

OPEEP CYBER SECURITY EXPENSE COVERAGE

2020-21

- A. In accordance with the deductible and limits on the **OPEEP** Declaration Page, **OPEEP** will reimburse the **named member** for **cyber security expenses** reasonably incurred by the **named member** which arise from an **occurrence** that qualifies as a **cyber liability event**. For purposes of this coverage, the term **cyber security expense** means:
- (1) Direct Member Cost Notification Costs incurred by the **named member**, with **OPEEP's** prior consent, resulting from either the **named member's** legal obligation to comply with a **breach notice law** because of a **cyber liability event**, or the **named member's** voluntary election to provide such notification following a **cyber liability event**.
 - (2) Third Party Liability Damages which the **member** becomes legally obligated to pay because of:
 - a. the **member's** failure to timely disclose a **cyber liability event** in violation of any **breach notice law**; or
 - b. the **member's** failure to administer an identity theft prevention program or take necessary actions to prevent identity theft required by governmental statute or regulation that results in a **cyber liability event**.
 - (3) Penalties Regulatory **penalties** which the **named member** becomes legally obligated to pay through a **regulatory proceeding** because of a **cyber liability event** caused or contributed to by a **members'** violation of a **privacy law**.
 - (4) Extortion **Cyber extortion costs** incurred by the **named member**. For purposes of this coverage "**cyber extortion cost**" means the reasonable and necessarily costs incurred with **OPEEP's** written consent, to combat a **credible threat**. **Cyber extortion costs** include funds or other property paid by the **named member**, with the written consent of **OPEEP**, to person(s) reasonably believed to be responsible for the credible threat, in response to a specific demand in connection with that **credible threat**, and for the purpose of terminating that **credible threat** and all residual effects.
 - (5) Impersonation Fraud Coverage: Subject to the deductibles and limits in the **OPEEP** Declaration Page, **OPEEP** will reimburse members for loss of funds as a direct result of a **named member** employee who in good faith and within established **named member** controls transfers money or securities by electronic transfer based on fraudulent transfer instructions received and relied upon from an imposter utilizing a fraudulent email or phone call or other communication method common to the **named member** to transfer money or securities to a falsely purported vendor with

whom a written contract is in force, or a falsely purported director, officer, or other employee of the **named member**, without the vendor's or **name member's** knowledge or consent.

B. **LIMIT OF LIABILITY** - The most **OPEEP** will pay to or on behalf of a **member** for any one or more **cyber claims** in a single coverage year is in accordance with the **OPEEP** Declaration Page.

C. **ADDITIONAL DEFINITIONS** - As used in this Coverage Part:

- (1) **"Breach notice law"** means any state, or federal regulation that requires notice to persons whose **personally identifiable non-public information** was accessed or reasonably may have been accessed by an unauthorized person.
- (2) **"Computer security"** means software, computer or network hardware devices, as well as the **named member's** written information security policies and procedures, the function or purpose of which is to prevent **unauthorized access or use**, a **denial of service attack** against **computer systems**, infection of **computer systems** by **malicious code** or transmission of **malicious code** from **computer systems**. **Computer security** includes anti-virus and intrusion detection software, firewalls and electronic systems that provide access control to **computer systems** through the use of passwords, biometric or similar identification of authorized users.
- (3) **"Computer systems"** means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:
 - a. operated by and either owned by or leased to the **named member**; or
 - b. systems operated by a third-party service provider and used for the purpose of providing hosted computer application services to the **named member** or for processing, maintaining, hosting or storing the **named member's** electronic data, pursuant to written contract with the **named member** for such services.
- (4) **"Credible threat"** means a criminal threat to:
 - a. Damage, destroy, corrupt, alter, delete, or otherwise physically preclude or hinder the **named member's** use of its **computer systems**, or
 - b. Release **personally identifiable non-public information** through the **unauthorized access or use** of the **named member's computer systems**, or

- c. Introduce **malicious code** into the **named member computer system**, or
- d. Use **named member's** data to enter into false communications with the **named member's** citizens to obtain personal or confidential information (also known as "pharming" or "phishing").

(5) **"Cyber claim"** means:

- a. a written demand including the service of a suit or institution of a regulatory or arbitration proceeding, received by the **named member** alleging a **cyber liability event** and seeking money or services;
- b. a written threat or initiation of a suit alleging a **cyber liability event** and seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction); and
- c. with respect to coverage provided under Section A(3), institution of a **regulatory proceeding** against the **member**.

(6) **"Cyber claims expenses"** means:

- a. reasonable and necessary fees charged by an attorney approved by **OPEEP** and paid by **OPEEP**;
- b. all other legal costs and expenses resulting from the investigation, adjustment, defense and appeal of a **cyber claim**, suit, or proceeding arising in connection therewith, or circumstance which might lead to a **cyber claim**, if incurred by **OPEEP**, or by the **named member** with the prior written consent of **OPEEP**; and
- c. the premium cost for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any **cyber claim** against a **named member**; provided **OPEEP** shall have no obligation to appeal or obtain bonds.
- d. **Cyber claims expenses** do not include any salary, overhead, or other charges by the **member** for any time spent in cooperating in the defense and investigation of any **cyber claim** or circumstance that might lead to a **cyber claim** notified under this Endorsement.

(7) **"Cyber liability event"** means:

- a. theft, loss, or **unauthorized disclosure** of **personally identifiable non-public information** that is in the care, custody or control of the **member**, or of an independent contractor that is holding,

processing or transferring such information on behalf of the **named member**; that occurs during the coverage period and/or

- b. one or more of the following acts or incidents which occur during the coverage period that directly result from a failure of **computer security** to prevent a **security breach**:
 - i. the alteration, corruption, destruction, deletion, or damage to a **data asset** stored on **computer systems**;
 - ii. the failure to prevent transmission of **malicious code** from **computer systems** to **third party computer systems**; or
 - iii. the participation by the **named member's computer systems** in a **denial of service attack** directed against a **third-party computer system**.

(8) "**Data asset**" means any software or electronic data that exists in **computer systems** and that is subject to regular back up procedures, including computer programs, applications, account information, customer information, private or personal information, marketing information, financial information and any other information maintained by the **named member** in its ordinary course of business.

(9) "**Denial of service attack**" means an attack intended by the perpetrator to overwhelm the capacity of a **computer system** by sending an excessive volume of electronic data to such **computer system** in order to prevent authorized access to such **computer system**.

(10) "**Limit of Liability**" means the most **OPEEP** will pay for a **cyber claim** or loss to which this Endorsement applies, as further set forth in the OPEEP Declarations Page.

(11) "**Loss**" means **damages, cyber claims expenses, privacy notification costs, and penalties**.

(12) "**Malicious code**" means any virus, Trojan horse, worm or any other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and/or spread itself from one computer to another.

(13) "**Penalties**" means:

- a. any civil fine or money penalty payable by the **member** to a governmental entity that is imposed in a regulatory proceeding by any other federal, state, or local governmental entity, in such entity's regulatory or official capacity; amounts which the **member** is legally obligated to **deposit** in a fund as equitable relief for the payment of

consumer **claims** due to an adverse judgment or settlement of a **regulatory proceeding**; but shall not include payments to charitable organizations or disposition of funds other than for payment of consumer **claims** for losses caused **by a covered cyber liability event**.

(14) **“Personally identifiable non-public information”** means:

- a. information protected by **privacy law**.
- b. medical or health care information concerning the individual, including “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, **and regulations issued** pursuant to the Act;
- c. the individual’s drivers license or state identification number; social security number; unpublished telephone numbers; credit, debit or other financial account numbers and associated security codes; access codes, passwords or personal identification numbers that allow access to the individual’s financial account information;

but does not include publicly available information that is lawfully made available to the general public from government records.

(15) **“Privacy law”** means a federal or state statute or regulation requiring the **member** to protect the confidentiality and/or security of **personally identifiable non-public information**.

(16) **“Privacy notification costs”** means the following reasonable and necessary costs incurred by the **named member** within one year of the discovery of the **cyber liability event**:

- a. for services of a computer security expert to determine the existence and cause of any **security breach** resulting in an actual or reasonably suspected theft, loss or **unauthorized disclosure** of **personally identifiable non-public information** and the extent to which such information was accessed by an unauthorized person or persons;
- b. to provide notification in compliance with a **breach notice law**;
- c. for services of a public relations consultant hired for the purpose of averting or mitigating material damage to the **named member’s** reputation as a result of the **cyber liability event**; however, this coverage applies only after the **named member’s** costs for a public relations consultant have reached or exceeded \$5,000. The amount

so incurred by the **named member** does not work to reduce any deductible which might otherwise apply to the **loss**; and

- d. in connection with a credit file monitoring program, to be approved in advance by **OPEEP**, consisting of:
 - i. the offering of one year of credit monitoring services to those individuals whose **personally identifiable non-public information** was compromised or reasonably believed to be compromised as a result of the theft or **unauthorized disclosure** of information giving rise to a notification requirement pursuant to a **breach notice law**, or, with **OPEEP's** prior written agreement, at the **named member's** voluntary election; and
 - ii. mailing and other reasonable third party administrative costs associated with such a program;
 - iii. provided, all such costs payable under this subsection (d) must be for the purpose of mitigating potential **damages** resulting from such **cyber liability event**.

Privacy notification costs shall not include any internal salary or overhead, or other related expenses of the **member**.

(17) **“Regulatory proceeding”** means a request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar proceeding brought by or on behalf of a federal or state agency with regulatory capacity in connection with a **cyber liability event**.

(18) **“Security breach”** means:

- a. **Unauthorized access or use of computer systems**, including **unauthorized access or use** resulting from the theft of a password from a **computer system** or from any **member**;
- b. **denial of service attack** against **computer systems** or **third party computer systems**; or
- c. infection of **computer systems** by **malicious code** or transmission of **malicious code** from **computer systems**,

whether any of the foregoing is a specifically targeted attack or a generally distributed attack.

(19) **“Third party computer systems”** means any computer systems that: 1) are not owned, operated or controlled by a **member**; and 2) does not include computer systems of a third party on which a **member** performs

services. Computer systems include associated input and output devices, data storage devices, networking equipment, and back up facilities.

- (20) “**Unauthorized access or use**” means the gaining of access to or use of **computer systems** by an unauthorized person or persons or the use of **computer systems** in an unauthorized manner.
- (21) “**Unauthorized disclosure**” means the disclosure of or access to information in a manner that is not authorized by the **named member**.

D. **ADDITIONAL CONDITIONS** - The following additional provisions apply to Defense and Settlement of **cyber claims**:

- (1) **Cyber claims expenses** including defense incurred by **OPEEP** in the investigation and defense of any **cyber claim** with respect to a **cyber liability event** which occurs during the coverage period are within the **limit of coverage** and shall reduce such limit.
- (2) The **limit of coverage** available to pay the **loss** shall be reduced and may be completely exhausted by payment of **cyber claims expenses** paid or reimbursed by **OPEEP**.
- (3) Once **OPEEP** has exhausted the limit of coverage on the Declaration Page, **OPEEP** may, at its option, withdraw from the defense of any **cyber claim**, and all costs of defense shall thereafter be the responsibility of the **named member**.

E. **ADDITIONAL EXCLUSIONS** - This Cyber Security Expense Coverage does not apply to any **cyber claim** or **loss**:

- (1) For, arising out of, or resulting from **bodily injury** or **property damage**;
- (2) For, arising out of, or resulting from any employer-employee relations, policies, practices, acts or omissions, or any actual or alleged refusal to employ any person, or the **member's** misconduct with respect to employees, whether such **claim** is brought by an employee, former employee, applicant for employment, or relative or domestic partner of such person.
- (3) For, arising out of, or resulting from any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written, provided, however, that this exclusion will not apply to the extent the **member** would have been liable in the absence of such contract or agreement; and further, this exclusion shall not apply to a contractual agreement to indemnify another party to the extent such agreement would be covered but for this exclusion.

- (4) For, arising out of, or resulting from any actual or alleged antitrust violation, restraint of trade, unfair competition, or false or deceptive or misleading advertising or violation of the Sherman Anti-Trust Act, the Clayton Act, or the Robinson-Patman Act, as amended;
- (5) For, arising out of or resulting from any actual or alleged false, deceptive or unfair trade practices; however, this exclusion does not apply to any **claim** or **loss** covered under this endorsement that results from a theft, loss or **unauthorized disclosure** of **personally identifiable non-public information**;
- (6) For, arising out of or resulting from:
 - a. the actual or alleged unlawful collection or acquisition of **personally identifiable non-public information** by or on behalf of the **member**; or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (e.g. opt-in or opt-out) from the collection, disclosure or use of **personally identifiable non-public information**; or
 - b. the distribution of unsolicited email, direct mail, or facsimiles, wiretapping, audio or video recording, or telemarketing, if such distribution, wiretapping or recording is done by or on behalf of the **member**.
- (7) For, arising out of or resulting from any of the following:
 - a. any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as the Racketeer Influenced and Corrupt Organizations Act or RICO), as amended, or any regulation promulgated there under or any similar federal law or legislation, or law or legislation of any state, province or other jurisdiction similar to the foregoing, whether such law is statutory, regulatory or common law;
 - b. any actual or alleged violation of any securities law, regulation or legislation, including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, any state or provincial blue sky or securities law, any other federal securities law or legislation, or any other similar law or legislation of any state, province or other jurisdiction, or any amendment to the above laws, or any violation of any order, ruling or regulation issued pursuant to the above laws;
 - c. any actual or alleged violation of the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Worker Adjustment and Retraining Act of 1988, the Certified Omnibus Budget

Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970, any similar law or legislation of any state, province or other jurisdiction, or any amendment to the above law or legislation, or any violation of any order, ruling or regulation issued pursuant to the above laws or legislation; or

- d. any actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;
- (8) For, arising out of, or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, any intentional **security breach**, or intentional or knowing violation of the law committed by any **member**.
- (9) For, arising out of or resulting from any actual or alleged:
- a. infringement of patent or patent rights or misuse or abuse of patent; or
 - b. infringement of copyright arising from or related to software code or software products; or
 - c. use or misappropriation of any ideas or trade secrets by a **member**, or on behalf of, or in collusion with a **member**.
- (10) In connection with or resulting from a **cyber claim** brought by or on behalf of any other state, federal, or local governmental entity, in such entity's regulatory or official capacity; provided, this exclusion shall not apply to a **cyber claim** otherwise covered under Section A(3).;
- (11) Arising out of or resulting from any of the following:
- a. trading losses, trading liabilities or change in value of accounts; any loss of monies, securities or tangible property of others in the care, custody or control of the **member**;
 - b. the monetary value of any electronic fund transfers or transactions by or on behalf of the **member** which is lost, diminished, or damaged during transfer from, into or between accounts; or
 - c. the value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;
- (12) For damage to, destruction of, corruption of, or any loss of use by any **member** of any **computer systems** or **data asset**, including without limitation any costs or expenses to the **member** to repair or replace any **computer systems** or **data asset**.