care that at least meets, at the time of such breach, current standards and best practices for computer and **data** security;
  - 6.2. For the purposes of the Exclusion 6.1. above, available security patches (available as patches in response to computer security threats as recognized and specified by any CERT entity, or available otherwise) or available smart phone operating system and software updates that are not applied automatically or semi-automatically must be applied by the **Named Insured** as soon as practicable following the **Named Insured's** discovery of a **privacy breach** related to a computer or **data** security vulnerability that is addressed by such a patch or by such an operating system or software update. In any event, such application should occur no later than thirty (30) days following a security patch or a smart phone operating system update being made available by a software developer, a software supplier, smart phone operating system provider or by a computer security specialist.
7. **Programming Errors**  
Expenses or other loss arising from errors in the programming or configuration of computer equipment or from errors in the configuration of **data** or of computer media.
8. **Dishonest Acts**  
Criminal, fraudulent or dishonest acts of any **Named Insured** or criminal or penal proceedings against any **Named Insured** (in any event, including any employee, volunteer or authorized representative of the **Named Insured**, whether acting alone or in collusion with others).
9. **Third Party Liability**  
Loss, damage, expense or costs, including judgements against the **Named Insured**, arising out of liability to a third party.
10. **Legal Expenses**  
Legal fees or other defence expenses.
11. **Illegal Gain**  
Any gain, profit, remuneration or advantage to which the **Named Insured** is not legally entitled.
12. **Contractual Liability**  
Liability assumed by the **Named Insured** under any contract or agreement except to the extent that the **Named Insured** would have been liable in the absence of such a contract or such an agreement.
13. **Consequential Loss**  
Loss, damage, expenses or increased costs due to delay, loss of use, loss of market, loss of occupancy or, except to the extent of coverage under Insuring Agreement B, other interruption of business.
14. **Mechanical Breakdown and Service Interruption**  
Loss, damage, expenses or increased costs due to mechanical failure, breakdown, short circuit or other electrical disturbance, or interruption of internet service or of electrical power supply.
15. **Betterment**  
Any cost or expenses incurred to update, upgrade or otherwise improve **data**, non-computer data, computer media or computing equipment.
16. **Cyber Extortion**  
Payments, including ransom, extortion or blackmail payments, made by the **Named Insured** in response to **cyber extortion** or otherwise complying with or responding to **cyber extortion**, except to the extent specified in EXTENSIONS OF COVERAGE section, item 3.
17. **Computer Forensic Services**  
The following expenses as such expenses may arise in regard to **computer forensic services** or otherwise:
  - 17.1. computer and device hardware or software costs, including the cost of acquiring, leasing, purchasing, altering, updating, replacing or repairing computer or device hardware or software;
  - 17.2. the **Named Insured's** payments that are part of any service or maintenance contract; or
  - 17.3. the remuneration of any employee, volunteer or authorized representative of the **Named Insured**, unless such expense is approved in writing by the Insurer beforehand.

**With respect to Insuring Agreement B, in addition to the exclusions above, insurance granted by this Endorsement shall not apply to:**

18. **Business Interruption**  
**Business interruption loss** arising out of unauthorized use of, unauthorized access to, loss of, or damage to unlicensed software or to copyrighted software that has been copied or that is being used without authorization.

## **EXTENSIONS OF COVERAGE (subject to all other terms, conditions, limitations and exclusions of this Endorsement)**

The following EXTENSIONS OF COVERAGE shall not increase the amounts of insurance that apply under this Endorsement and stated in the Declaration Page(s).

The following EXTENSIONS OF COVERAGE apply only with respect to a **privacy breach** that arises in regard to business activities of the **Named Insured** or of an employee, volunteer or authorized representative of the **Named Insured** while acting on behalf of the **Named Insured** in that capacity and that are activities related directly to the **Named Insured's** business operations.

#### COVERAGE IS EXTENDED TO:

1. Locations anywhere in the world if the **privacy breach** arises from the business activities of an employee, volunteer or authorized representative of the **Named Insured** who is away from Canada on the business of the **Named Insured** for a period not exceeding sixty (60) consecutive days. Coverage under this Endorsement does not apply in any country against which the Government of Canada has imposed economic or trade sanctions.
2. Computers, including tablets or smart phones that are personally owned by an employee, volunteer or authorized representative of the **Named Insured**, provided that any such computer, tablet or smart phone, at the time of a **privacy breach**, is being used with permission of the **Named Insured** on the **Named Insured's** business premises including offices in the homes of employees and while in transit to or from such offices and the **Named Insured's** business premises.
3.
  - 3.1. **Computer forensic services**, irrespective of an actual **privacy breach**, that are necessary to prevent or to mitigate **cyber extortion**, if such **computer forensic services** are approved in writing by the Insurer beforehand;
  - 3.2. Other **remediation expenses** due directly to **cyber extortion**;
  - 3.3. **Business Interruption loss** arising directly from a **privacy breach** that is due to **cyber extortion**.

#### ADDITIONAL CONDITIONS

- A. **Notice to Insurer** - Applicable to Insuring Agreements A and B and the EXTENSIONS OF COVERAGE: As a condition of insurance under this Endorsement, the **Named Insured** shall give written notice to the Insurer as soon as practicable of a **privacy breach** or of **cyber extortion**. Such written notice to the Insurer must be given no later than thirty (30) consecutive days from the **Named Insured's** discovery of a **privacy breach** or of **cyber extortion**.
- B. **Data Backup Requirement - Reasonable Precautions** - Applicable to Insuring Agreement B and to the extent that coverage is provided for **business interruption loss** under the EXTENSIONS OF COVERAGE: As a condition of insurance under Insuring Agreement B of this Endorsement, with respect to insured **business interruption loss**, the **Named Insured** will have diligently instituted and deployed a backup strategy and procedures for the **Named Insured's** business-critical or sensitive **data**. Such strategy and procedures must include, as the minimum requirements, regular backups (daily, weekly or monthly), backup archiving and backup testing. Failure of the **Named Insured** to fulfill this requirement will void coverage under Insuring Agreement B with respect to **business interruption loss** due to a **privacy breach**. This condition B does not apply to the theft of non-computer data.

#### DEFINITIONS

##### For the purpose of this Endorsement:

1. **Business interruption loss** means actual loss sustained of net income, before taxes, excluding interest and after depreciation, from the **Named Insured's** declared business operations in Canada provided that such loss would not have been incurred had no **privacy breach** taken place.
2. **Computer forensic services** means investigation and analysis of, and documentation for, computer or computing equipment by a certified individual or organization from outside the **Named Insured** entity.
3. **Cyber extortion** means a demand that originates from outside the **Named Insured** entity, made to the **Named Insured** for money, currency or something else of value in exchange for not carrying out a threat to commit **privacy breach**. **Cyber extortion** also means a threat to disseminate, without authorization, **data** that are non-public and personal information as established by law, or to deny, to impede, to make unavailable or to otherwise disrupt access to such **data**.
4. **Data** means:
  - 4.1. representations of information or concepts in any form and residing in or on the **Named Insured's** computer equipment except for and excluding programmable manufacturing machines or programmable controllers for industrial use. Computer equipment includes smart phones to the extent that coverage in regard to such devices is provided by this Endorsement.
  - 4.2. **Data** does not:
    - 4.2.1. include money, currency, funds, bonds or instruments of debt, credit or equity;
    - 4.2.2. include deeds, accounts, bills, records, abstracts, manuscripts or other documents except as they have been converted to computer **data** and then only in that converted form;
    - 4.2.3. mean such property already sold or that is held for sale or for distribution.
5. **Named Insured** means the entity named in the Declaration Page(s).
6. **Privacy breach** means failure to prevent unauthorized use of or unauthorized access to **data** (excluding such unauthorized use, unauthorized collection or unauthorized access by the **Named Insured** or from within the **Named Insured** entity by a person or persons affiliated with the **Named Insured** entity) that are possessed, managed, entrusted to, or held by the **Named Insured** and that are non-public and personal information as established by Canadian law. **Privacy breach** also means theft of non-computer data (excluding theft by the **Named Insured** or from within the **Named Insured** entity by a person or persons affiliated with the **Named Insured** entity) that are possessed, managed, entrusted to, or held by the **Named Insured** and that are non-public and personal information as established by Canadian law. **Privacy breach** does not include theft of, or failure to prevent unauthorized use of or unauthorized access to, intellectual property or trade secrets of any kind.
7. **Remediation expenses** means reasonable and necessary expenses that are required by law or that have received the Insurer's consent and approval beforehand, incurred by the **Named Insured** for:
  - 7.1. notification to existing, prospective or former customers, or existing or former employees or members of the **Named Insured**, provided that the need for such notification arises directly from a **privacy breach**;
  - 7.2. **computer forensic services**, provided that such services are retained with the Insurer's written consent beforehand and provided that the need for such services arises directly from a **privacy breach** or from the need to prevent a **privacy breach**;
  - 7.3. public relations services, provided that such services are retained with the Insurer's consent beforehand and provided that the need for such services arises directly from a **privacy breach**;
  - 7.4. required notification of a **privacy breach** to a governmental entity with authority to regulate the privacy of non-public and personal information of Canadians.

**Remediation expenses** also means, with respect to a **privacy breach**, the **Named Insured's** expenditures that may be incurred for services for credit monitoring or for fraud monitoring and pertaining directly to existing, prospective or former customers, or existing or former employees or members of the **Named Insured**, such individuals notified in accordance with item 7.1. above, for a period not exceeding fifty-two (52) consecutive weeks from the date that the actual **privacy breach** is first discovered.

All other terms and conditions of the policy to which this Endorsement applies remain unchanged.