IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
St. Margaret's Health – Peru, and St. Margaret's Health – Spring Valley,	)	Case No. 23-11641 (Jointly Administered)
Debtors.	)	Hon. David D. Cleary
Michael A. Brandess, solely as Trustee of the SMH Creditor Trust,	)	Adversary Case No. _____
Plaintiff,	)	Hon. David D. Cleary
v.	)	
CFC UNDERWRITING LIMITED, a United Kingdom entity, and Certain UNDERWRITERS AT LLOYD'S, LONDON, syndicates subscribing to Policy No. ESJ0026254522,	)	
Defendants.	)	

COMPLAINT

Michael Brandess, solely in his capacity as trustee ("Trustee") of the SMH Creditor Trust, by and through undersigned counsel, for his causes of action against Defendants CFC Underwriting Limited and the subscribing Underwriters at Lloyd's London (sometimes referred to collectively as "Defendants"), alleges as follows:

NATURE OF THE ACTION

1. This is an adversary proceeding for damages against Defendants in an amount no less than $2,959,128.00. Defendants failed to pay out to the SMH Creditor Trust (or its predecessor in interest) the full value of its insurance claim despite the losses the Debtors (defined below) incurred as the result of a cyber data breach covered by the Debtors' insurance policy.

2. At all times relevant, Defendants issued, underwrote, administered, adjusted, and/or were obligated to pay claims under Cyber Policy No. ESJ0026254522 (the "Policy"), effective December 31, 2020, through December 31, 2021, insuring SMP Health System ("SMP"), St. Margaret's Health - Spring Valley ("SMH-SV," or the "Hospital"), and certain of their affiliates.

JURISDICTION AND VENUE

3. On August 31, 2023 (the "Petition Date"), The Hospital and its affiliate St. Margaret's Health – Peru ("SMH-P," referred to collectively with the Hospital as the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") before the United States Bankruptcy Court for the Northern District of Illinois (the "Court"), thereby commencing the above-captioned jointly administered cases (the "Chapter 11 Cases").

4. On June 28, 2024, the Court entered its Order Approving Disclosure Statement and Confirming Joint Liquidating Plan (ECF 409) in the Chapter 11 Cases. As pertinent here, the confirmed plan (the "Plan") provided for the creation of a trust (the "SMH Creditor Trust," or "Trust"), the corpus of which includes the claims advanced in this Complaint. Plaintiff Brandess is the Trustee of the Trust. The Effective Date of the Plan occurred on October 18, 2024. *See* (ECF 461).

5. This Court has subject matter jurisdiction over this adversary proceeding, which arises under the Bankruptcy Code, arises in the Chapter 11 Cases, and/or is related to the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334(b), and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois.

6. The legal predicates for the relief sought herein include sections 541 and 542 of the Bankruptcy Code, Rule 7001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Declaratory Judgment Act (28 U.S.C. §§ 2201–02), and the substantive

laws of the State of North Dakota including North Dakota common law and Code § 51-15-01 and North Dakota Code § 26.1-04-03

7. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

8. This adversary proceeding constitutes a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A) and (E) and (O).

9. The Trustee consents to the entry of final orders and judgments by the Court in this adversary proceeding.

10. This Court has personal jurisdiction over Defendants pursuant to Bankruptcy Rule 7004(f).

PARTIES

11. Plaintiff Michael Brandess is the trustee of the SMH Creditor Trust and is duly authorized to prosecute this action.

12. Defendant CFC Underwriting Limited ("CFC Underwriting") is a specialist managing general agent organized under the laws of England and Wales with its principal place of business at 85 Gracechurch Street, London EC3V 0AA, United Kingdom.

13. Defendant Certain Underwriters at Lloyd's, London ("Underwriters") are believed to be one or more unincorporated insurance syndicates that subscribe to Policy No. ESJ0026254522. Upon information and belief, Underwriters, or the syndicates, transact the business of insurance in Illinois via surplus-lines licensure and, collectively with CFC Underwriting, marketed, bound, and administered the cyber insurance policy at issue. The cyber insurance policy relevant to this case was issued under CFC's name.

14. At all times relevant, Defendants issued, underwrote, administered, adjusted, and/or were obligated to pay claims under the Policy (Cyber Policy No. ESJ0026254522), effective December 31, 2020 – December 31, 2021, insuring SMP Health System, a Catholic non-profit health system headquartered at 213 Second Avenue NE, Rolla, North Dakota, and

at all times relevant, owned and operated SMH-SV. The Hospital was located in Bureau County, Illinois.

FACTUAL BACKGROUND

A. The Policy

15. A true and correct copy of the Policy is attached to this pleading as Exhibit A.

16. Relevant provisions include:

a. **Insuring Clause 2, Section B (Income Loss and Extra Expense):** In this section, Defendants agreed "to reimburse [the insured] for [its] income loss and extra expense during the indemnity period as a direct result of an interruption to [its] business operations caused by computer systems downtime arising directly out of a cyber event…," subject to a USD $5,000,000 aggregate limit and an eight-hour waiting period.

b. **Insuring Clause 2, Section A (System Damage and Rectification Costs):** In this section, Defendants agreed to pay costs of rebuilding data and reconstituting computer systems.

c. **Insuring Clause 1, Sections B–E:** In these sections, Defendants agreed to pay legal, regulatory, IT forensic, crisis-communication, and privacy-breach management costs.

17. The Policy's indemnity period for business-interruption extends twelve (12) months from first occurrence of computer-systems downtime.

18. The Policy includes no exclusion barring payment of claims by an insured in bankruptcy.

19. The Policy indicates that it is governed by North Dakota law. North Dakota law requires Defendants to adjust claims promptly, fairly, and equitably and implies a covenant of good faith and fair dealing.

B. The Cyber Attack and Resulting Losses

20. On February 21, 2021, the Hospital sustained a devastating Ryuk ransomware attack (the "Cyber Attack") that encrypted approximately 900 computers and network devices, abruptly disabling electronic medical records, scheduling, imaging, pharmacy, registration,

financial, and communications systems. *See Declaration of Timothy A. Muntz in Support of Chapter 11 Cases and First-Day Motions*, Dkt No., 23 ¶ 30.

21. The Cyber Attack rendered the Hospital's entire digital infrastructure inoperable, forcing the hospital to revert to manual, paper-based processes for all patient care, administrative, and financial functions. This thrust the Hospital and its care teams into a situation for which they could not have prepared: operating a 21st century facility, using manual (paper-based) systems never intended for use in a facility like the Hospital, to save patients' lives and attempt to provide essential and necessary care to patients.

22. Despite the Hospital's efforts, losing access to critical systems due to the Cyber Attack severely compromised patient care, delayed treatments, and created significant risks to patient safety and hospital operations.

23. The Hospital's systems were in total downtime for 8-16 weeks; restoration, data re-entry, and remediation extended through at least February 20, 2022 (the end of the Policy's one-year indemnity period) and, in practice, for more than two years thereafter. These on-going steps were required to fully restore the Hospital's operational capabilities.

24. During this period, the Hospital's staff were required to painstakingly re-enter data that had been recorded by hand, and the Hospital incurred substantial costs to restore and secure its systems. The Hospital had to purchase new computer software and hardware, among other items. The process of restoring electronic medical records, scheduling, and other critical systems was labor-intensive and required significant overtime from the Hospital's existing employees, as well as outside consultants the Hospital hired to assist in restoring and securing its systems. Each of these expenditures was indispensable to the operation of the Hospital, as it operates in a sector of the economy which is both highly regulated and highly litigious, thus making these expenditures essential.

25. The operational disruption and loss of efficiency caused by the Cyber Attack persisted well beyond the initial downtime, with lingering effects on the Hospital's revenue, staffing, and patient services.

26. The Hospital's ability to provide timely care was compromised, and the necessity to rebuild and secure its digital infrastructure placed ongoing financial and operational strain on the Hospital.

27. The Cyber Attack forced the Hospital to divert ambulances, cancel elective procedures, and rely on paper records (when many patient records were *only* accessible electronically). This disruption directly reduced the Hospital's revenue, dramatically increased expenses, and impaired the Hospital's reputation among the community.

28. The Hospital's ability to generate income was severely impaired following the Cyber Attack. Patient volume dropped, and the Hospital lost the ability to provide many services it had previously provided before the Cyber Attack. The Hospital never recovered many of its billings from this time period. Medical services were provided to patients, but because of the inability to fully document, bill, and receive payment for those procedures, those billings and revenues were forever lost.

29. The Hospital's need to hire additional agency staff and pay overtime to existing employees performing system restoration and security work following the Cyber Attack compounded the Hospital's financial problems. In addition to additional staffing demands and costs, the Hospital engaged outside consultants and vendors to assist with requisite system recovery and cybersecurity enhancements following the Cyber Attack, layering on additional expense for the Hospital.

30. The Defendants were given timely notice of the Cyber Attack through the Cyber Incident Response Line, and the Hospital fully cooperated in the investigation, and submitted detailed proof-of-loss documentation as requested by CFC.

31. The Hospital provided the Defendants and their adjusters comprehensive financial records, invoices, and supporting materials documenting the full scope of losses and expenses incurred as a direct result of the Cyber Attack.

32. The Hospital provided substantial documentation to Defendants regarding the Cyber Attack and its impact on the Hospital's business, including expert analyses, itemized breakdowns of both income loss and extra expense, and supporting affidavits.

33. The Hospital also participated in numerous calls and meetings with Defendants and their representatives to facilitate the claims process and address all questions and requests for information.

34. Under the Policy, the Hospital's covered losses include, *inter alia*:

(a) **Income Loss:** approximately $6.4 million in revenue shortfall during the indemnity period, caused solely by the ransomware-induced interruption. The income loss reflects the direct impact of the attack on the Hospital's ability to provide services and generate revenue, as well as the ongoing effects of system downtime and operational disruption.

(b) **Extra Expense:** approximately $1.7 million in technology, consulting, forensic, hardware, and software expenditures incurred to mitigate the interruption and restore operations, including SentinelOne licensing, Microsoft re-imaging services, Burwood consulting, Cisco Umbrella implementation, Palo Alto firewall replacement, API remediation, backup-system replacement, EMR test servers, nurse-call systems, and imaging-rendering hardware. These expenses were necessary to contain the attack, remove malware, rebuild and secure computer systems, and restore business operations to their pre-attack state. These reasonable sums were necessarily incurred in addition to the Hospital's normal operating expenses, were only incurred in direct response to the Cyber Attack, were necessary to continuing the Hospital's business operations, and were less than the Hospital's income loss that was sustained.

(c) **Agency and Emergency Department Contractor Fees:** more than $1 million in excess staffing costs necessitated by employee departures and operational stress traceable to the attack. The Cyber Attack caused significant stress and frustration among the Hospital employees, leading to increased turnover and the need to hire additional agency staff to maintain operations. In addition, the Hospital incurred higher

> costs for emergency department physician staffing through its existing contract with Emergency Physician Staffing Solutions (EPSS) and that contract's terms. These essential costs were incurred to continue business operations and mitigate the impact of the attack and are covered as extra expense under the Policy.[1]

35. The Hospital's total covered losses resulting from the Cyber Attack far exceeded the $5 million aggregate limit for Income Loss and Extra Expense under the Policy. Accordingly, the Hospital sought payment up to applicable limits under the Policy.

36. The magnitude of the losses and expenses incurred by the Hospital as a direct result of the Cyber Attack demonstrates the catastrophic impact of the event and the necessity of full reimbursement under the Policy.

37. The ongoing financial strain from the attack on the Hospital directly contributed to the Hospital's eventual bankruptcy filing and liquidation.

C. Defendants' Partial Payment and Wrongful Under-Adjustment

38. Underwriters maintains a business relationship with CFC. Upon information and belief, Underwriters provides guidelines, rules, techniques, instruction(s), a "mandate," or other controls and limits on CFC's methods and authority on investigating, handling, and adjusting claims, meaning that CFC is not truly independent.

39. ASL International ("ASL") was retained by a Defendant as an international adjuster and forensic accountant to evaluate the Hospital's claim. Discovery will reveal whether ASL was retained by CFC directly or by Underwriters.

40. Upon information and belief, ASL also operated without true independence, but rather as an agent under the control, direction, and guidance of CFC and/or Underwriters.

[1] Although Defendants may argue that these costs were a liquidated damage or penalty, the EPSS contracts did not contain liquidated damages provisions or penalty provisions. The additional staffing costs were required to be incurred solely to maintain adequate staffing and ensure continuity of patient care, both of which are necessary for patient safety and proper health outcomes.

41. On March 22, 2022, ASL approved only $2,040,872 in interim payment—$1,348,089 toward income loss and $692,783 toward system-rectification/extra-expense—leaving more than $2.9 million of Policy limits unpaid.

42. The Hospital provided Defendants and their agent ASL with extensive documentation, including detailed financial statements, revenue forecasts, payroll records, vendor invoices, contemporaneous correspondence, expert analyses, and itemized breakdowns of both income loss and extra expense.

43. The Hospital also provided Defendants and ASL with a comprehensive memorandum dated May 8, 2024, setting forth detailed legal and factual arguments in support of the claim.

44. Despite this comprehensive evidentiary record, CFC and ASL failed to adjust the claim fully and properly in accordance with the Policy's terms and the actual losses sustained. Instead, CFC and ASL repeatedly disregarded or minimized the evidence, failed to conduct a reasonable investigation, and ignored the plain language of the Policy, resulting in a gross underpayment that did not reflect the true impact of the Cyber Attack on the Hospital's (as well as SMP's) operations.

45. The foregoing adjustment process and resulting underpayment was done at the direction or under the control of Underwriters, such that Underwriters is liable for the acts or omissions of its agents.

46. ASL's loss calculation deviated from Policy terms and standard accounting principles in multiple, material respects:

(a) ASL limited its revenue comparison to the period of February–April 2021, despite the Policy's express requirement that income loss be measured over the full 12-month indemnity period following the cyber event. By arbitrarily truncating the analysis, ASL excluded substantial necessary losses incurred during the remainder of the indemnity period, including ongoing reductions in patient volume, delayed billing, and continued operational disruptions that persisted for months as the

Hospital struggled to restore its systems and services. This approach ignored the reality that the effects of the Cyber Attack extended well beyond the initial weeks of downtime, and that the H ospital's recovery was gradual and incomplete throughout the entire indemnity period. This discretionary decision (either by ASL, CFC, Underwriters, or collectively the three of them) to truncate the income loss period placed the insurer's financial benefit ahead of the policyholder's bargained-for contract right and exigent need for financial reimbursement.

(b) ASL further cherry-picked the data for its analysis, by averaging prior revenues from June 2020–January 2021, a period marked by the COVID-19 pandemic and associated government restrictions, which radically and artificially depressed hospital revenues. The revenue period ASL selected closely followed the time period ***before*** widescale availability of the first COVID-19 vaccines.[2] dASL selected the most outlying revenue period possible. This anomalous (once in a lifetime) baseline failed to reflect the hospital's own budget projections, did not reflect the expected normal revenue in the absence of the Cyber Attack, and did not account for the anticipated rebound in patient services and elective procedures as pandemic conditions eased, the broader availability of vaccines allowing a return to normalcy, and patients and providers feeling more comfortable returning to the Hospital for elective care. By using this distorted benchmark, ASL selected a calculation process—that was not included in the Policy—to purposefully understate the true loss suffered by the Hospital and deprive the Hospital of the full benefit of the insurance coverage it purchased.[3] Defendants then adopted the ASL calculation and approved it, rather than reading the Policy in a way to maximize coverage for its policyholder.

[2] The FDA authorized Moderna and then Pfizer's vaccines for emergency use, including for frontline essential health care workers like the Hospital's employees, in December 2020. By mid-January 2021, 31 million doses of these vaccines had been produced, but only 12 million administered. By February 2021, Moderna and Pfizer had secured contracts or other obligations for approximately 300 million doses. On February 24, 2021, the FDA concluded that Johnson & Johnson's single-shot Covid-19 vaccine was safe and effective, providing a third vaccine option. See, e.g., Gannon J, Azari R, Lomazzi M, Borisch B. Analysing the Launch of COVID-19 Vaccine National Rollouts: Nine Case Studies. Epidemiologia (Basel). 2021 Oct 23;2(4):519-539.

[3] Additionally, ASL improperly offset the Hospital's loss with revenues of SMH-P—a separate hospital not impacted by the Cyber Attack—deducting $2,384,228 from payments made to the Hospital on the false premise that the two facilities operated as a single entity. In reality, the Hospital and SMH-P maintained separate operations, budgets, management, and computer systems, and the income loss at the Hospital could not have been recovered or mitigated through SMH-P's activities. Further, the Debtors' ultimate parent, SMP did not claim any loss of income for SMH-P, and the deduction was wholly improper under the Policy. This misapplication of the Policy terms resulted in a significant and unjustified reduction of the claim, further compounding the financial harm to the Hospital. The Trustee reviewed this claim and has decided not to assert it in the present proceeding.

(1) CFC Improperly Denied Expenses

47. CFC denied or drastically reduced, on behalf of the Underwriters, reimbursement of clearly covered system-rectification and staffing expenses, invoking "betterment" and "hardware" exclusions that expressly do not apply under the circumstances and disregarding the Policy's explicit allowance for up to 25% additional costs for upgraded replacements in the event of a hacking attack or malware infection. No reasonable, technical explanation was given by Defendants for denying this request.

48. Many of the expenses denied by Defendants—including costs for malware analysis, system reimaging, firewall upgrades, backup system replacement, and IT consulting services—were necessary to restore the Hospital 's systems to their pre-Cyber Attack condition or to implement more secure and efficient solutions, as expressly permitted by the Policy, because the Hospital was clearly a target for a future attack. The Hospital repeatedly chose a more cost-effective solution that would secure its systems, and only had to acquire new versions of software and hardware when older versions no longer existed or offered insufficient security of patient health and financial data.

49. Defendants' refusal to reimburse these indispensable costs was contrary to the Policy language and the purpose of the coverage, and ignored the reality of the Hospital's post-Cyber Attack remediation expenses, where older hardware and software was no longer available or sufficiently secure. Defendants' refusal placed their own financial interests ahead of the required safety, security, and technical needs of the Hospital to protect patient financial and health data. Defendants' refusal substituted their judgment of what is a necessary extra expense to protect patient financial and health data, over the Hospital's.

50. By denying these claims, Defendants forced the Hospital to bear the financial burden of essential recovery efforts, undermining the Hospital's ability to resume normal operations and protect patient data (as required by law).

(2) The Defendants Improperly Refused to Reimburse Certain Agency Fees

51. Defendants further refused to reimburse the Hospital's requests for certain agency and Emergency Physician Staffing Solutions ("EPSS") fees, mischaracterizing them as "liquidated damages" in an effort to invoke an inapplicable exclusion rather than a pre-existing contractual obligation that the Hospital was required to pay.

52. The EPSS agreement contains no liquidated-damages clauses; the costs at issue represent ordinary extra expense incurred to maintain adequate staffing and ensure continuity of patient care during the period of disruption caused by the Cyber Attack.

53. In violation of North Dakota statutes and common law, CFC and ASL admitted in a January 4, 2024, call that they had never reviewed the EPSS contractual agreement before denying the Hospital's claim, and that the EPSS agreement contained only a contractual reimbursement clause, not a liquidated damages clause.

54. Defendants and ASL failed to review the actual EPSS agreement before denying the Hospital's claim, and their blanket rejection of these expenses was arbitrary, unsupported, and in direct conflict with the Policy's coverage for extra expense.

55. The additional costs embodied by the EPSS fees were necessary for the Hospital to maintain business operations, comply with regulatory requirements, and provide essential medical services to the community, and were clearly covered under the Policy.

56. Despite repeated supplemental submissions by the Hospital, conference calls, and written demands to Defendants—including a comprehensive memorandum dated May 8, 2024, which set forth detailed legal and factual arguments—Defendants have persisted in denying full payment of the claim to the Hospital.

57. The Hospital continued to engage with Defendants in good faith, providing all requested information, responding promptly to every inquiry, and making every effort to resolve the dispute without litigation.

58. Nevertheless, Defendants refused to honor their contractual obligations to the Hospital, disregarding both the clear terms of the Policy and the overwhelming evidence of loss.

59. The ongoing underpayment of the Hospital's claim by Defendants exacerbated the financial distress caused by the Cyber Attack, and directly contributed to the Hospital filing for bankruptcy protection.

60. The insurance proceeds at issue were critical to the interests of the Hospital's bankruptcy estate and its creditors, and now to the Trust, as they represent a primary source of recovery for unpaid vendors, employees, and other stakeholders.

CAUSES OF ACTION

COUNT I
Breach of Contract

61. The Trustee adopts and incorporates the foregoing allegations if fully restated here.

62. The Policy constitutes a valid, enforceable contract. The Hospital fully performed all obligations, paid all premiums, and satisfied all conditions precedent thereunder.

63. Defendants breached the Policy by: (a) failing and refusing to indemnify the Hospital up to the Policy limits for covered income loss, extra expense, system-rectification costs, and staffing fees; (b) misapplying exclusions under the Policy; and (c) unreasonably delaying adjustment and payment of the Hospital's claim resulting from the Cyber Attack.

64. As a direct and proximate result of the Defendants' breaches, the Hospital suffered damages exceeding $3 million plus consequential damages, interest, and attorneys' fees.

COUNT II

Breach of the Covenant of Good Faith and Fair Dealing / Bad-Faith Refusal to Pay

65. The Trustee adopts and incorporates the foregoing allegations if fully restated here.

66. North Dakota law, which is the applicable substantive law specified under the terms of the Policy, imposes a duty on insurers to act in good faith and fair dealing, to promptly investigate, evaluate, and pay covered claims, and to refrain from unreasonable or bad faith conduct.

67. North Dakota law mandates that an implied covenant of good faith and fair dealing govern every contract. The covenant of good faith and fair dealing constrains Defendants' discretion to abuse self-granted contractual provisions.

68. This good faith requirement extends to the manner in which a party employs discretion conferred by the contract.

69. Good faith and fair dealing, in connection with discharging performance and other duties according to a contract's terms, means preserving the spirit—not merely the letter—of the bargain. Evading the spirit of a contract and its bargain and abusing the power to specify terms constitute examples of bad faith in the performance of the contract.

70. Subterfuge and evasion violate the obligation of good faith in performance, even if the Defendants believed their conduct was justified under the Policy's terms. A lack of good faith may be overt or may consist of inaction, and fair dealing requires more than mere honesty. Other examples of violations of good faith and fair dealing include a party rendering imperfect performance, abusing its power to specify contract terms, and interfering with or failing to cooperate in the other party's performance.

71. Defendants breached the covenant of good faith and fair dealing as explained herein.

72. Each of Defendants' actions were done in an arbitrary and capricious manner, and with disregard to the rights of the Hospital (as policyholder of the Policy issued by Underwriters and adjusted by CFC).

73. Underwriters, through its agent CFC, and through ASL and its agents, breached their covenant of good faith and fair dealing by at least the following:

(a) Employing loss calculations contrary to Policy language and accounting norms;

(b) Selecting loss revenue calculations that favor the interests of Defendants over the interests of the policyholder;

(c) Making claims determinations (denials) before even reviewing relevant documentation;

(d) Ignoring clear documentation, failing to timely request additional information, and refusing to consider the full indemnity period;

(e) Invoking inapplicable exclusions with no reasonable basis; and

(f) Leveraging the Hospital's status as a chapter 11 debtor to delay and diminish payment under the Policy.

74. Defendants' conduct is unreasonable and in bad faith, and their breach of the covenant of good faith and fair dealing entitles the Hospital to extracontractual damages, statutory penalties, and attorneys' fees under North Dakota law and/or common-law bad faith principles.

COUNT III

Declaratory Judgment (28 U.S.C. §§ 2201–02)

75. The Trustee adopts and incorporates the foregoing allegations if fully restated here.

76. An actual, present, and justiciable controversy exists regarding Defendants' obligations to indemnify the Hospital up to the full $5 million Policy limit for Income Loss and Extra Expense, and to pay additional covered costs under Insuring Clause 1 and Section A of Insuring Clause 2 of the Policy.

77. The Hospital seeks a judicial declaration that: (a) the Cyber Attack constitutes a covered "cyber event"; (b) all claimed losses fall within the Policy's insuring agreements and are not subject to exclusion; and (c) Defendants must promptly pay all unpaid covered amounts, with interest.

COUNT IV

Violation of North Dakota Consumer Protection Law

78. The Trustee adopts and incorporates the foregoing allegations if fully restated here.

79. North Dakota Code §§ 51-15-01 *et seq*. broadly prohibits deceptive acts or practices in the state of North Dakota.

80. Defendants are each a "person" under North Dakota Code § 51-15-01(4).

81. In furnishing services in North Dakota, Defendants engaged in deceptive, unfair, and unlawful trade acts or practices, in violation of North Dakota Code § 51-15-01, including, but not limited to, the following:

(a) Defendants misrepresented material facts, pertaining to the sale and/or furnishing of insurance services to Plaintiff;

(b) Defendants omitted, suppressed, and concealed material facts in the handling of insurance claims, as will be revealed in discovery including a review of communications between ASL and Defendants, and the claim notes and communications between CFC and Underwriters;

(c) Defendants knowingly employed loss calculations contrary to Policy language and accounting norms and loss calculations that privileged and favored the insurer rather than the policyholder;

(d) Defendants ignored clear documentation, failed to timely request additional information, failed to even review/read materials submitted to them, and refusing to consider the full indemnity period/unilaterally selected a method to create the smallest possible time period for indemnity rather than consider facts from the policyholder proving a longer indemnity period applies;

(e) Defendants invoked inapplicable exclusions with no reasonable basis, including the liquidated damages exclusion and betterment exclusion; and

(f) Defendants leveraged the Hospital's status as a chapter 11 debtor to delay and diminish payment.

82. Defendants systematically engaged in these deceptive, misleading, and unlawful acts and practices, to the detriment of the Hospital.

83. Defendants knowingly engaged in such acts and practices in violation of North Dakota Code §§ 51-15-01 *et seq.* and accordingly, Plaintiff is entitled to actual damages exceeding $3 million, consequential and extracontractual damages, statutory penalties including treble damages under North Dakota Code § 51-15-09, and attorneys' fees under North Dakota law.

COUNT V

Unfair Claims Handling

84. The Trustee adopts and incorporates the foregoing allegations if fully restated here.

85. Pursuant to North Dakota Code § 26.1-04-03, Defendants are liable for unfair claim settlement practices because they, without just cause and with such frequency to indicate a general business practice by:

(a) Knowingly mispresented pertinent facts or insurance policy provisions relating to coverages at issue;

(b) Failing to acknowledge with reasonable promptness communications with claims arising under the Policy;

(c) Failing to adopt and implement reasonable standards for the investigation of the Hospital's claim;

(d) Not attempting in good faith to effectuate the prompt, fair, and equitable settlement of the Hospital's claim, or the portions of which liability has become reasonably clear;

(e) Compelling the Hospital to institute this suit to recover the amounts due under the Policy by offering substantially less than the amount that will be ultimately recovered;

(f) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss has been completed;

(g) Failing to adopt and implement reasonable standards for the prompt handling of written communications from the policyholder; and

(h) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

86. By reason of the foregoing unfair claim settlement practices, Defendants have committed unfair and deceptive acts and practices in violation of North Dakota Code § 26.1-04-03 which also serves as a basis for violations of North Dakota Code § 51-15-01(4), and accordingly, Plaintiff is entitled to damages

87. Defendants knowingly engaged in such acts and practices in violation of North Dakota Code §§ 51-15-01 *et seq.* and accordingly, Plaintiff is entitled to actual damages exceeding $3 million, consequential and extracontractual damages, statutory penalties including treble damages under North Dakota Code § 51-15-09, and attorneys' fees under North Dakota law.

Count VI

Turnover of Property – 11 U.S.C. § 542

88. The Trustee adopts and incorporates the foregoing allegations if fully restated here.

89. Defendants are in possession of funds, insurance premiums, and insurance reserves that are property of the estate as defined by 11 U.S.C. § 541. Plaintiff has an interest in this property through operation of the Plan.

90. Since the time the petition was filed, Plaintiff and his predecessors have repeatedly requested that the remaining amounts owed on the insurance policy be paid.

91. Pursuant to 11 U.S.C. § 542, Plaintiff requests an order of this Court directing the Defendants to immediately release and turn over $2,959,128, the remaining amounts owed on the insurance policy to Plaintiff.

VI. PRAYER FOR RELIEF

Wherefore, Plaintiff Michael A. Brandess, solely as the trustee of the SMH Creditor Trust, prays for judgment in favor of the Trust and against Defendants, jointly and severally, as follows:

A. On Count I, for compensatory damages in an amount to be proven at trial but not less than USD $2,959,128.00;

B. On Counts II, IV, V for compensatory damages, statutory penalties, punitive damages, and reasonable attorneys' fees and costs pursuant to North Dakota law, or such other extracontractual relief as the Court deems just;

C. On Count III, for a declaration that the Policy affords coverage for all claimed losses up to applicable limits and ordering Defendants to immediately pay all outstanding amounts in the maximum amount allowed at law;

D. On Count VI, for turnover in an amount to be proven at trial but not less than USD $2,959,128;

E. Treble damages or punitive damages, as applicable.

F. For costs of suit incurred herein and pre-judgment and post-judgment interest; and

G. For such other and further relief as the Court deems proper.

Date: February 13, 2026

Michael A. Brandess, Solely as Trustee of the SMH Creditor Trust

By: */s/ Elizabeth Vandesteeg*
One of his attorneys

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EXHIBIT A

Policy certificate

Insurance effected through the Coverholder:

CFC Underwriting Limited
85 Gracechurch Street
London EC3V 0AA
United Kingdom

PLEASE NOTE – This notice contains important information. PLEASE READ CAREFULLY.

This Certificate is issued by the Coverholder in accordance with the authorization granted to the Coverholder under the Binding Authority Agreement with the Unique Market Reference stated within this Policy. This Policy comprises a Certificate, the Declarations page, Wording and all other provisions and conditions attached and any endorsements issued.

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this Policy.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

In Witness whereof this Certificate has been signed by:

Authorized Official

Please examine this document carefully. If it does not meet your needs, please contact your broker immediately. In all communications the policy number appearing overleaf should be quoted.

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DECLARATIONS

POLICY NUMBER:	ESJ0026254522
UNIQUE MARKET REFERENCES:	B087520C9N5047
THE INSURED:	SMP Health System and Affiliates
ADDRESS:	213 Second Avenue NE PO Box 759 Rolla, ND 58367 US
THE UNDERWRITERS:	Underwritten by certain underwriters at Lloyd's and other insurers
THE INCEPTION DATE:	00:01 Local Standard Time on 31 Dec 2020
THE EXPIRY DATE:	00:01 Local Standard Time on 31 Dec 2021
TOTAL PAYABLE:	USD [redacted]
Broken down as follows:	
Premium:	USD [redacted]
Policy Administration Fee:	USD [redacted]
TRIA:	USD [redacted]
BUSINESS OPERATIONS:	Health System
CHOICE OF LAW:	North Dakota
SERVICE OF SUIT:	Lloyd's America, Inc. Attention: Legal Department 280 Park Avenue, East Tower, 25th Floor New York, NY 10017
LEGAL ACTION:	Worldwide
TERRITORIAL SCOPE:	Worldwide
US CLASSIFICATION:	Surplus Lines
INDEMNITY PERIOD:	12 months
WAITING PERIOD:	8 hours
RETROACTIVE DATE:	Unlimited
OPTIONAL EXTENDED REPORTING PERIOD:	12 months for 100% of applicable annualized premium
APPROVED CLAIMS PANEL PROVIDERS:	Wilson Elser Context Security Kivu Consulting Crowdstrike DOSArrest Mullen Coughlin Clyde & Co
CYBER INCIDENT MANAGER:	CFC Underwriting Limited
CYBER INCIDENT RESPONSE LINE:	In the event of an actual or suspected cyber incident please call our Cyber Incident Response Team on the toll

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	free 24-hour hotline number: 1 844-677-4155 or email cyberclaims@cfcunderwriting.com
WORDING:	Cyber (US) v1.0
ENDORSEMENTS:	Complaints Notice (USA) Risk Management Timetable Condition Subjectivity Condition Clause Cyber Extortion Extension Clause Named Insured Endorsement Policyholder Disclosure Notice Of Terrorism Insurance Coverage

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DECLARATIONS

INSURING CLAUSE 1: CYBER INCIDENT RESPONSE

SECTION A: INCIDENT RESPONSE COSTS

Aggregate limit of liability:	USD5,000,000	in the aggregate
Deductible:	USD0	each and every claim

SECTION B: LEGAL AND REGULATORY COSTS

Aggregate limit of liability:	USD5,000,000	in the aggregate
Deductible:	USD100,000	each and every claim

SECTION C: IT SECURITY AND FORENSIC COSTS

Aggregate limit of liability:	USD5,000,000	in the aggregate
Deductible:	USD100,000	each and every claim

SECTION D: CRISIS COMMUNICATION COSTS

Aggregate limit of liability:	USD5,000,000	in the aggregate
Deductible:	USD100,000	each and every claim

SECTION E: PRIVACY BREACH MANAGEMENT COSTS

Aggregate limit of liability:	USD5,000,000	in the aggregate
Deductible:	USD100,000	each and every claim

INSURING CLAUSE 2: SYSTEM DAMAGE AND BUSINESS INTERRUPTION

SECTION A: SYSTEM DAMAGE AND RECTIFICATION COSTS

Aggregate limit of liability:	USD5,000,000	in the aggregate
Deductible:	USD100,000	each and every claim

SECTION B: INCOME LOSS AND EXTRA EXPENSE

Aggregate limit of liability:	USD5,000,000	in the aggregate, sub-limited to USD1,000,000 in respect of **system failure**
Deductible:	USD100,000	each and every claim

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SECTION C: DEPENDENT BUSINESS INTERRUPTION

Aggregate limit of liability:	USD5,000,000	in the aggregate, sub-limited to USD1,000,000 in respect of **system failure**
Deductible:	USD100,000	each and every claim

INSURING CLAUSE 3: NETWORK SECURITY & PRIVACY LIABILITY

SECTION A: NETWORK SECURITY LIABILITY

Aggregate limit of liability:	USD5,000,000	in the aggregate, including **costs and expenses**
Deductible:	USD100,000	each and every claim, including **costs and expenses**

SECTION B: PRIVACY LIABILITY

Aggregate limit of liability:	USD5,000,000	in the aggregate, including **costs and expenses**
Deductible:	USD100,000	each and every claim, including **costs and expenses**

SECTION C: MANAGEMENT LIABILITY

Aggregate limit of liability:	USD5,000,000	in the aggregate, including **costs and expenses**
Deductible:	USD100,000	each and every claim, including **costs and expenses**

SECTION D: REGULATORY FINES

Aggregate limit of liability:	USD5,000,000	in the aggregate, including **costs and expenses**
Deductible:	USD100,000	each and every claim, including **costs and expenses**

SECTION E: PCI FINES, PENALTIES AND ASSESSMENTS

Aggregate limit of liability:	USD5,000,000	in the aggregate, including **costs and expenses**
Deductible:	USD100,000	each and every claim, including **costs and expenses**

INSURING CLAUSE 4: MEDIA LIABILITY

SECTION A: DEFAMATION

Aggregate limit of liability:	USD5,000,000	in the aggregate, including **costs and expenses**
Deductible:	USD100,000	each and every claim, including **costs and expenses**

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SECTION B: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

Aggregate limit of liability:	USD5,000,000	in the aggregate, including **costs and expenses**
Deductible:	USD100,000	each and every claim, including **costs and expenses**

INSURING CLAUSE 5: COURT ATTENDANCE COSTS

Aggregate limit of liability:	USD100,000	in the aggregate
Deductible:	USD0	each and every claim

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OUR REGULATORY STATUS

CFC Underwriting Limited is authorised and regulated by the United Kingdom Financial Conduct Authority (FCA). CFC Underwriting Limited's Firm Reference Number at the FCA is 312848. These details may be checked by visiting the Financial Conduct Authority website at https://register.fca.org.uk/. Alternatively, the Financial Conduct Authority may be contacted on +44 (0)20 7066 1000.

We are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if we cannot meet our obligations to you in respect of insurance policies that we have underwritten on behalf of insurers. This depends on the type of business and the circumstances of the claim. In respect of general insurance business the FSCS will cover 90% of the claim, without any upper limit and for compulsory classes of insurance, the FSCS will cover 100% of the claim, without any upper limit. Further information about compensation scheme arrangements is available from the FSCS.

HOW TO COMPLAIN - USA

We intend to provide an excellent service to you. However, we recognize that there may be occasions when you feel that this has not been achieved. If you are unhappy with any aspect of the service that you receive from us, please contact your insurance broker in the first instance, stating the nature of your complaint, the certificate and/or claim number.

Alternatively, you can contact us directly at enquiries@cfcunderwriting.com or please write to:

Chief Executive Officer
CFC Underwriting Limited
85 Gracechurch Street
London EC3V 0AA
United Kingdom

If you remain dissatisfied after we have considered your complaint and provided our response, you may have the right to refer your complaint to the Department of Insurance in your State for review.

You will be provided with further information about your complaint escalation rights to the Department of Insurance in your State by us on receipt of your complaint.

The existence of this complaints procedure does not affect your right to commence a legal action or an alternative dispute resolution proceeding in accordance with your contractual rights.

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DATA PROTECTION NOTICE

We collect and use relevant information about you to provide you with your insurance cover or the insurance cover that benefits you and to meet our legal obligations. Where you provide us or your agent or broker with details about other people, you must provide this notice to them.

The information we collect and use includes details such as your name, address and contact details and any other information that we collect about you in connection with the insurance cover from which you benefit. This information may include more sensitive details such as information about your health and any criminal convictions you may have.

In certain circumstances, we may need your consent to process certain categories of information about you (including sensitive details such as information about your health and any criminal convictions you may have). Where we need your consent, we will ask you for it separately. You do not have to give your consent and you may withdraw your consent at any time. However, if you do not give your consent, or you withdraw your consent, this may affect our ability to provide the insurance cover from which you benefit and may prevent us from providing cover for you or handling your claims.

The way insurance works means that your information may be shared with, and used by, a number of third parties in the insurance sector for example, insurers, agents or brokers, reinsurers, loss adjusters, sub-contractors, regulators, law enforcement agencies, fraud and crime prevention and detection agencies and compulsory insurance databases. We will only disclose your personal information in connection with the insurance cover that we provide and to the extent required or permitted by law.

We will process individual insured's details, as well as any other personal information you provide to us in respect of your insurance cover, in accordance with our privacy notice and applicable data protection laws.

To enable us to use individual insured's details in accordance with applicable data protection laws, we need you to provide those individuals with certain information about how we will use their details in connection with your insurance cover.

You agree to provide to each individual insured this notice, on or before the date that the individual becomes an individual insured under your insurance cover or, if earlier, the date that you first provide information about the individual to us.

We are committed to using only the personal information we need to provide you with your insurance cover. To help us achieve this, you should only provide to us information about individual insureds that we ask for from time to time.

You have rights in relation to the information we hold about you, including the right to access your information. If you wish to exercise your rights, discuss how we use your information or request a copy of our full privacy notice, please contact us directly at enquiries@cfcunderwriting.com.

For more information about how we use your personal information please see our full privacy notice, which is available online on our website at:

http://www.cfcunderwriting.com/privacy

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RISK MANAGEMENT TIMETABLE CONDITION

ATTACHING TO POLICY NUMBER:	ESJ0026254522
THE INSURED:	SMP Health System and Affiliates
WITH EFFECT FROM:	31 Dec 2020

It is understood and agreed that the following **CONDITION** is added to this Policy:

It is a **CONDITION** to coverage under this Policy that **you** take the following risk management actions by the deadlines shown below:

Risk Management Condition	Deadline
Implement Multi-Factor Authentication for emails accounts and remote access to network.	90 days after inception

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SUBJECTIVITY CONDITION CLAUSE

ATTACHING TO POLICY NUMBER:	ESJ0026254522
THE INSURED:	SMP Health System and Affiliates
WITH EFFECT FROM:	31 Dec 2020

It is understood and agreed that the following **CONDITION** is added to this Policy:

Subjectivities

The cover provided by this Policy is conditional upon **you** providing **us** with some additional information as detailed in the table below together with the dates by which **we** must have received this information.

Additional information:	Due date:
Full details of the surplus lines broker, including name, company name, address, license number, state of filing and expiry date.	14 Jan 2021
Signed version of the application form submitted, dated within 30 days of the required inception date.	14 Jan 2021

Upon receiving this additional information **we** reserve the right to change the terms or conditions of this Policy, including amending the premium, or to issue notice of cancellation in accordance with the "Cancellation" **CONDITION**.

If **we** change the terms or conditions of this Policy, this constitutes a counteroffer which **you** may accept or decline. If **you** decline **our** counteroffer **we** will issue notice of cancellation in accordance with the "Cancellation" **CONDITION**.

If the additional information is not received by the due dates shown in the table above **we** may, at **your** request, consider extending the due dates or **we** may issue a notice of cancellation in accordance with the "Cancellation" **CONDITION**.

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CYBER EXTORTION EXTENSION CLAUSE

ATTACHING TO POLICY NUMBER:	ESJ0026254522
THE INSURED:	SMP Health System and Affiliates
WITH EFFECT FROM:	31 Dec 2020

It is understood and agreed that the following amendments are made to this Policy:

1. The following **INSURING CLAUSE** is added to the Declarations page:

   INSURING CLAUSE 6: CYBER EXTORTION

Aggregate limit of liability:	5,000,000	in the aggregate
Deductible:	100,000	each and every claim

2. The following **INSURING CLAUSE** is added to this Policy:

   INSURING CLAUSE 6: CYBER EXTORTION

   We agree to reimburse **you** for any ransom paid in response to an extortion demand first discovered by **you** during the **period of the policy** as a direct result of any threat to:

   a. introduce malware, or the actual introduction of malware, including Ransomware, into **your computer systems**;

   b. prevent access to **your computer systems** or data or any **third party** systems hosting **your** applications or data, including **supply chain partners**;

   c. reveal **your** confidential information or confidential information entrusted to **you**; or

   d. damage **your** brand or reputation by posting false or misleading comments about **you** on social media sites.

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NAMED INSURED ENDORSEMENT

ATTACHING TO POLICY NUMBER:	ESJ0026254522
THE INSURED:	SMP Health System and Affiliates
WITH EFFECT FROM:	31 Dec 2020

It is understood and agreed that the following entities are added to "THE INSURED" in the Declarations page:

SMP Health System
Presentation Medical Center
Sisters of Mary of the Presentation
Ave Maria Village
Maryhill Manor
Sheyenne Care Center
Rosewood on Broadway
Prairieland Home Care
St. Andrews Health Center
St. Aloisius Medical Center
Villa Maria
St. Margaret's Hospital
St. Margaret's Health - Spring Valley
St. Margaret's Health - Peru
St. Margaret's Health

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POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

ATTACHING TO POLICY NUMBER:	ESJ0026254522
THE INSURED:	SMP Health System and Affiliates
WITH EFFECT FROM:	31 Dec 2020

Coverage for acts of terrorism is included in your policy. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act: The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020, of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage.

The Terrorism Risk Insurance Act, as amended, contains a $100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds $100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed $100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is USD0.00 and does not include any charges for the portion of losses covered by the United States government under the Act.

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Cyber

Policy document
United States

PREAMBLE

IMPORTANT: COVERAGE TRIGGERS. It is important for **you** to review this Policy carefully as the trigger for coverage, including when **you** must notify **us** of a claim, under each Section and Insuring Clause may differ.

This Policy is a contract of insurance between **you** and **us**. **Your** Policy contains all the details of the cover that **we** provide. This Policy consists of and must be read together with the Declarations page and any Endorsements. This Policy is not complete unless it is signed and a Declarations page is attached.

The sections of this Policy are identified by the blue lines across the page with white upper case print, these are for information purposes only and do not form part of the cover given by this Policy. Terms in bold upper case print are references to specific Insuring Clauses, Sections or Conditions. Other terms in bold lower case print are defined terms and have a special meaning as set forth in the Definitions section and elsewhere. Words stated in the singular will include the plural and vice versa.

In consideration of the **premium** and in reliance upon the information that **you** have provided to **us** prior to the commencement of this insurance, **we** agree to provide the cover as set out below:

INSURING CLAUSES

INSURING CLAUSE 1: CYBER INCIDENT RESPONSE

SECTION A: INCIDENT RESPONSE COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

a. gain access to **our 24/7 cyber incident response line**;
b. engage with **our cyber incident manager** who will coordinate the initial response;
c. obtain initial advice and consultancy from **our cyber incident manager**, including threat intelligence in relation to the **cyber event**; and
d. obtain initial remote support and assistance from **our cyber incident manager** to respond to the **cyber event**.

SECTION B: LEGAL AND REGULATORY COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

a. obtain legal advice to determine the correct course of action;
b. draft **privacy breach** notification letters, substitute notices, website notices or e-mail notification templates;

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c. notify any appropriate governmental, regulatory, law enforcement, professional or statutory body;
d. respond to any **regulatory investigation**; and
e. defend any regulatory action.

SECTION C: IT SECURITY AND FORENSIC COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

a. engage with an external IT security consultant to identify the source and scope of the **cyber event**;
b. obtain initial advice to remediate the impact of the **cyber event**;
c. conduct a forensic investigation of **your computer systems** where reasonable and necessary or as required by law or a regulatory body (including a requirement for a PCI Forensic Investigator);
d. contain and remove any malware discovered on **your computer systems**; and
e. engage with an IT security consultant to provide expert witness testimony at any trial or hearing arising from the **cyber event**.

SECTION D: CRISIS COMMUNICATION COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered by **you** during the **period of the policy** to:

a. engage with a crisis communications consultant to obtain specific advice in direct relation to the **cyber event**;
b. coordinate media relations in response to the **cyber event**;
c. receive training for relevant spokespeople with respect to media communications in direct relation to the **cyber event**; and
d. formulate a crisis communications plan in order to reduce damage to **your** brand and reputation as a direct result of the **cyber event**.

SECTION E: PRIVACY BREACH MANAGEMENT COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred by **you**, or on **your** behalf, as a direct result of a **cyber event** first discovered during the **period of the policy** to:

a. print and post appropriate notices for any individual affected by the actual or suspected **cyber event** or to send e-mail notices or issue substitute notices;
b. provide credit monitoring services, identity monitoring services, identity restoration services or identity theft insurance to affected individuals;
c. set up a call center to manage inbound and outbound calls in direct relation to the **cyber event**; and
d. provide translation services to manage communications with affected individuals.

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INSURING CLAUSE 2: SYSTEM DAMAGE AND BUSINESS INTERRUPTION

SECTION A: SYSTEM DAMAGE AND RECTIFICATION COSTS

We agree to reimburse **you** for the additional cost of employing:

a. contract staff or overtime costs for **employees** to rebuild **your** data, including the cost of data re-entry or data re-creation;
b. specialist consultants, including IT forensic consultants, to recover **your** data or applications; and
c. specialist consultants or overtime costs for **employees** working within **your** IT department to reconstitute **your computer systems** to the position they were in immediately prior to the **cyber event**;

reasonably and necessarily incurred as a direct result of a **cyber event** first discovered by **you** during the **period of the policy**.

SECTION B: INCOME LOSS AND EXTRA EXPENSE

We agree to reimburse **you** for **your income loss** and **extra expense** during the **indemnity period** as a direct result of an interruption to **your business operations** caused by **computer systems** downtime arising directly out of a **cyber event** or **system failure** which is first discovered by **you** during the **period of the policy**, provided that the **computer systems** downtime lasts longer than the **waiting period**.

SECTION C: DEPENDENT BUSINESS INTERRUPTION

We agree to reimburse **you** for **your income loss** and **extra expense** sustained during the **indemnity period** as a direct result of an interruption to **your business operations** arising directly out of any sudden, unexpected and continuous outage of computer systems used directly by a **supply chain partner** which is first discovered by **you** during the **period of the policy**, provided that the computer systems downtime lasts longer than the **waiting period** and arises directly out of any **cyber event** or **system failure**.

INSURING CLAUSE 3: NETWORK SECURITY & PRIVACY LIABILITY

SECTION A: NETWORK SECURITY LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including the establishment of any consumer redress fund and associated expenses) as a result of any **claim** arising out of a **cyber event** first discovered by **you** during the **period of the policy** that results in:

a. the transmission of malware to a **third party's** computer system;
b. **your computer systems** being used to carry out a denial of service attack;
c. **your** failure to prevent unauthorized access to information stored or applications hosted on **your computer systems** or a **third party's** computer systems; and
d. identity theft, experienced by **your employees**, **senior executive officers** or any **third party**.

We will also pay **costs and expenses** on **your** behalf.

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SECTION B: PRIVACY LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including the establishment of any consumer redress fund and associated expenses) as a result of any **claim** arising out of a **cyber event** first discovered by **you** during the **period of the policy** that results in:

a. an actual or suspected disclosure of or unauthorized access to any Personally Identifiable Information (PII), including payment card information or Protected Health Information (PHI);
b. **your** failure to adequately warn affected individuals of a **privacy breach**, including the failure to provide a data breach notification in a timely manner;
c. a breach of any rights of confidentiality as a direct result of **your** failure to maintain the confidentiality of any data pertaining to an **employee** or a **senior executive officer**;
d. a breach of any rights of confidentiality, including a breach of any provisions of a non-disclosure agreement or breach of a contractual warranty relating to the confidentiality of commercial information, PII, or PHI;
e. a breach of any part of **your** privacy policy; or
f. actual or suspected disclosure of or unauthorized access to **your** data or data for which **you** are responsible.

We will also pay **costs and expenses** on **your** behalf.

SECTION C: MANAGEMENT LIABILITY

We agree to pay on behalf of any **senior executive officer** all sums they become legally obliged to pay as a result of any **claim** made against them arising directly out of a **cyber event** first discovered by **you** during the **period of the policy**.

We will also pay **costs and expenses** on behalf of **your senior executive officers**.

However, **we** will not make any payment under this Section for which the **senior executive officer** is entitled to indemnity under any other insurance, except for any additional sum which is payable over and above the other insurance.

SECTION D: REGULATORY FINES

We agree to pay on **your** behalf any fines and penalties resulting from a **regulatory investigation** arising as a direct result of a **cyber event** first discovered by **you** during the **period of the policy**.

We will also pay **costs and expenses** on **your** behalf.

SECTION E: PCI FINES, PENALTIES AND ASSESSMENTS

We agree to pay on **your** behalf any fines, penalties and card brand assessments including fraud recoveries, operational reimbursements, non-cooperation costs and case management fees

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which **you** become legally obliged to pay **your** acquiring bank or payment processor as a direct result of a **payment card breach** first discovered by **you** during the **period of the policy**.

We will also pay **costs and expenses** on **your** behalf.

INSURING CLAUSE 4: MEDIA LIABILITY

SECTION A: DEFAMATION

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** during the **period of the policy** for any:

a. defamation, including but not limited to libel, slander, trade libel, product disparagement and injurious falsehood; or
b. emotional distress or outrage based on harm to the character or reputation of any person or entity;

arising out of any **media content**.

We will also pay **costs and expenses** on **your** behalf.

SECTION B: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against **you** during the **period of the policy** for any:

a. infringement of any intellectual property rights, including, but not limited to, copyright, trademark, trade dilution, trade dress, commercial rights, design rights, domain name rights, image rights, moral rights, service mark or service name, but not including patent;
b. act of passing-off, piracy or plagiarism or any misappropriation of content, concepts, format rights or ideas or breach of a contractual warranty relating to intellectual property rights;
c. breach of any intellectual property rights license acquired by **you**; or
d. failure to attribute authorship or provide credit;

arising out of any **media content**.

We will also pay **costs and expenses** on **your** behalf.

INSURING CLAUSE 5: COURT ATTENDANCE COSTS

We agree to reimburse **you** for any reasonable sums necessarily incurred by **you** with **our** prior written agreement (which will not be unreasonably withheld) to attend court or any tribunal, arbitration, adjudication, mediation or other hearing in connection with any claim for which **you** are entitled to indemnity under this Policy.

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HOW MUCH WE WILL PAY

YOUR MAXIMUM LIMITS UNDER THIS POLICY

The maximum amount payable by **us** under this Policy for any one claim or series of related claims is the **policy limit**.

The maximum amount payable by **us** under any Insuring Clause for any one claim or series of related claims is the amount shown as the limit in the Declarations page for that Insuring Clause.

The maximum amount payable by **us** under any Section for any one claim or series of related claims is the amount shown as the limit in the Declarations page for that Section.

YOUR MAXIMUM LIMIT FOR RELATED INCIDENTS

Where more than one claim arises from the same original cause or single source or event, all of those claims will be deemed to be one claim and only one **policy limit** will apply in respect of that claim.

In the event that cover is provided under multiple Insuring Clauses or multiple Sections for any one claim, only one **policy limit** will apply in total for that claim.

In respect of **INSURING CLAUSES 3** and **4**, **we** may at any time pay to **you** in connection with any **claim** the amount of the **policy limit** (after deduction of any amounts already paid). Upon that payment being made **we** will relinquish the conduct and control of the **claim** and be under no further liability in connection with that **claim**.

If **costs and expenses** are stated in the Declarations page to be in addition to the **policy limit** or if the operation of local laws require **costs and expenses** to be paid in addition to the **policy limit**, and if a damages payment in excess of the **policy limit** has to be made to dispose of any **claim**, **our** liability for **costs and expenses** will be in the same proportion as the **policy limit** bears to the total amount of the damages payment.

YOUR DEDUCTIBLE

We will only be liable for that part of each and every claim which exceeds the amount of the **deductible**. If any expenditure is incurred by **us** which falls within the amount of the **deductible**, then **you** will reimburse that amount to **us** upon **our** request.

Where more than one claim arises from the same original cause or single source or event all of those claims will be deemed to be one claim and only one **deductible** will apply.

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In respect of INSURING CLAUSE 2 (SECTIONS B and C only), a single **waiting period**, **deductible** and **indemnity period** will apply to each claim. Where the same original cause or single source or event causes more than one period of computer systems downtime these will be considered one period of computer systems downtime whose total duration is equal to the cumulative duration of each individual period of computer systems downtime.

Where cover is provided under multiple Sections or multiple Insuring Clauses only one **deductible** will apply to that claim and this will be the highest **deductible** of the Sections under which cover is provided.

DEFINITIONS

1. **"Approved claims panel providers"** means

   the approved claims panel providers stated in the Declarations page.

2. **"Business operations"** means

   the business operations stated in the Declarations page.

3. **"Claim"** means
   a. a written demand for compensation;
   b. a written request for a retraction or a correction;
   c. a threat or initiation of a lawsuit; or
   d. a disciplinary action or **regulatory investigation**.

   made against **you**.

4. **"Company"** means

   the company named as the Insured in the Declarations page or any **subsidiary**.

5. **"Computer systems"** means

   all electronic computers used directly by **you**, including operating systems, software, hardware and all communication and open system networks and any data or websites wheresoever hosted, off-line media libraries and data back-ups and mobile devices including but not limited to smartphones, iPhones, tablets or personal digital assistants.

6. **"Continuity date"** means

   the **inception date** or if **you** have maintained uninterrupted insurance of the same type with **us**, the date this insurance was first incepted with **us**.

7. **"Costs and expenses"** means
   a. **third party** legal and professional expenses (including disbursements) reasonably incurred in the defense of **claims** or circumstances which could reasonably be

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expected to give rise to a **claim** or in quashing or challenging the scope of any injunction, subpoena or witness summons;

b. any post judgment interest; and

c. the cost of appeal, attachment and similar bonds including bail and penal bonds.

Subject to all **costs and expenses** being incurred with the **cyber incident manager's** prior written agreement.

8. **"Cyber event"** means

   any actual or suspected unauthorized system access, electronic attack or **privacy breach**, including denial of service attack, cyber terrorism, hacking attack, Trojan horse, phishing attack, man-in-the-middle attack, application-layer attack, compromised key attack, malware infection (including spyware or Ransomware) or computer virus.

   Cyber event does not mean **system failure**.

9. **"Cyber incident manager"** means

   the company or individual named as the cyber incident manager in the Declarations page.

10. **"Cyber incident response line"** means

    the telephone number stated as the cyber incident response line in the Declarations page.

11. **"Deductible"** means

    the amount stated as the deductible in the Declarations page.

12. **"Employee"** means

    any employee of the **company**, any volunteer working for the **company** and any individual working for the **company** as an independent contractor.

    "**Employee**" does not mean any **senior executive officer**.

13. **"Expiry date"** means

    the expiry date stated in the Declarations page.

14. **"Extra expense"** means

    your reasonable sums necessarily incurred in addition to **your** normal operating expenses to mitigate an interruption to and continue **your business operations**, provided that the costs are less than **your** expected **income loss** sustained had these measures not been taken.

15. **"Inception date"** means

    the inception date stated in the Declarations page.

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16. **"Income loss"** means

    your income that, had the **cyber event** or **system failure** which gave rise to the claim not occurred, would have been generated directly from **your business operations** (less sales tax) during the **indemnity period**, less:

    a. actual income (less sales tax) generated directly from **your business operations** during the **indemnity period**; and
    b. any cost savings achieved as a direct result of the reduction in income.

17. **"Indemnity period"** means

    the period starting from the first occurrence of:

    a. the **computer systems** downtime; or
    b. the downtime of computer systems used directly by a **supply chain partner**;

    and lasting for the period stated as the indemnity period in the Declarations page.

18. **"Media content"** means

    any content created or disseminated by **you** or on **your** behalf, including but not limited to content disseminated through books, magazines, brochures, social media, billboards, websites, mobile applications, television and radio.

    "**Media content**" does not include any:

    a. tangible product design;
    b. industrial design;
    c. architectural or building services;
    d. any advertisement created by **you** for a **third party**;
    e. business, company, product or trading name;
    f. product packaging or labeling; or
    g. software products.

19. **"Payment card breach"** means

    an actual or suspected unauthorized disclosure of payment card data stored or processed by **you** arising out of an electronic attack, accidental disclosure or the deliberate actions of a rogue **employee**.

    "Payment card breach" does not mean a situation where payment card data is deliberately shared with or sold to a **third party** with the knowledge and consent of a **senior executive officer**.

20. **"Period of the policy"** means

    the period between the **inception date** and the **expiry date** or until the Policy is canceled in accordance with **CONDITION 5**

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21. **"Policy limit"** means

    the highest individual limit available where cover is applicable under any Insuring Clause or Section as stated in the Declarations page.

22. **"Premium"** means

    the amount stated as the premium in the Declarations page and any subsequent adjustments.

23. **"Privacy breach"** means

    an actual or suspected unauthorized disclosure of information arising out of an electronic attack, accidental disclosure, theft or the deliberate actions of a rogue **employee** or **third party**.

    "**Privacy breach**" does not mean a situation where information is deliberately shared with or sold to a **third party** with the knowledge and consent of a **senior executive officer**.

24. **"Regulatory investigation"** means

    a formal hearing, official investigation, examination, inquiry, legal action or any other similar proceeding initiated by a governmental, regulatory, law enforcement, professional or statutory body against **you**.

25. **"Senior executive officer"** means

    board members, C-level executives, in-house lawyers and risk managers of the **company**.

26. **"Subsidiary"** means

    any entity in which the **company** has majority ownership of on or before the **inception date**.

27. **"Supply chain partner"** means

    any:

    a. **third party** that provides **you** with hosted computing services including infrastructure, platform, file storage and application level services; or
    b. **third party** listed as a supply chain partner in an endorsement attaching to this policy which **we** have issued.

28. **"System failure"** means

    any sudden, unexpected and continuous downtime of **your computer systems** which renders them incapable of supporting their normal business function and is caused by an application bug, an internal network failure or hardware failure.

    However, in respect of **INSURING CLAUSE 2** (**SECTION C** only), **system failure** also means any sudden, unexpected and continuous downtime of computer systems used directly by a **supply chain partner** which renders them incapable of supporting their normal business function and is caused by an application bug, an internal network failure or hardware failure.

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System failure does not mean a **cyber event**.

29. **"Third party"** means

    any person who is not an **employee** or any legal entity that is not the **company**.

30. **"Waiting period"** means

    the number of hours stated as the waiting period in the Declarations page.

31. **"We/our/us"** means

    the underwriters stated in the Declarations page.

32. **"You/your"** means

    the **company**, **employees** and **senior executive officers** solely acting in the normal course of the **company's business operations**.

EXCLUSIONS

We will not make any payment under this Policy:

EXCLUSIONS RELATING TO SYSTEM DAMAGE AND BUSINESS INTERRUPTION

In respect of **INSURING CLAUSE 2** only:

1. **Business interruption liability**

   for that part of any **claim** that constitutes actual or alleged liability to a **third party**, or legal costs in the defense of any **claim**, including customer compensation.

EXCLUSIONS RELATING TO MEDIA LIABILITY

In respect of **INSURING CLAUSE 4** only:

2. **Antitrust**

   for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising.

EXCLUSIONS RELATING TO ALL INSURING CLAUSES

3. **Associated companies**

   a. in respect of any **claim** made by any company, firm or partnership in which the **company** has greater than a 10% executive or financial interest, unless the **claim** emanates from an independent **third party**;

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b. in respect of any **claim** made by any company, firm, partnership or individual which has greater than a 10% executive or financial interest in the **company**, unless the **claim** emanates from an independent **third party**;
c. arising out of or resulting from any of **your** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **company**; or
d. in respect of any **claim** made by or on behalf of the **company** against a **third party**.

4. **Betterment**

which results in **you** being in a better financial position or **you** benefitting from upgraded versions of **your computer systems** as a direct result of the event which gave rise to the claim under this policy.

However, in the event of a hacking attack, malware infection or computer virus, when rebuilding **your computer systems we** will pay the additional costs and expenses incurred to install a more secure and efficient version of the affected **computer system**, provided that the maximum amount **we** will pay is 25% more than the cost that would have been incurred to repair or replace the original model or license. Under no circumstances will **we** pay the cost of acquiring or installing **computer systems** which did not form a part of **your computer systems** immediately prior to the incident which gave rise to the claim.

5. **Bodily injury and property damage**

arising directly or indirectly out of bodily injury, or tangible property damage.

However, this Exclusion will not apply to **INSURING CLAUSES 3** (**SECTIONS A**, **B** and **C** only) and **4** for any **claim** as a direct result of mental injury or emotional distress.

6. **Chargebacks**

for any credit card company or bank, wholly or partially, reversing or preventing a payment transaction, unless specifically covered under **INSURING CLAUSE 3** (**SECTION E** only) for which **you** have purchased coverage.

7. **Core internet infrastructure failure**

arising directly from a failure, material degradation or termination of any core element of the internet, telecommunications or GPS infrastructure that results in a regional, countrywide or global outage of the internet or core telecommunications network, including a failure of the core DNS root servers, satellite network or the IP addressing system or an individual state or non-state actor turning off all or part of the internet.

8. **Domain name suspension or revocation**

arising directly or indirectly from the suspension, cancellation, revocation or failure to renew any of **your** domain names or uniform resource locators.

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9. Insolvency

   arising out of or relating directly or indirectly to **your** insolvency or bankruptcy, or the insolvency or bankruptcy of any **third party**. However, **your** insolvency will not relieve **us** of any of **our** legal obligations under this contract of insurance where this insolvency does not give rise to a claim under this Policy.

10. Known claims and circumstances

    arising out of any actual or suspected **cyber event**, **claim** or circumstance which might give rise to a claim under this Policy of which a **senior executive officer** was aware of, or ought reasonably to have been aware of, prior to the **continuity date**, including any claim or circumstance notified to any other insurer.

11. Liquidated damages, service credits and penalty clauses

    for liquidated damages or service credits, or arising out of penalty clauses unless **you** would have been liable in the absence of any contract stipulating the liquidated damages or service credits or penalty clauses.

12. Loss of economic value

    for the reduction in economic or market value (including loss of potential future sales) of any of **your** intellectual property assets.

13. Management liability

    for any sums that **your senior executive officers** become legally obliged to pay, including **costs and expenses**, as a result of any **claim** made against them arising out of a **cyber event**.

    However, this Exclusion will not apply to **INSURING CLAUSE 3** (**SECTION C** only).

14. Misleading advertising

    arising directly or indirectly from any advertisement, promotion or product description that is actually or alleged to be false or misleading.

15. Nuclear

    arising directly or indirectly from or contributed to by:

    a. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
    b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component.

16. Other insurance

    for which **you** are entitled to indemnity under any other insurance except for:

    a. any additional sum which is payable over and above the other insurance where that insurance has been declared to **us**, or

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b. any contribution that **we** are obliged to make by law and that contribution will be in proportion to the indemnity available under the Policies.

17. **Patent infringement**

arising directly or indirectly out of the actual or alleged infringement of any patent or inducing the infringement of any patent.

18. **Payment card industry related fines, penalties and assessments**

for fines, penalties and card brand assessments, including fraud recoveries, operational reimbursements, non-cooperation costs and case management fees which **you** become legally obliged to pay **your** acquiring bank or payment processor as a direct result of a **payment card breach**.

However, this Exclusion will not apply to **INSURING CLAUSE 3** (**SECTION E** only).

19. **Power and utility failure**

arising directly or indirectly from any:

a. failure in the power supply, including that caused by any surge or spike in voltage, electrical current or transferred energy; or
b. failure, disruption or reduction in the supply of utilities, including but not limited to gas and water infrastructure or services.

20. **Product IP infringement**

arising directly or indirectly from the actual or alleged theft or misappropriation of any trade secret by an **employee** from a former employer of theirs or infringement of any intellectual property right by any product manufactured, designed, formulated, licensed, distributed, or sold by **you** or the misappropriation of any trade secret by **you** or a **third party**.

21. **Professional liability**

arising directly out of any negligent advice or professional services provided to a client for a fee except when arising directly from a **cyber event**.

22. **Property and hardware costs**

for any tangible property repair or replacement including the cost of repairing any hardware or replacing any tangible property or equipment that forms part of **your computer systems**.

However, where repairing or replacing hardware or tangible property or equipment is a more practical and cost effective solution than installing new firmware or software onto **your** existing components, **we** will pay the costs required to do so.

23. **Regular hours staff costs**

for contracted salary and bonus costs paid to **employees** or **senior executive officers**.

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24. **Sanctions**

or will be deemed to provide any cover, to the extent that the provision of such payment or cover will expose **us** to any sanction, prohibition or restriction under the United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, Canada, the European Union, United Kingdom or United States of America.

25. **Terrorism**

arising directly or indirectly out of:

a. any act or threat of force or violence by an individual or group, whether acting alone or on behalf of or in connection with any organization or government, committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear; or
b. any action taken in controlling, preventing, suppressing or in any way relating to a. above.

However, this Exclusion does not apply to a **cyber event** affecting **your computer systems** or a **supply chain partner**'s computer systems.

26. **Theft of funds**

for theft of money or financial assets in any format, including but not limited to cash, bank notes, electronic currency, customer account balances, and stock or bond certificates.

27. **Uninsurable fines**

for fines, penalties, civil or criminal sanctions or multiple, punitive or exemplary damages, unless insurable by law.

28. **Unlawful surveillance**

in respect of any actual or alleged eavesdropping, wiretapping, or unauthorized audio or video recording committed by **you** or by a **third party** on **your** behalf with the knowledge and consent of **your senior executive officers**.

29. **Unsolicited communications**

arising directly or indirectly from any actual or alleged violation of:

a. the CAN-SPAM Act of 2003 or any subsequent amendments to that Act;
b. the Telephone Consumer Protection Act (TCPA) of 1991 or any subsequent amendments to that Act; or
c. any other law, regulation or statute relating to unsolicited communication, distribution, sending or transmitting of any communication via telephone or any other electronic or telecommunications device.

However, this Exclusion will not apply to **INSURING CLAUSE 3** (**SECTION A** only).

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30. War

arising directly or indirectly out of:

a. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
b. any action taken in controlling, preventing, suppressing or in any way relating to a. above.

31. Willful or dishonest acts of senior executive officers

arising directly or indirectly out of any willful, criminal, malicious or dishonest act, error or omission by a **senior executive officer** as determined by final adjudication, arbitral tribunal or written admission.

CONDITIONS

1. What you must do if an incident takes place

If any **senior executive officer** becomes aware of any incident which may reasonably be expected to give rise to a claim under this Policy, **you** must:

a. other than in accordance with **CONDITION 2**, notify the **cyber incident manager** as soon as is reasonably practicable and follow their directions. However, this notification must be made no later than the end of any applicable extended reporting period. A telephone call to **our cyber incident response line** or confirmed notification via **our** cyber incident response app will constitute notification to the **cyber incident manager**; and
b. in respect of **INSURING CLAUSES 3** and **4**, not admit liability for or settle or make or promise any payment or incur any **costs and expenses** without **our** prior written agreement (which will not be unreasonably withheld).

Due to the nature of the coverage offered by this Policy, any unreasonable delay by **you** in notifying the **cyber incident manager** could lead to the size of the claim increasing or to **our** rights of recovery being restricted. **We** will not be liable for that portion of any claim that is due to any unreasonable delay in **you** notifying the **cyber incident manager** of any incident in accordance with this clause. However, if **you** are prevented from notifying **us** by a legal or regulatory obligation then **your** rights under this Policy will not be affected.

If **you** discover a **cyber event** or **system failure**, **you** may only incur costs without **our** prior written consent within the first 72 hours following the discovery and any **third party** costs incurred must be with a company forming part of the **approved claims panel providers**. All other costs may only be incurred with the prior written consent of the **cyber incident manager** (which will not be unreasonably withheld).

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2. What you must do in the event of a circumstance which could give rise to a claim

   In respect of **INSURING CLAUSE 4**, should a **senior executive officer** become aware of:

   a. a situation during the **period of the policy** that could give rise to a **claim**; or
   b. an allegation or complaint made or intimated against **you** during the **period of the policy**;

   then **you** have the option of whether to report this circumstance to **us** or not. However, if **you** choose not to report it this circumstance **we** will not be liable for that portion of any **claim** that is greater than it would have been had **you** reported this circumstance.

   If **you** choose to report this circumstance **you** must do so no later than the end of any applicable extended reporting period for it to be considered under this Policy and **we** will require **you** to provide full details of the circumstance, including but not limited to:

   a. the time, place and nature of the circumstance;
   b. the manner in which **you** first became aware of this circumstance;
   c. the reasons why **you** believe that this circumstance could give rise to a **claim**;
   d. the identity of the potential claimant; and
   e. an indication as to the size of the **claim** that could result from this circumstance.

   Any subsequent **claim** arising directly from this circumstance will be deemed to have been made at the time this circumstance was notified to **us** and **we** will regard this **claim** as having been notified under this Policy.

3. Additional insureds

   We will indemnify any **third party** as an additional insured under this Policy, but only in respect of sums which they become legally obliged to pay (including liability for claimants' costs and expenses) as a result of a **claim** arising solely out of an act, error or omission committed by **you**, provided that:

   a. **you** contracted in writing to indemnify the **third party** for the **claim** prior to it first being made against them; and
   b. had the **claim** been made against **you**, then **you** would be entitled to indemnity under this Policy.

   Before **we** indemnify any additional insured they must:

   a. prove to **us** that the **claim** arose solely out of an act, error or omission committed by **you**; and
   b. fully comply with **CONDITION 1** as if they were **you**.

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Where a **third party** is treated as an additional insured as a result of this Condition, any **claim** made by that **third party** against **you** will be treated by **us** as if they were a **third party** and not as an insured.

4. Agreement to pay claims (duty to defend)

We have the right and duty to take control of and conduct in **your** name the investigation, settlement or defense of any **claim**. **We** will not have any duty to pay **costs and expenses** for any part of a **claim** that is not covered by this Policy.

You may ask the **cyber incident manager** to consider appointing **your** own lawyer to defend the **claim** on **your** behalf and the **cyber incident manager** may grant **your** request if they consider **your** lawyer is suitably qualified by experience, taking into account the subject matter of the **claim**, and the cost to provide a defense.

We will endeavor to settle any **claim** through negotiation, mediation or some other form of alternative dispute resolution and will pay on **your** behalf the amount **we** agree with the claimant. If **we** cannot settle using these means, **we** will pay the amount which **you** are found liable to pay either in court or through arbitration proceedings, subject to the **policy limit**.

We will not settle any **claim** without **your** consent. If **you** refuse to provide **your** consent to a settlement recommended by **us** and elect to continue legal proceedings in connection with the **claim**, any further **costs and expenses** incurred will be paid by **you** and **us** on a proportional basis, with 80% payable by **us** and 20% payable by **you**. As a consequence of **your** refusal, **our** liability for the **claim**, excluding **costs and expenses**, will not be more than the amount for which the **claim** could have been settled.

5. Cancellation

This Policy may be canceled with 30 days written notice by either **you** or **us**.

If **you** give **us** notice of cancellation, the return **premium** will be in proportion to the number of days that the Policy is in effect. However, if **you** have made a claim under this Policy there will be no return **premium**.

If **we** give **you** notice of cancellation, the return **premium** will be in proportion to the number of days that the Policy is in effect.

We also reserve the right of cancellation in the event that any amount due to **us** by **you** remains unpaid more than 60 days beyond the **inception date**. If **we** exercise this right of cancellation it will take effect from 14 days after the date the written notice of cancellation is issued.

The Policy Administration Fee will be deemed fully earned upon inception of the Policy.

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6. Continuous cover

If **you** have neglected, through error or oversight only, to report an incident discovered by **you** that might give rise to a **claim** under this Policy during the period of a previous renewal of this Policy issued to **you** by **us**, then provided that **you** have maintained uninterrupted insurance of the same type with **us** since the expiry of that earlier Policy, then, notwithstanding **EXCLUSION 10**, **we** will permit the matter to be reported under this Policy and **we** will indemnify **you**, provided that:

a. the indemnity will be subject to the applicable limit of liability of the earlier Policy under which the matter should have been reported or the **policy limit**, whichever is the lower;
b. **we** may reduce the indemnity entitlement by the monetary equivalent of any prejudice which has been suffered as a result of the delayed notification; and
c. the indemnity will be subject to all of the terms, Conditions, Definitions and Exclusions of this Policy, other than a) above.

7. Extended reporting period

An extended reporting period of 60 days following the **expiry date** will be automatically granted at no additional premium. This extended reporting period will cover, subject to all other terms, conditions and exclusions of this Policy:

a. any **claim** first made against **you** during the **period of the policy** and reported to **us** during this extended reporting period;
b. any **cyber event** or **system failure** first discovered by **you** during the **period of the policy** and reported to **us** during this extended reporting period; and
c. any circumstance that a **senior executive officer** became aware of during the **period of the policy** and reports to **us** during this extended reporting period.

No claim will be accepted by **us** in this 60 day extended reporting period if **you** are entitled to indemnity under any other insurance, or would be entitled to indemnity under such insurance if its limit of liability was not exhausted.

8. Optional extended reporting period

If **we** or **you** decline to renew or cancel this Policy then **you** will have the right to have issued an endorsement providing an optional extended reporting period for the duration stated in the Declarations page which will be effective from the cancelation or non-renewal date. This optional extended reporting period will cover, subject to all other terms, conditions and exclusions of this Policy:

a. any **claim** first made against **you** and reported to **us** during this optional extended reporting period, provided that the **claim** arises out of any act, error or omission committed prior to the date of cancelation or non-renewal; and

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b. any **cyber event** or **system failure** first discovered by **you** during this optional extended reporting period, provided that the **cyber event** or **system failure** occurred during the **period of the policy**;

If **you** would like to purchase the optional extended reporting period **you** must notify **us** and pay **us** the optional extended reporting period premium stated in the Declarations page within 30 days of cancelation or non-renewal.

The right to the optional extended reporting period will not be available to **you** where cancelation or non-renewal by **us** is due to non-payment of the **premium** or **your** failure to pay any amounts in excess of the applicable **policy limit** or within the amount of the applicable **deductible** as is required by this Policy in the payment of claims.

At the renewal of this Policy, **our** quotation of different **premium**, **deductible**, limits of liability or changes in policy language will not constitute non-renewal by **us**.

9. Fraudulent claims

If it is determined by final adjudication, arbitral tribunal or written admission by **you**, that **you** notified **us** of any claim knowing it to be false or fraudulent in any way, **we** will have no responsibility to pay that claim, **we** may recover from **you** any sums paid in respect of that claim and **we** reserve the right to terminate this Policy from the date of the fraudulent act. If **we** exercise this right **we** will not be liable to return any **premium** to **you**. However, this will not affect any claim under this Policy which has been previously notified to **us**.

10. Innocent non-disclosure

We will not seek to avoid the Policy or reject any claim on the grounds of non-disclosure or misrepresentation except where the non-disclosure or misrepresentation was reckless or deliberate.

11. Mergers and acquisitions

If **you** acquire an entity during the **period of the policy** whose annual revenue does not exceed 20% of the **company's** annual revenue, as stated in its most recent financial statements, cover is automatically extended under this Policy to include the acquired entity as a **subsidiary**.

If **you** acquire an entity during the **period of the policy** whose annual revenue exceeds 20% of the **company's** annual revenue, as stated in its most recent financial statements, cover is automatically extended under this Policy to include the acquired entity as a **subsidiary** for a period of 45 days.

We will consider providing cover for the acquired entity after the period of 45 days if:

a. **you** give **us** full details of the entity within 45 days of its acquisition; and
b. **you** accept any amendment to the terms and conditions of this Policy or agree to pay any additional **premium** required by **us**.

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In the event **you** do not comply with a. or b. above, cover will automatically terminate for the entity 45 days after the date of its acquisition.

Cover for any acquired entity is only provided under this Policy for any act, error or omission committed on or after the date of its acquisition.

No cover will be automatically provided under this Policy for any acquired entity:

a. whose business activities are materially different from **your** business activities;
b. that has been the subject of any lawsuit, disciplinary action or regulatory investigation in the 3 year period prior to its acquisition; or
c. that has experienced a **cyber event** in the 3 year period prior to its acquisition, if the **cyber event** cost more than the highest **deductible** of this Policy.

If during the **period of the policy you** consolidate, merge with or are acquired by another entity then all coverage under this Policy will terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage, and **you** have agreed to any additional **premium** and terms of coverage required by **us**.

12. **Our rights of recovery**

You must maintain all of **your** rights of recovery against any **third party** and make these available to **us** where possible.

We will not exercise any rights of recovery against any **employee** or **senior executive officer**, unless this is in respect of any fraudulent or dishonest acts or omissions as proven by final adjudication, arbitral tribunal or written admission by **you**.

Any recoveries will be applied in proportion to the amounts paid by **you** and **us**.

13. **Prior subsidiaries**

Should an entity cease to be a **subsidiary** after the **inception date**, cover in respect of the entity will continue as if it was still a **subsidiary** during the **period of the policy**, but only in respect of an act, error, omission or event occurring prior to the date that it ceased to be a **subsidiary**.

14. **Process for adjustment of business interruption losses**

In order to determine the amount of **your** financial loss following an interruption to **your business operations** covered under **INSURING CLAUSE 2** (**SECTIONS B** and **C** only), **you** must provide **us** with **your** calculation of the financial loss including:

a. how the loss has been calculated and what assumptions have been made; and
b. supporting documents including account statements, sales projections and invoices.

If **we** are unable to agree with **your** calculation, an appropriate **third party** expert will be appointed between **you** and **us**.

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If an independent expert cannot be agreed upon, one will be appointed by an arbitrator mutually agreed between **you** and **us** whose decision will be final and binding. Once an independent expert has been appointed, their calculation of loss will be final and binding.

We will not pay for costs incurred by any experts retained solely by **you**.

15. **Process for paying privacy breach notification costs**

Any **privacy breach** notification transmitted by **you** or on **your** behalf must be done with **our** prior written consent. **We** will ensure that notification is compliant with any legal or regulatory requirements and contractual obligations. No offer must be made for financial incentives, gifts, coupons, credits or services unless with **our** prior written consent which will only be provided if the offer is commensurate with the risk of harm.

We will not be liable for any portion of the costs **you** incur under **INSURING CLAUSE 1** (**SECTION E** only) that exceed the costs that **you** would have incurred had **you** gained **our** prior written consent. In the absence of **our** prior written consent **we** will only be liable to pay **you** the equivalent cost of a notification made using the most cost effective means permissible under the governing law.

16. **Supply chain interruption events**

In respect of **INSURING CLAUSE 3** (**SECTION D** only), it is a condition precedent to liability under this Policy that **you** submit to **us** a written report from the **supply chain partner** confirming the root cause and length of the outage.

17. **Choice of law and service of suit**

In the event of a dispute between **you** and **us** regarding this Policy, the dispute will be governed by the laws of the State of the United States of America shown as the choice of law stated in the Declarations page. **We** agree, at **your** request, to submit to the jurisdiction of a court of competent jurisdiction within the United States of America.

Nothing in this Condition constitutes or should be understood to constitute a waiver of **our** rights to commence an action in any court of competent jurisdiction in the United States of America, to move an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States of America or the laws of any State of the United States of America.

It is further agreed that service of process in such suit may be made upon the law firm stated in the Declarations page and that in any suit instituted against **us**, **we** will abide by the final decision of such court or of any appellate court in the event of an appeal. The law firm stated in the Declarations page is authorized and directed to accept service of process on **our** behalf

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in any such suit and, at **your** request, to give a written undertaking to **you** that they will enter a general appearance on **our** behalf in the event such suit is instituted.

Additionally, in accordance with the statute of any state, territory or district of the United States which makes such a provision, **we** hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as **our** true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by **you** arising out of this Policy. The law firm stated in the Declarations page is hereby designated as the firm to whom the above mentioned officer is authorized to mail such process or a copy thereof.

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INSURANCE BINDER

PLEASE READ THIS CONFIRMATION CAREFULLY AND COMPARE IT WITH QUOTE AND SUBMISSION DOCUMENTS AND REVIEW THE POLICY FORMS FOR THE ACTUAL COVERAGES PROVIDED. SEE PAGE 2 FOR ANY OUSTANDING SUBJECTIVITY ITEMS.

BINDER ISSUED:	February 25, 2022
BINDER EXPIRES:	UPON DELIVERY OF THE FORMAL POLICY ISSUED TO REPLACE IT, THIS BINDER IS TERMINATED.
PRODUCER:	Kim Seilkop HPSI / Healthcare Professional Services, Inc
INSURED:	**SMP Health System and Affiliates** 1202 Page Drive S, Fargo, ND 58103
INSURER:	North American Capacity Insurance Co
POLICY NO.:	C-4LQO-173963-CYBER-2022
COVERAGE:	Cyber Liability
POLICY PERIOD:	2/9/2022 TO 2/9/2023
RETRO DATE:	Full Prior Acts

LIMITS:

$5,000,000	Per Loss/aggregarte
$250,000	FUNDS TRANSFER FRAUD
$2,500,000	COMPUTER REPLACEMENT
$100,000	SERVICE FRAUD
$1,000,000	REPUTATIONAL HARM LOSS
$5,000,000	BREACH RESPONSE SEPARATE LIMIT

DEDUCTIBLE: $25,000 Each Claim

PREMIUM: $[redacted]

FEES:

TAXES: $[redacted] Surplus Lines Tax

TOTAL: $[redacted]

PENDING SUBJECTIVITY ITEMS:

SUBJECT TO WITHIN 2 WEEKS OF BINDING:
Disabling EWS, or restricting public access to the exchange server. (Asset: webmail.smphs.org) see attachment

POLICY FORM(S) / ENDORSEMENTS / TERMS:

Endorsements and Forms Effective at Inception
DECLARATIONS SP 14 797 0221
COALITION CYBER POLICY SP 14 798 0419
QUOTA SHARE ENDORSEMENT SP 15 629 0218
SERVICE OF SUIT ENDORSEMENT SP 14 927 0219
COMPUTER REPLACEMENT ENDORSEMENT SP 17 514 0419
REPUTATION REPAIR ENDORSEMENT SP 14 802 1117
REPUTATIONAL HARM LOSS SP 16 383 0718
SERVICE FRAUD ENDORSEMENT SP 16 183 0518
CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM SP 17 252 0219
DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT SP 17 255 0220
BREACH RESPONSE SEPARATE LIMIT ENDORSEMENT SP 16 296 0618
REGULATORY COVERAGE ENHANCEMENT ENDORSEMENT – CCPA AND GDPR SP 17 147 1119
COURT ATTENDANCE COST REIMBURSEMENT ENDORSEMENT SP 16 777 0918
CRIMINAL REWARD COVERAGE SP 16 670 0818
DUTY TO COOPERATE ENDORSEMENT SP 17 274 0219
INVOICE MANIPULATION ENDORSEMENT SP 17 813 0819
YOUR OBLIGATIONS AS AN INSURED ENDORSEMENT SP 17 275 0219
PHISHING (IMPERSONATION) AND PROOF OF LOSS PREPARATION
EXPENSE ENDORSEMENT SP 18 435 0720
WRONGFUL COLLECTION EXCLUSION SP 18 324 0521
$0 RETENTION FOR SERVICES FROM COALITION INCIDENT RESPONSE SP 18 395 0620
MULTI-FACTOR AUTHENTICATION (MFA) RETENTION REDUCTION SP 17 814 0819

Basis: Claims Made

STATE NOTICE:

NOTICE

1. **“An insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. These companies are called "nonadmitted" or "surplus lines" insurers.”**

2. **“The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state.”**

3. **“These insurers generally do not participate in insurance guaranty funds**

created by state law. These guaranty funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised."

4. **"Some states maintain lists of approved or eligible surplus lines insurers and surplus lines producers may use only insurers on the lists. Some states issue orders that particular surplus lines insurers cannot be used."**

5. **"For additional information about the above matters and about the insurer, you should ask questions of your insurance producer or surplus lines producer. You may also contact your insurance department consumer help line."**

CANCELLATION:

THIS POLICY IS SUBJECT TO THE CANCELLATION PROVISIONS AS FOUND IN THE POLICY(IES) OR CERTIFICATE(S) CURRENTLY IN USE BY THE INSURER. THE INSURANCE EFFECTED UNDER THE INSURER'S BINDER CAN BE CANCELLED BY THE INSURER (SUBJECT TO STATUTORY REGULATIONS) BY MAILING, TO THE INSURED AT THE ADDRESS STATED ON THE FACE OF THIS CONFIRMATION OF INSURANCE, WRITTEN NOTICE STATING WHEN SUCH CANCELLATION SHALL BE EFFECTIVE. IN THE EVENT OF CANCELLATION BY THE INSURED, THE EARNED PREMIUM WOULD BE SUBJECT TO THE MINIMUM PREMIUM IF APPLICABLE.

Coalition®

FILING POLICY NO.: **C-4LQO-173963-CYBER-2022**
ENDT. NO.: **21**

POLICY CHANGES

Form Number	SP 15 654 0219
Effective Date of Endorsement	February 09, 2023
Named Insured	SMP Health System and Affiliates
Filing Policy Number	C-4LQO-173963-CYBER-2022
Issued by (Name of Insurance Company)	Arch Specialty Insurance Company, North American Capacity Insurance Company, Certain Underwriters at Lloyd's, London

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COALITION CYBER POLICY

In consideration of the premium charged for this Policy, it is hereby understood and agreed that this endorsement changes the policy effective on the inception date of the policy, unless another date is indicated above, in the following particulars:

The following item(s):	is (are) deleted and replaced with the following:
☐ Master Policy Number	
☐ Item 1. Insured's Name and Address	
☑ Item 2. Policy Period	From: February 09, 2022 To: February 23, 2023 Both dates 12:01 A.M. at the address stated in Item 1.
☐ Item 4. Aggregate Policy Limit of Liability	
☐ Item 5. Insuring Agreement(s) purchased, Limits of Liability, and Retentions	
☐ Item 9. Retroactive Date	
☐ Item 10. Continuity Date	
☐ Item 11. Optional Extended Reporting Period	
☐ Item 12. Choice of Law	
☐ Endorsement No.	
for additional premium of $[redacted] (annual premium of $0.00) and return premium of $0.00.	

All other terms and conditions of this Policy remain unchanged.



This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.