

# PRIVACY & INFORMATION SECURITY COVERAGE AGREEMENT

## PART A GENERAL

- 1. Recitals.** The TASB Risk Management Fund (the Fund) provides coverage for privacy and information security risk to educational entities in Texas. This coverage relies on information provided by the Fund Member. It is contingent on the Fund Member's full compliance with the Agreements: collectively, this Privacy & Information Security Coverage Agreement (Coverage Agreement), the Contribution and Coverage Summary (CCS), and all other agreements between the Fund and the Fund Member with provisions relating to coverage under this Coverage Agreement. This Coverage Agreement is a risk sharing and risk participation agreement and is not a contract of insurance. The Fund is not an insurance company nor is any member an insured. The Fund is a self-insured risk pool through which its members agree to share risk and actively participate in their contractual obligations to lessen risk and cost for all members. The Fund Member and the Fund agree that, as sophisticated entities, any interpretation of the Agreements' coverage provisions will reflect the risk sharing nature of the Fund's purpose and the Fund Member's risk participation obligations contained in the Agreements, and disputes will be decided in favor of the Fund Member sharing risk with the Fund rather than transferring risk to the Fund. This § 1 is incorporated into the terms of this Coverage Agreement.
- 2. Claim Basis and Claim Expense.** This Coverage Agreement's liability coverages (**Data & Network Liability, Regulatory Defense & Penalties, and Payment Card Liabilities & Costs**) provide coverage on a claims-made and reported basis and apply only to claims first made against any Covered Person during the Participation Period and reported to the Fund under the provisions of this coverage. All other coverages are occurrence-based. See § 8 for specific requirements. Additionally, Claim Expense incurred under this Coverage Agreement will reduce and may exhaust the limit of liability and is subject to any deductible; see § 4.6(C). This § 2 emphasizes but does not replace specific provisions found elsewhere in this Coverage Agreement.

## PART B COVERAGE GRANTS

- 3. Coverage Grants.** This Coverage Agreement incorporates the following coverage lines: **Breach Response Services, First Party Loss, Liability, eCrime, Criminal Reward, and Post Breach Remedial Services.** Each coverage line may contain individual sub-lines of coverage, and all lines and sub-lines are subject to the **Aggregate Limit of Liability** per event defined in § 6.1. Several coverage lines or sub-lines may have dedicated limits of liability that are less than the **Aggregate Limit of Liability**; see § 6.2. The Fund agrees with the Fund Member to grant the following lines and sub-lines of coverage to the Fund Member, subject to the provisions of this Coverage Agreement:
  - 3.1 Breach Response.** The Fund will provide **Breach Response Services** to the Fund Member because of an actual or reasonably suspected **Data Breach** or **Security Breach** that the Fund Member first discovers during the **Participation Period**.
  - 3.2 First Party Loss.** To indemnify the Fund Member for all the following:
    - (A) Business Interruption Loss** that the Fund Member sustains because of a **Security Breach** or **System Failure** that any **Covered Person** first discovers during the **Participation Period**;
    - (B) Dependent Business Loss** that the Fund Member sustains because of a **Dependent Security Breach** that any **Covered Person** first discovers during the **Participation Period**;
    - (C) Data Recovery Costs** that the Fund Member incurs as a direct result of a **Security Breach** that any **Covered Person** first discovers during the **Participation Period**;



- (D) **Consequential Reputational Loss** that the Fund Member incurs as a result of an actual or reasonably suspected **Data Breach** or **Security Breach** that the Fund Member first discovers during the **Participation Period** and for which individuals have been notified under the **Breach Response Services** definition; or
- (E) **Reputation Loss** that the Fund Member sustains solely as a result of an **Adverse Media Event** during the **Participation Period** concerning:
  - (1) a **Data Breach, Security Breach, or Extortion Threat** that any **Covered Person** first discovers during the **Participation Period**; or
  - (2) if this Coverage Agreement is a **Renewal**, a **Data Breach, Security Breach, or Extortion Threat** that any **Covered Person** first discovers during the last 90 days of the prior **Participation Period**.

**3.3 Liability.** To provide coverage for all the following:

- (A) **Data & Network Liability.** Provided the Fund Member, at the time of failure, has in force a **Privacy Policy** relevant to a **Claim** under this section, the Fund will pay **Damages** and **Claim Expense** that any **Covered Person** is legally obligated to pay because of any **Claim** for:
  - (1) a **Data Breach**;
  - (2) a **Security Breach**;
  - (3) the Fund Member's failure to timely disclose a **Data Breach** or **Security Breach**; or
  - (4) the failure by any **Covered Person** to comply with that part of a **Privacy Policy** that specifically:
    - (a) prohibits or restricts the Fund Member's disclosure, sharing, or selling of **Personally Identifiable Information**;
    - (b) requires the Fund Member to provide an individual with access to **Personally Identifiable Information** or to correct any 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**; or
- (B) **Regulatory Defense & Penalties.** To pay **Penalties** and **Claim Expense** that any **Covered Person** is legally obligated to pay because of a **Regulatory Proceeding** first initiated against any **Covered Person** during the **Participation Period** for a **Data Breach** or a **Security Breach**; or
- (C) **Payment Card Industry Liabilities & Costs.** To indemnify the Fund Member for **PCI Fines, Expenses and Costs** that it is legally obligated to pay because of a **Claim** first made against any **Covered Person** during the **Participation Period**.

**3.4 eCrime.** To indemnify for any direct monetary loss or other loss indicated resulting from all the following frauds first discovered by any **Covered Person** or threat first made during the **Participation Period**:

- (A) **Fraudulent Instruction**;
- (B) **Funds Transfer Fraud**;
- (C) **Telephone Fraud**;
- (D) **Cyber Extortion Loss** because of an **Extortion Threat**;



(E) **Cryptojacking**; or

(F) **Invoice Manipulation** for **Direct Net Loss** that directly results from the Fund Member's inability to collect payment for any goods, products, or services after these goods, products, or services have been transferred to a third party as a result of **Invoice Manipulation**.

**3.5 Criminal Reward.** To indemnify the Fund Member for **Criminal Reward Funds** that have been paid.

**3.6 Post Breach Remedial Services.** To receive up to 8 hours per event or incident for **Post Breach Remedial Services** following a **Data Breach** or **Security Breach** involving the actual **Unauthorized Access or Use** of the Fund Member's **Computer Systems** for which the Fund Member has utilized services from Beazley service providers.

## PART C DEFINITIONS

**4. Definitions.** The following bolded and first letter capitalized terms in this section are defined and applicable throughout this Coverage Agreement.

**4.1 Adverse Media Event** means:

(A) publication by a third party via any medium, including television, print, radio, electronic, or digital form of previously non-public information specifically concerning a **Data Breach, Security Breach, or Extortion Threat**; or

(B) notification of individuals under the **Breach Response Services** definition; and

(C) additionally, that multiple **Adverse Media Events** arising from the same or a series of related, repeated, or continuing **Data Breaches, Security Breaches, or Extortion Threats** will be considered a single **Adverse Media Event** and will be treated as occurring at the time of the first **Adverse Media Event**

**4.2 Breach Notice Law** means any statute or regulation that requires notice to individuals whose personal information was accessed or may have been accessed by an unauthorized person. **Breach Notice Law** includes any statute or regulation requiring notice of a **Data Breach** to be provided to governmental or regulatory authorities.

**4.3 Breach Response Services** means the following fees and costs incurred by the Fund Member with the Fund's prior written consent in response to an actual or suspected **Data Breach** or **Security Breach** and will not include any internal salary or overhead expenses of the Fund Member:

(A) for an attorney to provide necessary legal advice to the Fund Member to evaluate its obligations under **Breach Notice Laws** or a **Merchant Services Agreement**;

(B) for a computer security expert to determine the existence, cause, and scope of an actual or suspected **Data Breach**, and if such **Data Breach** is actively in progress on the Fund Member's **Computer Systems**, to assist in containing it;

(C) 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 Fund Member's PCI compliance as required by a **Merchant Services Agreement**;

(D) to notify those individuals whose **Personally Identifiable Information** was potentially impacted by a **Data Breach**;



- (E) to provide a call center to respond to inquiries about a **Data Breach**;
- (F) to provide a credit monitoring, identity monitoring, or other personal fraud or loss prevention solution to individuals whose **Personally Identifiable Information** was potentially impacted by a **Data Breach**; or
- (G) for public relations and crisis management costs directly related to mitigating harm to the Fund Member that is approved in advance by the Fund in its discretion.

**4.4 Business Interruption Loss** means **Income Loss, Forensic Expenses, and Extra Expense** that were sustained during the **Period of Restoration** due to the actual interruption of the Fund Member's business operations caused by a **Security Breach** or **System Failure**. Coverage for **Business Interruption Loss** will apply only after the **Waiting Period** has elapsed. **Business Interruption Loss**, however, will not include loss arising out of liability to any third party, legal costs or legal expenses, a loss incurred as a result of unfavorable business conditions, loss of market or any other consequential loss, **Dependent Business Loss**, or **Data Recovery Costs**.

**4.5 Claim** means:

- (A) a written demand received by any **Covered Person** for money or services;
- (B) for coverage provided under the Regulatory Defense & Penalties coverage provisions only, initiation of a **Regulatory Proceeding** against any **Covered Person**; or
- (C) for coverage provided under § 3.3(A)(1) ("**Data Breach**") of the Data & Network Liability coverage provision only, a demand received by any **Covered Person** to fulfill the Fund Member's contractual obligation to provide timely notice of a **Data Breach** under a **Breach Notice Law**; and
- (D) additionally, that multiple **Claims** arising from the same or a series of related, repeated, or continuing acts, errors, omissions, or events, these **Claims** will be considered a single **Claim** and to have been made at the same time as the first **Claim** made.

**4.6 Claim Expense** means:

- (A) 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 Fund Member with the prior written consent of the Fund; or
- (B) 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 any **Covered Person**. The Fund will have no obligation to file an appeal or to obtain any bonds; and
- (C) additionally, that **Claim Expense** will not include any salary, overhead, or other charges by any **Covered Person** 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 Agreement, or costs to comply with any regulatory orders, settlements, or judgments. **Claim Expense** will reduce and may exhaust the **Aggregate Limit of Liability** and is subject to any deductible.

**4.7 Claim Preparation Costs** means reasonable and necessary costs that the Fund Member incurs to contract with a third party to prepare a proof of loss demonstrating a **Reputational Loss**.

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

- (A) operated by and either owned by or leased to the Fund Member; or



(B) for coverage under the Breach Response and Liability coverage provisions, operated by a third party under a written contract with the Fund Member and used to provide hosted computer application services to the Fund Member or for processing, maintaining, hosting, or storing the Fund Member's electronic data.

**4.9 Consequential Reputational Loss** means the **Revenue Loss** that the Fund Member is prevented from receiving as a direct result of damage to the Fund Member's reputation caused by an actual or reasonably suspected **Data Breach** or **Security Breach**. This **Revenue Loss** must occur during the notification period, which is the 30-day period that begins on the first date that any individuals first receive notification arising from a **Data Breach** or **Security Breach**. **Consequential Reputational Loss** does not include loss arising out of liability to any third party, legal costs or legal expenses, a loss incurred as a result of unfavorable business conditions, loss of market or any other consequential loss, or costs or expenses the Fund Member incurs to identify, investigate, respond to, or remediate an actual or reasonably suspected **Data Breach** or **Security Breach**.

**4.10 Control Group** means the individuals who hold the following positions with the Fund Member: any board members; the executive and senior administrators; the employee responsible for information systems; the General Counsel and attorneys employed as staff attorneys by the Fund Member; and any individual in a substantially similar position or with substantially similar responsibilities as these positions, irrespective of the title of the individual. This definition includes any individual who previously held any of these positions.

**4.11 Covered Person** means the Fund Member, and any past, present, or future:

(A) trustee, school board member, student-teacher, or volunteer while acting within the course and scope of their Fund Member duties, or

(B) employee, including student-employee, while acting within the course and scope of the duties of their employment.

**4.12 Criminal Reward Funds** means any amount offered for and paid by the Fund Member with the Fund's prior written consent for information that leads to the arrest and conviction of any individual committing or trying to commit any illegal act related to any coverage under this Coverage Agreement. But this amount will not include any amount based on information provided by any **Covered Person**, the Fund Member's auditors, or any individual hired or retained to investigate the illegal acts. All **Criminal Reward Funds** offered under this Coverage Agreement must expire no later than 180 days following the end of the **Participation Period**.

**4.13 Cryptojacking** means the **Unauthorized Access or Use of Computer Systems** to mine for **Digital Currency** that directly results in additional costs incurred by the Fund Member for electricity, natural gas, oil, or internet (the "Utilities"); provided, however, that such additional costs for the Utilities are:

(A) incurred under a written contract between the Fund Member and the respective utility provider, which was executed before the **Cryptojacking** first occurred;

(B) billed to the Fund Member by statements issued by the respective utility provider, which include usage or consumption information;

(C) not charged to the Fund Member at a flat fee that does not scale with the rate of use of the respective utility; and

(D) incurred according to statements issued by the respective utility provider and due for payment during the **Participation Period**.

**4.14 Cyber Extortion Loss** means:

- (A) any **Extortion Payment** made by or on behalf of the Fund Member with the Fund's prior written consent to prevent or terminate an **Extortion Threat**; or
- (B) reasonable and necessary expenses incurred by the Fund Member with the Fund's prior written consent to prevent or respond to an **Extortion Threat**.

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

- (A) future profits, restitution, or disgorgement of unjust enrichment or profits by any **Covered Person**, or the costs of complying with orders granting injunctive or equitable relief;
- (B) return or offset of fees, charges, or commissions charged by or owed to any **Covered Person** for goods or services already provided or contracted to be provided;
- (C) taxes or loss of tax benefits;
- (D) fines, sanctions, or penalties;
- (E) punitive or exemplary damages or any damages that are a multiplier of compensatory damages;
- (F) discounts, coupons, prizes, awards, or other incentives offered to the Fund Member's customers or clients;
- (G) liquidated damages, but only to the extent that such damages exceed the amount that the Fund Member would have been liable in the absence of a liquidated damages agreement;
- (H) fines, costs, or other amounts the Fund Member is responsible for paying under a **Merchant Services Agreement**; or
- (I) any amounts for which the Fund Member is not liable, or for which there is no legal recourse against the Fund Member.

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

**4.17 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 Fund Member or any third party for whose theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Information** or **Third Party Information** the Fund Member is liable.

**4.18 Data Recovery Costs** means the reasonable and necessary costs incurred by the Fund Member to replace, restore, or gain access to **Data**, or if **Data** cannot reasonably be replaced, restored, or accessed, then the reasonable and necessary costs incurred by the Fund Member to reach this determination. **Data Recovery Costs** will not include:

- (A) the monetary value of profits, royalties, or lost market share related to **Data**, including trade secrets or other proprietary information or any other amount regarding the value of **Data**;
- (B) legal costs or legal expenses;
- (C) loss arising out of any liability to any third party; or

(D) **Cyber Extortion Loss.**

**4.19 Dependent Business** means any entity that is not a part of the Fund Member but provides necessary products or services to the Fund Member under a written contract.

**4.20 Dependent Business Loss** means **Income Loss** and **Extra Expense** sustained during the **Period of Restoration** because of an actual interruption of the Fund Member's business operations caused by a **Dependent Security Breach**. Coverage for **Dependent Business Loss** will apply only after the **Waiting Period** has elapsed. **Dependent Business Loss** will not include loss arising out of liability to any third party, legal costs or legal expense, loss incurred as a result of unfavorable business conditions, loss of market or any other consequential loss, **Business Interruption Loss**, or **Data Recovery Costs**.

**4.21 Dependent Security Breach** means a failure of computer security to prevent a breach of computer systems operated by a **Dependent Business**.

**4.22 Digital Currency** means a type of digital currency that all the following provisions:

(A) requires cryptographic techniques to regulate the generation of units of currency and verify their transfer;

(B) is both stored and transferred electronically; and

(C) operates independently of a central bank or other central authority.

**4.23 Direct Net Loss** means the direct net cost to the Fund Member to provide goods, products, or services to a third party. **Direct Net Loss** will not include any net asset increase to the Fund Member as a result of providing such goods, products, or services.

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

**4.25 Extortion Threat** means, unless an **Extortion Payment** is received from or on behalf of the Fund Member, there is a threat to:

(A) Alter, destroy, damage, delete, or corrupt **Data**;

(B) Perpetrate the **Unauthorized Access or Use of Computer Systems**;

(C) Prevent access to **Computer Systems** or **Data**;

(D) Steal, misuse, or publicly disclose **Data**, **Personally Identifiable Information**, or **Third Party Information**;

(E) Introduce malicious code into **Computer Systems** or to third party computer systems from the Fund Member's **Computer Systems**; or

(F) Interrupt or suspend **Computer Systems**.

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



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

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

**4.29 Fraudulent Instruction** means the transfer, payment, or delivery of **Money** or **Securities** by any **Covered Person** as a result of fraudulent written, electronic, telegraphic, cable, teletype, or telephone instructions provided by a third party that is intended to mislead any **Covered Person** through the misrepresentation of a material fact and is relied upon in good faith by that **Covered Person**. **Fraudulent Instruction** will not include loss arising out of:

- (A) fraudulent instruction received by any **Covered Person** that is not first authenticated by any **Covered Person** (to verify the authenticity or validity of the request) via a communication method other than the means of the original request;
- (B) any actual or alleged use of credit, debit, charge, access, convenience, customer identification, gift, or other cards;
- (C) any transfer involving a third party who is not a natural person **Covered Person** but had authorized access to the Fund Member's authentication mechanism;
- (D) the processing of or the failure to process credit, check, debit, personal identification number debit, electronic benefits transfers, or mobile payments for merchant accounts;
- (E) accounting or arithmetical errors or omissions, or the failure, malfunction, inadequacy, or illegitimacy of any product or service;
- (F) any liability to any third party, or any indirect or consequential loss of any kind;
- (G) any legal costs or legal expenses; or
- (H) the proving of or establishing the existence of **Fraudulent Instruction**.

**4.30 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 it to transfer, pay, or deliver **Money** or **Securities** from any account maintained by the Fund Member at this institution without the Fund Member's knowledge or consent. **Funds Transfer Fraud** will not include any loss arising out of:

- (A) a type or kind covered by the Fund Member's financial institution bond or commercial crime policy;
- (B) any actual or alleged fraudulent, dishonest, or criminal act or omission by or involving any natural person **Covered Person**;
- (C) any indirect or consequential loss of any kind;
- (D) punitive, exemplary, or multiplied damages of any kind or any fines, penalties, or loss of any tax benefit;
- (E) any liability to any third party, except for direct compensatory damages arising directly from **Funds Transfer Fraud**.



- (F) any legal costs or expenses, or the proving or establishing the existence of **Funds Transfer Fraud**;
- (G) the theft of, the disappearance of, destruction of, unauthorized access to, or unauthorized use of confidential information, including a PIN or security code;
- (H) any forged, altered, or fraudulent negotiable instruments, securities, documents, or instructions; or
- (I) any actual or alleged use of credit, debit, charge, access, convenience, gift, or other cards or the information contained on those cards.

**4.31 Invoice Manipulation** means the release or distribution of any fraudulent invoice or fraudulent payment instruction to a third party as a direct result of a **Security Breach** or a **Data Breach**.

**4.32 Loss** means:

- (A) **Breach Response Services, Business Interruption Loss, Claims Expenses, Criminal Reward Funds, Cyber Extortion Loss, Damages, Data Recovery Costs, Dependent Business Loss, PCI Fines, Expenses and Costs, Penalties**, loss covered under the eCrime coverage, and any other amounts covered under this Coverage Agreement; or
- (B) for the Breach Response and First Party Loss coverage provisions only, 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 these coverage provisions will be considered to have been discovered at the time the first act, error, omission, or event is discovered; and
- (C) additionally, that 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** under this Coverage Agreement.

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

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

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

**4.36 Penalties** means:

- (A) any monetary civil fine or penalty payable to a governmental entity imposed in a **Regulatory Proceeding**; or
- (B) amounts that any **Covered Person** 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"); and

(C) additionally, that **Penalties** will not include:

- (1) costs to remediate or improve **Computer Systems**;
- (2) costs to establish, implement, maintain, improve, or remediate security or privacy practices, procedures, programs, or policies;
- (3) audit, assessment, compliance, or reporting costs; or
- (4) costs to protect the confidentiality, integrity, or security of **Personally Identifiable Information** or other information.

**4.37 Period of Restoration** means the 180 days beginning from the actual and necessary interruption of the Fund Member's business operations.

**4.38 Personally Identifiable Information** means:

- (A) any information concerning an individual that is defined as personal information under any **Breach Notice Law**; or
- (B) an individual's driver's license or state identification number, social security number, unpublished telephone number, or credit, debit, or other financial account numbers in combination with associated security codes, access codes, passwords, or PINs, but only 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, and
- (C) additionally, that **Personally Identifiable Information** will not include information that is lawfully made available to the general public.

**4.39 Participation Period** means the period between the inception date listed in the CCS and the effective date of termination or expiration of this coverage, and specifically excludes any prior **Participation Period** or renewal period.

**4.40 Post Breach Remedial Services** means up to 8 hours per event or incident of post breach computer security consultation and remedial services that can be provided by a vendor selected by the Fund. These services will be provided at the Fund Member's request and will be available in response to incidents in which forensic costs covered under the definition of **Breach Response Services** have been incurred, subject to any deductible. **Post Breach Remedial Services** will not include any costs to purchase or upgrade any hardware or software. The Fund Member's request for this service must be given to the Fund within 60 days following a determination of the actual **Unauthorized Access or Use** of the Fund Member's **Computer Systems**.

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

**4.42 Protection Period** means the period beginning on the date the **Adverse Media Event** occurs and ends after the earlier of:

- (A) 180 days; or
- (B) the date that gross revenues are restored to the level they would have been but for the **Adverse Media Event**.

**4.43 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.

**4.44 Renewal** means a CCS and Coverage Agreement issued by the Fund to the Fund Member for the **Participation Period** immediately preceding this **Participation Period** that provides coverage for a **Data Breach, Security Breach, or Extortion Threat** otherwise covered under this Coverage Agreement.

**4.45 Reputation Loss** means:

- (A) the net revenue gain or loss that the Fund Member would have received during the **Protection Period** but for an **Adverse Media Event**; and
- (B) continuing normal operating expenses incurred by the Fund Member (including payroll), but only to the extent that such operating expenses must necessarily continue during the **Protection Period**; and
- (C) additionally, that **Reputation Loss** will not mean, and no coverage will be available for, loss arising out of liability to any third party, legal costs or legal expenses, a loss incurred as a result of unfavorable business conditions, loss of market or any other consequential loss, **Breach Response Services**, or **Cyber Extortion Loss**. No coverage is available if there is an actual interruption of the Fund Member's business operations.

**4.46 Revenue Loss** means an amount equal to:

- (A) the net revenue the Fund Member is prevented from receiving from any state funding plan, tax assessment, or business operations of the Fund Member; and
- (B) the continuing normal operating expenses incurred by the Fund Member (including payroll), but only to the extent that such operating expenses must necessarily continue during the **Protection Period**.

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

**4.48 Security Breach** means a failure of a Fund Member's computer security to prevent:

- (A) **Unauthorized Access or Use of Computer Systems**, including **Unauthorized Access or Use** resulting from the theft of a password from a **Computer System** or any **Covered Person**;
- (B) a denial of service attack affecting **Computer Systems**;
- (C) infection of **Computer Systems** by malicious code or transmission of malicious code from other **Computer Systems**;
- (D) for coverage under the Liability coverage provisions only, a denial of service attack affecting computer systems that are not owned, operated, or controlled by any **Covered Person**; or
- (E) for the **Business Interruption Loss** coverage only:
  - (1) the voluntary and intentional shutdown of **Computer Systems** by the Fund Member, but only to the extent necessary to limit the **Loss** during an active or ongoing **Unauthorized Access or Use of Computer Systems** or infection of **Computer Systems** by malicious code, as covered by (A) or (C) above; or

- (2) the intentional shutdown of **Computer Systems** by the Fund Member as expressly required by any federal, state, local or foreign governmental entity in that entity's regulatory or official capacity resulting from a situation described in (A) or (C) above.

- 4.49 System Failure** means an unintentional and unplanned interruption of **Computer Systems** that is not an interruption of **Computer Systems** resulting from a **Security Breach**, or the interruption of any third party computer system.
- 4.50 Telephone Fraud** means the act of a third party gaining access to and using the Fund Member's telephone system in an unauthorized manner.
- 4.51 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 items of information of a third party not covered under this Coverage Agreement and that is not available to the general public.
- 4.52 Transfer Account** means an account maintained by the Fund Member at a **Financial Institution** from which the Fund Member can initiate the transfer, payment, or delivery of **Money** or **Securities**.
- 4.53 Unauthorized Access or Use** means the gaining of access to or use of **Computer Systems** by an unauthorized person or the use of **Computer Systems** in an unauthorized manner.
- 4.54 Unauthorized Disclosure** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by the Fund Member and is without the knowledge, consent, or acquiescence of any individual of the **Control Group**.
- 4.55 Waiting Period** means the period that begins upon the actual interruption of the Fund Member's business operations caused by a **Security Breach**, **System Failure**, or **Dependent Security Breach** and ends after 10 hours.

PART D  
EXCLUSIONS

- 5. Exclusions.** The coverage under this Coverage Agreement will not apply to any **Loss** arising out of:
- 5.1 Bodily injury or property damage.** This provision excludes physical injury, sickness, disease, or death to any person, including any mental anguish or emotional distress resulting from any physical injury, sickness, disease, or death, and physical injury to or destruction of any tangible property, including its loss of use. Electronic data is not considered tangible property.
- 5.2 Trade practices and antitrust.** This provision excludes any actual or alleged false, deceptive, or unfair trade practices, antitrust violation, restraint of trade, unfair competition, false or deceptive or misleading advertising, or violation of the Sherman Antitrust Act, the Clayton Act, or the Robinson-Patman Act. This exclusion will not apply to:
- (A) the Breach Response provisions; or
- (B) if no member of the **Control Group** participated or colluded in that **Data Breach** or **Security Breach**, then the **Data Breach** or **Security Breach** coverage provisions.
- 5.3 Gathering or distribution of information.** This provision excludes:

- (A) the unlawful collection or retention of **Personally Identifiable Information** or other personal information by or on behalf of the Fund Member. But this exclusion will not apply to **Claim Expense** incurred to defend any **Covered Person** against allegations of unlawful collection of **Personally Identifiable Information**; or
- (B) the distribution of unsolicited email, text messages, direct mail, facsimiles, or other communications, or wiretapping, audio or video recording, or telemarketing, if such distribution, wiretapping, recording, or telemarketing is done by or on behalf of the Fund Member. But this exclusion will not apply to **Claim Expense** incurred in defending any **Covered Person** against allegations of unlawful audio or video recording.

**5.4 Prior known acts and prior noticed Claims.** This provision excludes:

- (A) any act, error, omission, incident, or event committed or occurring before the **Participation Period** of this Coverage Agreement if any member of the **Control Group** before the **Participation Period** knew or could have reasonably foreseen that such act, error, omission, incident, or event might be expected to be the basis of a **Claim** or **Loss**; or
- (B) any **Claim**, **Loss**, incident, or circumstance for which notice has been provided under any prior Coverage Agreement of which this Coverage Agreement is a renewal or replacement.

**5.5 Racketeering, benefit plans, employment liability, and discrimination.** This provision excludes:

- (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 Fund 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 concerning employees;
- (D) any actual or alleged discrimination; or
- (E) if no member of the **Control Group** participated or colluded in that **Data Breach**, this exclusion will not apply to coverage under the Breach Response coverage provisions, or §§ 3.3(A)(1), (2), or (3) of the Data & Network Liability coverage provisions that result from a **Data Breach**.

**5.6 Securities.** This provision excludes:

- (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.

**5.7 Criminal, intentional, or fraudulent acts.** This provision excludes any criminal, dishonest, fraudulent, or malicious act or omission, or intentional or knowing violation of the law if committed by any **Covered Person**, or by others if the **Covered Person** colluded or participated in any such conduct or activity. This exclusion will not apply to:

- (A) **Claim Expense** incurred in defending any **Claim** alleging these acts until there is a final non-appealable adjudication establishing this conduct; or
- (B) a natural person **Covered Person**, if that **Covered Person** did not personally commit, participate in, or know about any act, error, omission, incident, or event giving rise to such **Claim** or **Loss**; but

- (C) for this exclusion only, the acts, errors, omissions, or knowledge by an individual of the **Control Group** will be imputed to the Fund Member.

**5.8 Patent, copyright, misappropriation of information.** This provision excludes:

- (A) an infringement, misuse, or abuse of a patent or patent rights;
- (B) infringement of copyright arising from or related to software code or software products. But this exclusion will not apply to infringement resulting from theft or **Unauthorized Access or Use** of software code by a person who is not a past, present, or future employee of the Fund Member; or
- (C) the use or misappropriation of any ideas, trade secrets, or **Third Party Information** by or on behalf of the Fund Member, or by any other person or entity if this use or misappropriation is done with the knowledge, consent, or acquiescence of an individual of the **Control Group**.

**5.9 Governmental actions.** This provision excludes any **Claim** brought by or on behalf of any state, federal, local, or foreign governmental entity in such entity's regulatory or official capacity. This exclusion will not apply to the Regulatory Defense & Penalties coverage provisions.

**5.10 Other Covered Persons.** This provision excludes any **Claim** made by or on behalf of any **Covered Person**. But this exclusion will not apply to a **Claim** made by an individual that is not an individual of the **Control Group** under the Data & Network Liability coverage provisions.

**5.11 Trading losses, loss of Money, and discounts.** This provision excludes:

- (A) any trading losses, trading liabilities, or change in the value of accounts;
- (B) any loss, transfer, or theft of monies, securities, or tangible property of any **Covered Person** or others in the care, custody, or control of the Fund Member;
- (C) the monetary value of any transactions or electronic fund transfers by or on behalf of any **Covered Person** that is lost, diminished, or damaged during the 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; and
- (E) additionally, this exclusion will not apply to coverage under the eCrime coverage provisions.

**5.12 Certain First Party Loss.** For the First Party Loss coverage provisions, this provision excludes:

- (A) seizure, nationalization, confiscation, or destruction of property or data by order of any governmental or public authority;
- (B) costs or expenses incurred by any **Covered Person** 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 before a **Security Breach, System Failure, Dependent Security Breach, or Extortion Threat**;
- (C) failure or malfunction of satellites, or power, utility, mechanical, or telecommunications (including internet) infrastructure or services that are not under the Fund Member's direct operational control; or
- (D) fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, an act of God, or other physical events.

- 5.13 War and civil war.** This provision excludes any **Claim** 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. 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 into furthering these objectives.
- 5.14 Nuclear incident.** This provision excludes any liability arising from any **Claim** resulting or arising, directly or indirectly, from any nuclear material handling, usage, processing, storage, transportation, or disposal, or any nuclear facility ownership or operation, by or on behalf of the Fund Member.
- 5.15 Radioactive contamination.** This provision excludes, concerning liability arising outside the U.S.A., its territories or possessions, Puerto Rico, or the Canal Zone, any liability of any nature directly or indirectly caused by, contributed to, or arising from ionizing radiations or contamination by radioactivity from any nuclear fuel or any nuclear waste from the combustion of nuclear fuel.
- 5.16 Asbestos, pollution, and contamination.** This provision excludes any **Loss** directly or indirectly arising out of (either in whole or in part), resulting from or in consequence of, or in any way involving:
- (A) asbestos or material containing asbestos;
  - (B) fungi, molds, spores, or mycotoxins of any kind, including the defense of any **Covered Person** for any **Claim** or governmental or regulatory order or other directives;
  - (C) electromagnetic fields or radiation, regardless of effect; or
  - (D) pollutants of any kind.

PART E  
LIMITS, DEDUCTIBLES, CONDITIONS, AND MISCELLANEOUS TERMS

**6. Limits of Liability.** The following applies to the limits of liability under this Coverage Agreement:

- 6.1 Aggregate Limit of Liability.** This Coverage Agreement’s **Aggregate Limit of Liability** (the “**Aggregate Limit of Liability**”) is the limit listed in the CCS and is the Fund’s combined total limit of liability for all **Loss** per event payable under this Coverage Agreement regardless of the number of coverage lines or sub-lines involved.
- 6.2 Limit per line or sub-line of coverage.** The limit of liability payable under each coverage line (e.g., **Breach Response Services**) or sub-line under a coverage line (e.g., Data & Network Liability under Liability) will be equal to the **Aggregate Limit of Liability** purchased unless a lesser limit is listed in this § 6.2. All limits are a part of and not in addition to the **Aggregate Limit of Liability** per event. The following coverage lines or sub-lines have limits (as indicated) regardless of the **Aggregate Limit of Liability**: **Fraudulent Instruction** (\$250,000); **Funds Transfer Fraud** (\$250,000); **Telephone Fraud** (\$250,000); **Criminal Reward** (\$100,000); **Cryptojacking** (\$250,000); **Invoice Manipulation** (\$100,000).
- 6.3 Aggregate limit exhaustion.** The Fund will not be obligated to pay any **Loss, Damages, Penalties, PCI Fines, Expenses and Costs, Claims Expenses**, expenses, fees, costs, or other monetary obligation, or required to pay for or provide any event-specific services, or to defend any **Claim**, after the **Aggregate Limit of Liability** has been exhausted, or after the deposit of the **Aggregate Limit of Liability** in a court of competent jurisdiction. After exhaustion, for example, the **Fund Member** will be responsible for all costs related to notifying and providing call center services and credit or identity monitoring services.

7. **Deductible.** If a deductible is stated in the CCS, only one deductible will apply to each event or any related events giving rise to a **Claim** or **Loss**. All costs (including **Breach Response Services**), losses, settlements, judgments, **Damages, Penalties, Claim Expense, Criminal Reward Funds, and PCI Fines Expenses and Costs** will be subject to this deductible regardless of the disposition of the claim. The Fund Member will, on notice from the Fund, pay the deductible amount stated in the CCS.

8. **General Conditions and Miscellaneous Terms.** The following general conditions and miscellaneous terms apply:

8.1 **Notice of Claim or Loss.** The Fund Member must notify the Fund of any **Claim** as soon as practicable but in no event later than 30 days after the end of the **Participation Period**. Additionally:

- (A) for **Breach Response Services**, the Fund Member must notify the Fund of any actual or reasonably suspected **Data Breach** or **Security Breach** as soon as practicable after discovery but in no event later than 30 days after the end of the **Participation Period**. Notice of an actual or reasonably suspected **Data Breach** or **Security Breach** in conformity with this paragraph will also constitute notice of a circumstance that could reasonably be the basis for a **Claim**;
- (B) for **Cyber Extortion Loss**, the Fund Member must notify the Fund as soon as practicable after discovery of an **Extortion Threat** but no later than 30 days after the end of the **Participation Period**. The Fund Member must obtain the Fund's written consent before incurring **Cyber Extortion Loss**;
- (C) for **Data Recovery Costs, Business Interruption Loss, and Dependent Business Loss**, the Fund Member must notify the Fund as soon as practicable after discovery. The Fund Member must provide the Fund a proof of **Data Recovery Costs, Business Interruption Loss and Dependent Business Loss**, and this Coverage Agreement will cover the reasonable and necessary costs, not to exceed \$50,000, that the Fund Member incurs to contract with a third party to prepare such proof. All loss described in this § 8.1(C) must be reported and all proofs of loss must be provided to the Fund no later than 180 days after the **Participation Period**;
- (D) for **Consequential Reputational Loss**, the Fund Member must notify the Fund as soon as practicable after discovery of the circumstance, incident, or event giving rise to this loss. The Fund Member must provide the Fund proof of **Consequential Reputational Loss**. All losses must be reported and all proof of loss provided to the Fund no later than 180 days after the **Participation Period**. The costs and expenses of preparing and submitting proof of loss and establishing or proving **Consequential Reputational Loss** will be the Fund Member's obligation and are not covered under this Coverage Agreement;
- (E) for **Reputation Loss**, the Fund Member must notify the Fund as soon as practicable after discovery of the circumstance, incident, or event giving rise to this loss. All **Reputation Loss** must be reported and all proof of loss must be provided to the Fund no later than 120 days after the Protection Period. This Coverage Agreement will cover up to \$50,000 for **Claim Preparation Costs** in excess of the deductible;
- (F) for eCrime coverage, the Fund Member must notify the Fund of any loss covered under this provision as soon as practicable, but in no event later than 30 days after the **Participation Period**; or
- (G) for any **Claim** arising out of a **Loss** covered under the Breach Response, First Party Loss, or eCrime coverage provisions and reported to the Fund as indicated above will be considered to have been made during the **Participation Period**.

8.2 **Notice of circumstance.** For any circumstance or incident that the Fund Member becomes aware of that could reasonably be the basis for a **Claim** (other than a **Data Breach** or **Security Breach** noticed under the Breach Response coverage provisions), the Fund Member must give written notice of such circumstance to the Fund as soon as practicable during the **Participation Period**. Any subsequent **Claim** made against any **Covered Person** arising out of any circumstance reported to the Fund as indicated below 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 **Participation Period**. This notice must include all the following:

- (A) the specific details of the act, error, omission, circumstance, incident, or event that could reasonably be the basis for a **Claim**;
- (B) the injury or damage that may result or has resulted from the act, error, omission, circumstance, incident, or event; and
- (C) the facts by which the Fund Member first became aware of the act, error, omission, circumstance, incident, or event.

**8.3 Defense of Claims.** Regarding the defense of **Claims** or **Regulatory Proceedings**, the following provisions apply:

- (A) the Fund has the right and duty to defend any covered **Claim** or **Regulatory Proceeding**, except for coverage under the Payment Card Liabilities & Costs coverage provision; and
- (B) for the Payment Card Liabilities & Costs coverage provision, coverage will be provided on an indemnity basis, and legal counsel will be mutually agreed by the Fund Member and the Fund and will be selected from one of the firms listed by the Fund.

**8.4 Consent to settle.** The Fund has the right to settle any **Claim** except for a **Claim** against the Fund Member, which requires the consent of the Fund Member. If the Fund Member refuses their consent to the settlement recommended by the Fund, the Fund Member will be responsible for any further negotiations and defense of the **Claim**. The Fund's monetary liability will not exceed the amount that the **Claim** could have been settled for plus the **Claim Expense**, costs, and expenses incurred with the Fund's consent up to the date of the Fund Member's refusal to consent to any settlement recommended by the Fund, and minus any remaining deductible payable by the Fund Member. The failure of the Fund Member to express consent to settlement within 30 days will be considered a refusal to consent by the Fund Member.

**8.5 Assistance and cooperation.** The following assistance and cooperation provisions apply to all **Covered Persons**:

- (A) the Fund has the right to make any investigation, and all **Covered Persons** must cooperate with the Fund in all investigations, including investigations regarding coverage under this Coverage Agreement and the information and materials provided to the Fund in connection with the underwriting and issuance of this Coverage Agreement. The **Covered Person** must execute or cause to be executed all papers and render all assistance requested by the Fund. All **Covered Persons** agree not to take any action that increases the Fund's exposure under this Coverage Agreement. Expenses incurred by any **Covered Person** in assisting or cooperating with the Fund are not **Claims Expense** under this Coverage Agreement; and
- (B) the **Covered Person** 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 the Fund's written consent. Compliance with a **Breach Notice Law** will not be considered an admission of liability.

**8.6 Subrogation.** The following subrogation provisions apply to all **Covered Persons**:

- (A) If any payment is made under this Coverage Agreement and there is any right of recovery against any other party, then the Fund will maintain all such rights of recovery;
- (B) The **Covered Person** 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 these rights; and

- (C) Any recoveries will be applied first to subrogation expenses, second to **Loss** paid by the Fund, and lastly to any deductible. Any additional amounts recovered will be paid to the Fund Member.
- 8.7 Other coverage.** The coverage under this Coverage Agreement will apply in excess of any other valid and collectible coverage or insurance available to any **Covered Person** unless the other coverage or insurance is written only as specific excess coverage or insurance over this Coverage Agreement.
- 8.8 Action against the Fund.** The following provisions apply to actions against the Fund:
- (A) No action will lie against the Fund or the Fund's representatives unless, as a condition precedent to it, the **Covered Person** has fully complied with all provisions, terms, and conditions of this Coverage Agreement and the amount of the **Covered Person's** obligation to pay has been finally determined either by judgment or award against the **Covered Person** after trial, regulatory proceeding, arbitration, or by written agreement of the **Covered Person**, the claimant, and the Fund; and
- (B) No person or organization will have the right under this Coverage Agreement to join the Fund as a party to an action or other proceeding against any **Covered Person** to determine the **Covered Person's** liability, nor may the Fund be impleaded by any **Covered Person** or the **Covered Person's** legal representative.
- 8.9 No waiver.** The terms of this Coverage Agreement may not be waived or changed except by endorsement issued to form a part of this Coverage Agreement signed by the Fund.
- 8.10 Insolvency.** Any **Covered Person's** bankruptcy or the insolvency of a **Covered Person's** estate will not relieve the Fund of any obligations.
- 8.11 Assignment.** The interests of any **Covered Person** are not assignable. If the **Covered Person** dies or is adjudged incompetent, this coverage will cover the **Covered Person's** legal representative as if this representative were the **Covered Person**.
- 8.12 Singular form of a word.** Whenever the singular form of a word is used in this Coverage Agreement, the same will include the plural when required by the context.
- 8.13 Headings.** The titles of sections, subsections, clauses, provisions, or endorsements of or to this Coverage Agreement are not intended to take the place of the text's detailed provisions unless the context indicates otherwise, such as with the defined terms and exclusion provisions. They may be used to resolve any ambiguity, but they may not be used to undo or limit what the language otherwise makes clear.
- 8.14 Representation by the Fund Member.** All **Covered Persons** agree that the statements contained in the information and materials provided to the Fund in connection with the underwriting and issuance of this Coverage Agreement are true, accurate, and are not misleading, and that the Fund issued this Coverage Agreement and assumed the risks in reliance on the truth of these statements.
- 8.15 Fund Member as agent.** The Fund Member will be considered the agent of all **Covered Persons** and will act on behalf of all **Covered Persons** for the giving or receipt of all notices regarding this Coverage Agreement, and the acceptance of any endorsements to this Coverage Agreement. The Fund Member is responsible for the payment of all contributions and deductibles and for receiving any return contributions.
- 8.16 Prior loss prevention.** The Fund Member warrants and represents that it has complied with all prior Fund-recommended cybersecurity protocols as well as all specific guidance previously given under the Post Breach Remedial Services from any preceding claim under this coverage. No coverage will extend if the Fund Member fails to abide by this loss prevention advice, and a similar type of claim occurs.

- 8.17 Claim administration.** The Fund has sole authority in all claim decisions, including the extent to which any coverage or limit applies. The **Covered Person** retains all rights afforded by law.
- 8.18 “Including.”** Unless the context requires otherwise, the term “including,” and its variants, mean “including but not limited to.”
- 8.19 Coverage Agreement.** Unless the context requires otherwise, any use of the term “Coverage Agreement” will include its endorsements and the Fund Member’s CCS.
- 8.20 Fund Designee.** Unless the context requires otherwise, any use of the term “Fund” includes its designees.
- 8.21 Severability.** If a court for any reason holds a provision of this Coverage Agreement unenforceable, the rest remains fully enforceable.