

CYBER LIABILITY POLICY

IMPORTANT NOTICE: THIS POLICY'S LIABILITY INSURING AGREEMENTS PROVIDE COVERAGE ON A CLAIMS MADE BASIS AND APPLY ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE OPTIONAL EXTENSION PERIOD (IF APPLICABLE) AND REPORTED TO THE INSURER IN ACCORDANCE WITH THE TERMS OF THIS POLICY. DEFENSE COSTS ARE INCLUDED WITHIN THE LIMIT OF LIABILITY. DEFENSE COSTS WILL REDUCE THE AVAILABLE LIMIT OF LIABILITY AND ARE SUBJECT TO RETENTIONS.

In consideration of the payment of the premium paid and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the **Application** and any attachments thereto, and subject to all terms, conditions and limitations of this **Policy**, the **Insured** and **Insurer** agree:

SECTION I - INSURING AGREEMENTS

It is understood and agreed that coverage will not be provided under any Insuring Agreement unless a Limit of Liability, Retention and premium for such Insuring Agreement are set forth in the Declarations.

A. DATA BREACH LIABILITY

The **Insurer** will pay on behalf of the **Insured** for **Loss** resulting from **Claims** for **Wrongful Privacy and Security Acts** made against the **Insured** if such **Claims** are first made during the **Policy Period** or the Extended Reporting Period.

B. ELECTRONIC FUNDS TRANSFER LIABILITY

The **Insurer** will pay on behalf of the **Insured** for **Loss** resulting from **Claims** for **Wrongful Electronic Funds Transfer Acts** made against the **Insured** if such **Claims** are first made during the **Policy Period** or the Extended Reporting Period. No coverage will apply under this Subsection B, however, unless the **Claim** for which the **Insured** seeks coverage involves the transfer of funds of a **Customer** of the **Insured** with which the **Insured** has a **Written Agreement**.

C. NETWORK SECURITY LIABILITY

The **Insurer** will pay on behalf of the **Insured** for **Loss** resulting from **Claims** brought by a **Customer** of the **Insured** for **Wrongful Cyber Banking Services** if such **Claims** are first made during the **Policy Period** or the Extended Reporting Period. Examples of **Claims** for **Wrongful Cyber Banking Services** include **Claims** for:

- (1) the failure to provide any authorized user with access to the **Insured's** website, internet banking platform, or mobile banking platform;
- (2) the failure to prevent the distribution of unsolicited content;

- (3) the failure to prevent the transmission of a computer virus or a **Denial of Service Attack** from a **Computer System** under the control of the **Insured** to a **Computer System** that is not under the control of the **Insured**;
- (4) the loss of a **Customer's** business opportunity; or
- (5) other causes of action.

D. CYBER PUBLISHING AND SOCIAL NETWORKING LIABILITY

The **Insurer** will pay on behalf of the **Insured** for **Loss** resulting from **Claims** for **Wrongful Cyber Publishing Acts** and for **Claims** arising directly out of the **Company's Cyber Publishing and Social Networking Activities** if such **Claims** are first made during the **Policy Period** or the Extended Reporting Period.

As a condition precedent to coverage for **Claims** arising out of the **Company's Cyber Publishing and Social Networking Activities**, before a **Claim** arises, the **Company** must have a written policy and procedure in place that requires monitoring of its **Cyber Publishing and Social Networking Activities**.

E. REGULATORY DEFENSE

The **Insurer** will pay on behalf of the **Insured** for **Defense Costs** and **Regulatory Correction Expenses** resulting from **Claims** brought by a **Regulatory Agency** against the **Insured** for **Wrongful Privacy and Security Acts** or **Wrongful Cyber Publishing Acts** if such **Claims** are first made during the **Policy Period** or Extended Reporting Period.

As a condition precedent to coverage for **Claims** arising out of the **Company's Cyber Publishing and Social Networking Activities**, the **Company** must have a written policy and procedure in place, before a **Claim** arises, that requires monitoring of its **Cyber Publishing and Social Networking Activities**.

F. BREACH RESPONSE EXPENSES

If there is reasonable evidence to suggest that a **Privacy Breach Incident** or a **Denial of Service Attack** has occurred, the **Insurer** will indemnify the **Company** for its actual, reasonable, and necessary **Privacy Breach Response Expenses**. **Privacy Breach Response Expenses** means expenses incurred in:

- (1) engaging a forensic investigator to investigate the existence and extent of the **Privacy Breach Incident** or a **Denial of Service Attack**;
- (2) engaging a qualified expert to restore authorized access to the **Company's Computer System** after a **Denial of Service Attack**;
- (3) engaging a **Privacy Expert** to advise the **Insured** in its duties to comply with any federal or state law or regulation that requires notice to persons and governmental agencies due to an actual **Privacy Breach Incident**, and, if applicable, to examine the **Insured's** indemnification rights and obligations under any written contract with a **Service Provider**;
- (4) changing account numbers and related information, including the reissuance of debit, credit, and ATM cards for those persons who have been directly affected by an actual **Privacy Breach Incident**;

- (5) paying, where insurable by law, contractual monetary fines owed by the **Company** for violations of the Payment Card Industry Data Security Standards, but only when such violations resulted in a covered **Privacy Breach Incident** or **Denial of Service Attack**,
- (6) paying, where insurable by law, civil money penalties levied by a **Regulatory Agency** but only when such penalties resulted from a covered **Privacy Breach Incident** or **Denial of Service Attack**;
- (7) notifying those individuals who may be directly affected by an actual **Privacy Breach Incident** as required by federal or state or federal law or regulation;
- (8) notifying those individuals who may be directly affected by an actual **Privacy Breach Incident** where there is no specific legal requirement mandating such notification, however, such expenses are subject to the **Insurer's** discretion;
- (9) providing call center services, credit-monitoring services, identity-monitoring services, and reimbursement for credit freezes and/or credit thaws from a vendor pre-approved by the **Insurer** for those individuals who have been directly affected by an actual **Privacy Breach Incident**;

The coverage provided by this Subsection F will apply, however, only if the following conditions precedent to coverage are satisfied:

- (a) such expenses are incurred, and engagements are made, with the prior written approval of the **Insurer**;
- (b) the **Insured** incurs the **Privacy Breach Response Expenses** within twelve (12) months of discovering evidence reasonably suggesting that a **Privacy Breach Incident** or a **Denial of Service Attack** had occurred; and
- (c) the **Privacy Breach Incident** or **Denial of Service Attack** occurs during the **Policy Period** and the **Insured** notifies the **Insurer** of the **Privacy Breach Incident** or **Denial of Service Attack** within thirty (30) days of discovery of such **Privacy Breach Incident** or **Denial of Service Attack**.

G. **PUBLIC RELATIONS EXPENSES**

The **Insurer** will indemnify the **Company** for the actual, reasonable, and necessary expenses for restoring the professional reputation of the **Company** to the extent those expenses exceed the **Company's** normal operating costs. This Subsection G covers only such expenses that the **Insured** incurs in response to **Negative Publicity** resulting from a covered **Claim** or a covered **Privacy Breach Incident** and that the **Insurer** approves in writing before they are incurred. The **Insurer** will indemnify the **Company** for **Public Relations Expenses** only if the **Insured** incurs such expenses within twelve (12) months after the reporting of the **Claim** or **Privacy Breach Incident** that causes the **Insured** to incur such expenses.

SECTION II – ADDITIONAL COVERAGES

A. COVERAGE FOR LIABILITY OF ESTATES, HEIRS, AND MARITAL ESTATES

This **Policy** covers **Loss** resulting from **Claims** for **Wrongful Internet/Electronic Banking Acts** of **Insured**

Persons made against:

- (1) The estates, heirs, legal representatives, or assigns of an **Insured Person** who is deceased, incompetent, insolvent, or bankrupt, but only to the extent that such **Claims** would have been covered by this **Policy** in the absence of such death, incompetency, insolvency, or bankruptcy; and
- (2) The lawful spouse or **Domestic Partner** of an **Insured Person** solely by reason of such person's status as a spouse or **Domestic Partner**, or such spouse or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Internet/Electronic Banking Act** of such **Insured Person**.

The Limit of Liability that would have applied under an insuring agreement in Section I of this **Policy** will also apply to any **Claim** for coverage under this Section II. A.

The coverage provided by this Section II. A. will not apply to any loss arising out of any act or omission by an **Insured Person's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**.

B. CRIMINAL REWARD

The **Insurer** will indemnify the **Company** for any reward amount offered and paid by the **Company** with the **Insurer's** prior written consent for information that leads to the arrest and conviction of persons responsible for any illegal act relating to any coverage under this **Policy**. Such coverage shall not apply to any reward money offered or paid:

- (a) to **Insured Persons**;
- (b) to external auditors and/or investigators working under contract with the **Company**;
- (b) to law enforcement; or
- (c) to any entity directly or indirectly controlled, operated, or managed by the **Company** or any entity with whom the **Company** has entered into any form of agreement.

This Sublimit of Liability for coverage pursuant to this Section II.B. shall be \$25,000. Such Sublimit shall be part of, and not in addition to the Limit of Liability set forth in Item 4. of the Declarations for Data Breach Liability Insuring Agreement. No Retention shall apply this this coverage.

The coverage provided by this Section II. B. expires no later than six (6) months following the end of the **Policy Period**.

SECTION III – EXTENDED REPORTING PERIOD

- A. If the **Company** or the **Insurer** cancels or non-renews this **Policy** or if the **Policy** converts subject to Section XI (C)(1)(b), the **Insured** will have the right to purchase an optional extended reporting period (herein called the Extended Reporting Period) for the period set forth in Item 10 of the Declarations. It is understood that if the **Insurer** cancels this **Policy** due to nonpayment of premium, the **Insured** will not be entitled to the Extended Reporting Period.

- B. The Extended Reporting Period is not an extension of coverage, but rather an extended reporting period for:
- (1) **Claims** first made during the Extended Reporting Period resulting from **Wrongful Internet/Electronic Banking Acts** that occurred prior to the effective date of cancellation, nonrenewal, or termination and that are otherwise covered under this **Policy**; and
 - (2) **Privacy Breach Incidents** and **Denial of Service Attacks** that began prior to the effective date of cancellation, nonrenewal, or termination and that are otherwise covered under this **Policy**.
- Notice of facts and circumstances that may give rise to a **Claim**, or provide evidence suggesting the occurrence of a **Privacy Breach Incident** or a **Denial of Service Attack**, pursuant to Section IX (B), must be given during the **Policy Period** and will not be effective if given during the Extended Reporting Period.
- C. If the **Insured** elects to purchase the Extended Reporting Period, the premium will be calculated by multiplying the annual Liability premium set forth in Item 6(a) of the Declarations by the percentage set forth in Item 10 of the Declarations. The Extended Reporting Period is non-cancellable and the entire premium will be deemed fully earned at its commencement.
- D. The **Insureds'** right to purchase the Extended Reporting Period will lapse unless the **Insurer** receives written notice of the **Insureds'** election and full payment of the additional premium due within sixty (60) days after the effective date of such cancellation, nonrenewal, or termination.
- E. The Limit of Liability with respect to **Claims** made during the Extended Reporting Period will be part of and not in addition to the Total Policy Limit set forth in Item 3 of the Declarations for all **Claims** made during the immediately preceding **Policy Year**. Any **Claim** made during the Extended Reporting Period will be deemed to be made during the **Policy Year** immediately preceding the Extended Reporting Period.
- F. The offer by the **Insurer** and acceptance by the **Insured** of continued coverage under terms, conditions, Limits of Liability, Retentions, or premiums different from those applicable to the expiring **Policy** will not constitute a refusal to renew and will not entitle any **Insured** to exercise the Extended Reporting Period.

SECTION IV - DEFINITIONS

Advertising Injuries means **Claims** for:

- (1) false advertising,
- (2) false light invasion of privacy, and
- (3) misappropriation of likeness for commercial purposes,

arising directly from the **Company's** advertising activities.

Application means:

- (1) the application signed for the procurement of this **Policy** and any materials submitted to the **Insurer** in support of the procurement of this **Policy** or any **Policy** for which this **Policy** is a direct or indirect renewal or replacement; and
- (2) any publicly available information regarding the **Insured** that is in the twelve (12) months preceding the **Policy's** inception, published by the Insured or filed by the Insured with a recognized source, agency or institution and any amendment to such information, whether or not submitted with any signed application.

The **Application** is deemed to be attached to and incorporated into this **Policy**, as if physically attached.

Claim, either in singular or plural, means any of the following instituted against an **Insured**:

- (1) a written demand for monetary damages or non-monetary relief;
- (2) a civil proceeding commenced by the service of a complaint or similar pleading;
- (3) a criminal proceeding commenced by a return of an indictment or the filing of an information;
- (4) an arbitration proceeding in which monetary damages are sought;
- (5) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document; or
- (6) a written request to toll or waive a statute of limitations, relating to a potential **Claim** described in Items (1) through (5) above,

for **Wrongful Internet/Electronic Banking Acts**, including any appeals from such proceedings.

Cloud means a remote server that is hosted on the Internet and that:

- (1) is used for storage or computer processing by the **Company**;
- (2) the **Company** directly pays for; and
- (3) is owned by a company with which the **Company** has entered into a direct service-level agreement.

Company means the entity or entities set forth in Item 1 of the Declarations, any **Subsidiary** created or acquired as of the inception date set forth in Item 2 of the Declarations, and, subject to Section X (A) of the **Policy**, any bank **Subsidiary** created or acquired during the **Policy Period**.

Computer Program means a set of related electronic instructions that direct the operations and functions of a computer or devices connected to it and that enable the computer or devices to receive, process, store, or send **Electronic Data**.

Computer System means:

- (1) any computer with related peripheral components;
- (2) any electronic processing, storage or communication device;
- (3) any network or operating system; and
- (4) any tablet or smart phone

by which **Electronic Data** is electronically collected, transmitted, processed, stored, and retrieved. **Computer System** includes transmissions of the **Company's Electronic Data** to and from a **Cloud**.

Confidential Information means:

- (1) any nonpublic personal information that allows an individual to be distinctively identified, including a social security number, driver's license, or state identification number;
- (2) a **Customer's** credit or debit card numbers, PINs, passwords or other account numbers; and
- (3) any financial or commercial information that is subject to the terms of a confidentiality agreement agreed to by the **Insured**.

Customer means any natural person or entity that receives professional services directly from the **Company**.

Cyber Banking Services means any service not forbidden by law or regulation and rendered by the **Insured** through the transmission of **Electronic Data** to or from the **Insured's** secured and authenticated **Secured Portal**. **Cyber Banking Services** do not include:

- (1) an **Insured's** development of websites or software, an **Insured's** provision of hosting or network security services, or an **Insured** acting as an internet service provider, internet access provider, application service provider, or provider of like services to third parties;
- (2) **Privacy and Security Acts**;
- (3) **Cyber Publishing and Social Networking Activities**; or
- (4) **Electronic Funds Transfer Acts**.

Cyber Publishing and Social Networking Activities means the electronic display or electronic dissemination of information through the **Company** website listed in the Declarations or the **Company's** approved **Social Networking** accounts.

Defense Costs means reasonable and necessary legal fees and expenses incurred in defending or investigating any **Claim** and the cost of appeal, including attachment bonds, or other similar bonds. **Defense Costs** do not include salaries, wages, overhead, or benefit expenses incurred by the **Insured**.

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**.

Domestic Partner means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**.

Electronic Data means facts or information converted to a form usable in a **Computer System** by **Computer Programs** and stored on magnetic tapes or disks, optical storage disks, or other bulk media.

Electronic Data Processor means a natural person, partnership, or corporation that has the **Company's** written authorization to perform services as data processor of checks of the **Insured**. A Federal Reserve Bank or clearinghouse is not an **Electronic Data Processor**.

Electronic Funds Transfer Act means the transfer of funds from a **Customer's** account through a **Computer System** operated by the **Company**.

Electronic/On-Line Communication means a communication that is transmitted through the **Company's Computer System** and stored electronically on the **Company's Computer System**. An **Electronic/On-Line Communication** does not include a communication delivered through a Telefacsimile Device, via voice or voice recording, or via email.

Employee, either in singular or plural, means any natural person whose labor or service is or was engaged and directed by the **Company** including any: 1) past, present, future, part-time, seasonal or temporary employees; and 2) volunteers and interns acting in the capacity of an **Employee**. **Employee** also includes **Leased Employees** but does not include **Independent Contractors**.

Executive Officer means the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Information Technology Officer, Director, In-house Counsel, Controller, Internal Auditor, Risk Manager, Senior Loan Officer or President, of the **Company** or any person holding any equivalent position within the **Company**.

Financial Impairment means the **Company** becoming a debtor in possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company** or any **Subsidiary**.

Independent Contractor means any natural person who is not an **Employee** or a **Leased Employee** but performs labor or service for the **Company** pursuant to a written contract or agreement.

Insured, either in singular or plural, means:

- (1) any **Insured Person** acting solely in his or her capacity as such; or
- (2) the **Company**,

acting in connection with the provision of any **Cyber Banking Services, Electronic Funds Transfer Acts, Privacy and Security Acts, or Cyber Publishing and Social Networking Activities**.

Insured Person, either in singular or plural, means any natural person who was, now is or shall become an **Employee**, director, officer, member of the board of trustees, governor, advisory or honorary director, or advisory or honorary member of the board of trustees of the **Company** while acting in his or her capacity as such.

Internet/Electronic Banking Services means **Cyber Banking Services, Electronic Funds Transfer Acts, Privacy and Security Acts, and Cyber Publishing and Social Networking Activities**.

Interrelated Wrongful Internet/Electronic Banking Acts means any **Wrongful Cyber Acts, Wrongful Electronic Funds Transfer Acts, Wrongful Privacy and Security Acts, and Wrongful Cyber Publishing Acts** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.

Leased Employee means any natural person who is leased to the **Company** by a labor leasing firm under an agreement between the **Company** and the labor leasing firm to perform work for the **Company** and for whom the **Company** controls the means and manner of the work performed. But any coverage afforded under this **Policy** to a **Leased Employee** applies only to the extent that the **Company** indemnifies such **Leased Employee**, and any such coverage will be specifically excess of any other indemnity and insurance otherwise available to such **Leased Employee**.

Loss means **Defense Costs** and any other amount that the **Insured** is legally obligated to pay resulting from a **Claim**, including damages, judgments, settlements, and pre- and post-judgment interest. **Loss** also includes, where insurable by law, punitive or exemplary damages and the multiple portion of any multiplied damage award that the **Insured** is legally obligated to pay. **Loss** does not include:

- (1) taxes;
- (2) criminal or civil fines or penalties imposed by law;
- (3) any unpaid, unrecoverable, or outstanding loan, lease, or extension of credit to any **Customer** or any forgiveness of debt;
- (4) costs to comply with any non-monetary or injunctive relief of any kind or any agreement to provide such relief, including but not limited to any damages, costs, or expenses incurred in making an accommodation for any disabled person pursuant to the Americans with Disabilities Act or any similar federal, state, or local laws, or in complying with any other federal, state, or local laws of any kind, unless such costs are specifically enumerated **Privacy Breach Response Expenses** or **Public Relations Expenses** resulting from a covered **Privacy Breach Incident** or **Denial of Service Attack**, or **Regulatory Correction Expenses** resulting from a covered **Claim**.
- (5) any amounts the **Company** is obligated to pay pursuant to any express written contract or agreement existing prior to the date the **Claim** was made;
- (6) the depreciation (or failure to appreciate) in value of any investment product, including but not limited to securities, commodities, currencies, options, and futures due to market fluctuation unrelated to any **Wrongful Internet/Electronic Banking Acts**;
- (7) any restitution, disgorgement, or similar payments including but not limited to the return of fees, commissions or charges for the **Company's** services;
- (8) any matters which are uninsurable under the law pursuant to which this **Policy** shall be construed; provided that damages shall be deemed insurable under this **Policy** if such damages are insurable under the law of any jurisdiction that is most favorable to the insurability of such damages and has a substantial relationship to the **Insureds**, the **Claim**, the **Insurer**, or this **Policy**;
- (9) any costs or expenses associated with upgrading or improving any **Computer System**;
- (10) any payment, expense, or settlement agreed to by, or paid by, the **Insured** on behalf of any **Claim** without the **Insurer's** prior written consent; or
- (11) any **Customer** funds lost due to an unauthorized funds transfer, unless the **Claim** is covered under Insuring Agreement B.

Loss Information means information on open, closed, and potential **Claims**, including date, description, and payment amounts, if any.

Named Insured means the first named entity set forth in Item 1 of the Declarations.

Negative Publicity means information associated with a covered **Privacy Breach Incident** or a covered **Claim** which is publicized through newspapers, radio, television or similar print or broadcast media that is likely to cause a deterioration in the **Company's** business reputation.

Policy means collectively, the Declarations, the **Application**, this policy form and any Endorsements attached hereto or subsequently added.

Policy Period means the period from the inception date set forth in Item 2 of the Declarations to the expiration date set forth in Item 2 of the Declarations or any earlier termination date. In no event will the Policy Period continue past the effective date of cancellation or termination of this **Policy**.

Policy Year means the period of one year following the effective date and hour of this **Policy** or any anniversary thereof, or if the time between the effective date and termination of the **Policy Period** is less than one year, such lesser period. Any extension of the **Policy Period** will not result in an increase or reinstatement of the Limit of Liability. If the **Policy Period** is extended beyond its original expiration date, the period of the extension will be a part of the **Policy Year** that would have ended on the original expiration date.

Pollutants include but are not limited to any solid, liquid, gaseous or thermal organism, irritant, or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, hazardous substances, nuclear materials, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

Privacy and Security Act means the management, oversight, or preservation of **Confidential Information** or the security of the **Company's Computer System**.

Privacy Expert means an attorney or certified privacy professional, approved by the **Insurer**, with experience in privacy law, data-breach compliance, or related areas.

Privacy Breach Incident means the unauthorized access to **Confidential Information** in the custody or control of the **Insured**, an **Electronic Data Processor**, or a **Service Provider**.

Public Relations Expenses means the actual necessary expenses incurred and paid by the **Company**, in excess of the **Company's** normal operating costs, for public relations services recommended and provided by a crisis-management firm or public relations firm approved by the **Insurer**, to mitigate actual or potential **Negative Publicity**. No expenses will qualify as **Public Relations Expenses**, however, unless such expenses are incurred, and the engagement to incur such expenses is made, with the prior written approval of the **Insurer**.

Regulatory Agency means the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, the Securities Exchange Commission, the Federal Trade Commission, or any other State banking, State insurance regulatory agency or State Attorney General.

Regulatory Correction Expenses means actual, reasonable, and necessary expenses incurred by the **Company** to issue a correction, retraction, or other public statement as required by a **Regulatory Agency**. **Regulatory Correction Expenses** do not include the cost of issuing or disseminating a correction that is made to satisfy a **Customer** complaint. **Regulatory Correction Expenses** also do not include **Employee** wages or criminal or civil fines or penalties imposed by law.

Secured Portal means the **Company's**:

- (1) website listed in the Declarations;
- (2) internet or mobile banking applications; or
- (3) private, internal network

that requires a commercially reasonable encryption protocol for communication and data transmissions. A **Secured Portal** does not include any emails, email systems, telefacsimile devices, or any voice or voice-recording system.

Securities Claim means a **Claim**:

- (1) against an **Insured** for a violation of any securities law, but solely in connection with the Securities of the **Company**;
- (2) against an **Insured** for a common law cause of action, pled in tandem with, or in lieu of, any securities law violation described in Subsection (1) above and brought by:
 - a. a security holder of the **Company** with respect to his interest in the securities of the **Company**, brought directly or derivatively; or
 - b. any person or entity in connection with the purchase, sale or offer to purchase to sell securities of the **Company**; or
- (3) brought by or on behalf of the **Company** seeking a motion to dismiss a derivative action.

Service Provider means any third-party entity with which the **Insured** has entered into a direct service-level agreement requiring the third party to provide internet or mobile banking applications, electronic storage, or similar electronic services to the **Company**. **Service Provider** includes only organizations that are signatories to a direct service-level agreement with the **Insured** pursuant to which the **Insured** directly pays for the agreed-upon services.

Social Networking means the **Company's** official profile or account on an internet-based venue owned by a third-party entity that allows its users to disseminate information electronically to other venue participants, and facilitates and encourages comments and dialogue.

Subsidiary means:

- (1) any entity in which the **Company** owns, directly or through one or more entities, more than 50% of the outstanding securities representing the present right to vote for the election of directors; or

- (2) any limited liability company in which the **Company**, directly or indirectly, has the right to appoint or designate 50% or more of such limited liability company's managers.

Trust Services means any of the following services performed by the **Insured**:

- (1) administrator, custodian, or trustee under any individual retirement account (IRA) or H.R. 10 Plan (Keogh Plan);
- (2) executor, administrator, or personal representative of estates, administrator of guardianships, trustee under personal or corporate trust agreements, or conservator of any person;
- (3) trustee of a pension, profit sharing, health and welfare, or any other employee benefit plan or trust, other than an employee benefit plan or trust sponsored or established by the **Company** for its own **Employees**;
- (4) custodian, depository, or managing agent for securities or real property, manager of any personal property owned by others, attorney-in-fact, interest or dividend disbursing agent, transfer or paying agent, redemption or subscriptions agent, fiscal agent, tax-withholding agent, registrar of securities, agent for voting securities, sinking fund agent, escrow agent, or trustee under a corporate bond indenture; or
- (5) trustee exercising any other trust or fiduciary powers permitted by law.

Written Agreement means a document signed by the **Customer** that:

- (1) authorizes the **Insured** to rely on instructions received through an **Electronic/On-Line Communication**, voice-initiated instruction, telefacsimile device, or email, as applicable to the transaction(s) at issue, to make transfers from that **Customer's** account to another account;
- (2) has provided the **Insured** with the names of persons authorized to initiate such transfers, and the transfer at issue was initiated by someone purporting to be an authorized person; and
- (3) establishes the instruction verification mechanism to be used by the **Insured** for all such transfers.

Wrongful Cyber Banking Services means any actual or alleged error, omission, misstatement, misleading statement, neglect, or breach of duty by any **Insured Person**, acting solely in the capacity as such, or by the **Company**, committed in connection with the provision of **Cyber Banking Services**.

Wrongful Cyber Publishing Acts means any actual or alleged:

- (1) infringement of copyright, misappropriation of ideas (but not patent infringement), or plagiarism;
- (2) infringement of trademark, trade name, or service mark;
- (3) libel, slander, defamation, or other actionable disparagement; or
- (4) **Advertising Injuries**

directly related to the **Cyber Publishing and Social Networking Activities** of an **Insured** and that results in an injury sustained or allegedly sustained by a natural person, partnership, or corporation.

Wrongful Electronic Funds Transfer Acts mean any actual or alleged error, omission, misstatement, act of negligence, or breach of duty committed in connection with an **Electronic Funds Transfer Act**.

Wrongful Internet/Electronic Banking Acts means any actual or alleged error, omission, misstatement, misleading statement, neglect, or breach of duty by:

- (1) any **Insured Person** acting solely in his or her capacity as such; or
- (2) the **Company**

that is committed in connection with the provision of any **Cyber Banking Services, Electronic Funds Transfer Acts, Privacy and Security Acts, or Cyber Publishing and Social Networking Activities.**

Wrongful Privacy and Security Acts means any actual or alleged error, omission, misstatement, act of negligence, or breach of duty committed by the **Insured** or a **Service Provider** in connection with a **Privacy and Security Act** that results in:

- (1) the unauthorized access to **Confidential Information** in the custody or control of the **Insured**, an **Electronic Data Processor** or a **Service Provider**;
- (2) the failure of the **Insured** to provide notice of a **Privacy Breach Incident** as required by federal or state law or regulation; or
- (3) the loss of a **Customer's** business opportunity as a result (1) or (2) above.

SECTION V - EXCLUSIONS

Bodily Injury/Personal Injury/Property Damage Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** for actual or alleged bodily injury, sickness, disease, or death of any person, damage to or destruction of any tangible or intangible property, other than **Electronic Data**, including loss of use thereof, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, abuse of process, assault, battery, mental anguish, emotional distress, loss of consortium, invasion of privacy, defamation, false light, libel, or slander. But this exclusion does not apply to claims for invasion of privacy, defamation, false light, libel, or slander arising directly out of **Privacy and Security Acts or Cyber Publishing and Social Networking Activities.**

Bonding/Insurance Company Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim** that is brought directly or indirectly by or for the benefit of any insurance carrier or bond carrier of the **Company**, or any affiliate of the **Company**, regardless of the name under which such **Claim** is actually made.

Brokerage Services Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of or in any way involving financial advisory services, investment or financial advice or recommendations (including investment banking services) or the rendering of brokerage services of any kind. But this exclusion does not apply to:

- (1) **Claims** alleging invasion of privacy, libel, slander, defamation, other actionable oral or written disparagement, loss or damage to **Electronic Data** of a **Customer**, unauthorized access to a **Customer** account maintained by the **Company**, infringement of copyright, misappropriation of ideas (other than patent infringement), plagiarism, or infringement of trademark, trade name, or service mark; or
- (2) **Loss** covered under any Business Interruption, Cyber/Network Extortion or Public Relations Expenses Insuring Agreement attached to this **Policy** (if applicable).

Contract Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack**:

- (1) arising out of or in any way involving the assumption of any liability to defend, indemnify, or hold harmless any person or entity, other than an **Insured Person**, under any written contract or agreement, unless such liability would be imposed regardless of the existence of such contract or agreement; or
- (2) for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** that exceeds any limitation of liability to which the **Insured** agreed pursuant to any written contract or agreement existing prior to the date the **Claim, Privacy Breach Incident, or Denial of Service Attack** was made; or
- (3) for the breach of any express written or oral contract or amounts the **Company** is obligated to pay pursuant to any express written or oral contract.

Employment Practices Exclusion - The **Insurer** will not be liable to make any payment for **Loss** in connection with any **Claim** arising out of any actual or potential employment relationship between any person and the **Company** or an affiliate of the **Company**, including without limitation, hiring, terminating, promoting, or disciplining any person, the refusal or failure to hire or promote any person, and employment-related discrimination, misrepresentation, retaliation, libel, slander, humiliation, defamation, or invasion of privacy.

ERISA Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of or in any way involving any pension, profit sharing or employee benefit program established in whole or in part for the benefit of **Employees** of the **Company**, including, without limitation, any violation of the Employee Retirement Income Security Act of 1974, as amended, or similar provisions of any federal, state, or local statutory law, common law, or administrative law.

Fraud/Violation of Law Exclusion - The **Insurer** will not be liable to make any payment for **Loss** (other than **Defense Costs**), **Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of or in any way involving any fraudulent, dishonest or criminal act or any willful violation of any civil or criminal statute, regulation, or law by the **Insured**, if a final judgment or final adjudication establishes such fraudulent, dishonest, or criminal act or such willful violation of statute, regulation or law.

Illegal Profit/Payment Exclusion - The **Insurer** will not be liable to make any payment for **Loss** (other than **Defense Costs**), **Regulatory Correction Expense**, **Public Relations Expense**, or **Privacy Breach Response Expense** in connection with any **Claim**, **Privacy Breach Incident**, or **Denial of Service Attack** arising out of or in any way involving:

- (1) any **Insured** gaining any profit, remuneration, or financial advantage to which the **Insured** was not legally entitled; provided that this exclusion shall only apply if a final judgment or final adjudication establishes that the **Insured** was not legally entitled to such profit, remuneration or financial advantage;
- (2) payment by the **Company** of inadequate or excessive consideration in connection with its purchase of **Company** securities; or
- (3) conflicts of interest, engaging in self-dealing, or acting in bad faith.

Insolvency Exclusion - The **Insurer** will not be liable to make any payment for **Loss**, **Regulatory Correction Expense**, **Public Relations Expense**, or **Privacy Breach Response Expense** in connection with any **Claim**, **Privacy Breach Incident**, or **Denial of Service Attack** arising out of or in any way involving the insolvency, conservatorship, receivership, liquidation of, bankruptcy of, or suspension of payment by any person or entity.

Insurance Operations Exclusion - The **Insurer** will not be liable to make any payment for **Loss**, **Regulatory Correction Expense**, **Public Relations Expense**, or **Privacy Breach Response Expense** in connection with any **Claim**, **Privacy Breach Incident**, or **Denial of Service Attack** arising out of or in any way involving any advice or recommendations made with respect to the sale of insurance or the rendering of services as an insurance agent or insurance broker. But this exclusion does not apply to:

- (1) **Claims** alleging invasion of privacy, libel, slander, defamation, other actionable oral or written disparagement, loss or damage to **Electronic Data** of a **Customer**, unauthorized access to a **Customer** account maintained by the **Company**, infringement of copyright, misappropriation of ideas (other than patent infringement), plagiarism, or infringement of trademark, trade name, or service mark; and
- (2) **Loss** covered under any Business Interruption or Cyber/Network Extortion Insuring Agreement attached to this **Policy** (if applicable).

Insured vs. Insured Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** by or at the behest of the **Company**, any affiliate of the **Company** or any **Insured Person**. However, this Exclusion shall not apply to any **Claim** by an **Insured Person**:

- (1) brought solely as a customer of the **Company**;
- (2) brought as **Employee**, director, officer, member of the board of trustees, honorary or advisory director or advisory member of the board of trustees, or shareholder of the **Company** but only to the extent such **Claim** pertains to the unauthorized disclosure of the personally identifiable information of the **Employee**, director, officer, member of the board of trustees, honorary or advisory director or advisory member of the board of trustees, or shareholder of the **Company**; or
- (3) who has not been an **Employee**, director, officer, member of the board of trustees, honorary or advisory director or advisory member of the board of trustees of the **Company** for four (4) years prior to the inception date of the **Policy**.

Non-Company Security Breach Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of, or in any way involving, a breach of any computer system or any communication network, other than the **Company's Computer System**. The **Insurer** also will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** in any way relating to the unauthorized access to, or use of, login, password, access key, or other **Confidential Information** where such information was obtained from the **Customer**, or any other means under the **Customer's** control, regardless of whether the information was obtained through theft, trick, artifice, fraud, or false pretenses.

The **Non-Company System Breach Exclusion** does not apply to a **Claim** for a **Wrongful Privacy and System Security Act, Privacy Breach Incident, or Denial of Service Attack** arising directly out of a security breach of a **Company Service Provider's or Company Electronic Data Processor's Computer System**.

Non-Subsidiary Wrongful Acts Exclusion - The **Insurer** will not be liable to make any payment for **Loss or Regulatory Correction Expense** in connection with any **Claim** involving any **Subsidiary** or its **Insured Persons** acting in the capacity of director, member of the board of trustees, officer or **Employee** of such **Subsidiary** for any **Wrongful Internet/Electronic Banking Act or Interrelated Wrongful Internet/Electronic Banking Acts** actually or allegedly committed in whole or in part at any time when the entity was not a **Subsidiary** except as provided in Section XI (C)(3). The **Insurer** will also not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense or Privacy Breach Response Expense** in connection with any **Privacy Breach Incident or Denial of Service Attack** that began or occurred at any time when the entity was not a **Subsidiary** except as provided in Section XI (C)(3).

Patent Infringement Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of or involving any actual or alleged infringement of any patent, patent pending or application for patent.

Plastic Card Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of the unauthorized access to **Confidential Information** where the **Confidential Information** was obtained through the fraudulent use or unauthorized scanning or collection of data obtained from tangible debit, credit or ATM cards.

Pollution Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of or in any way involving:

- (1) the actual, alleged or threatened discharge, disposal, migration, dispersal, release, or escape of **Pollutants**; or
- (2) any direction, order or request to test for, monitor, remediate, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants**, or to pay for or contribute to the costs of undertaking such actions.

Prior Notice Exclusion - The **Insurer** will not be liable to make any payment for **Loss or Regulatory Correction Expense**, in connection with any **Claim** arising out of or in any way involving any **Wrongful Internet/Electronic Banking Act** or any **Wrongful Internet/Electronic Banking Act** that is part of any **Interrelated Wrongful Internet/Electronic Banking Acts**, or any fact, circumstance, or situation that has been the subject of any notice given to any carrier other than the **Insurer** under any similar insurance policy providing protection for any **Insured**. The **Insurer** will also not be liable for any **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Privacy Breach Incident** or **Denial of Service Attack** that has been the subject of any notice given to any carrier other than the **Insurer** under any similar insurance policy providing protection for any **Insured**.

Prior and Pending Proceeding Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of or in any way involving any litigation against any **Insured** initiated prior to the respective date set forth in Item 9 of the Declarations, or arising out of or in any way involving any of the same or substantially the same facts, circumstances, or situations underlying or alleged in such prior litigation.

Receivership Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of or in any way involving the **Company's** function or activity as receiver, trustee in bankruptcy, or assignee for the benefit of creditors.

Regulatory Proceeding Exclusion – The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** brought by or on behalf of, in the right of, at the behest of, or with the participation of any federal, state or foreign governmental authority. But this exclusion does not apply to **Defense Costs** and **Regulatory Correction Expenses** resulting directly from a **Claim** covered under Insuring Agreement E.

RICO Exclusion - The **Insurer** will not be liable to make any payment for **Loss (other than Defense Costs), Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of, or in any way involving any violation, or alleged violations, of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961–1968), and amendments thereto, or similar provisions of any state or local statutory law, common law or administrative law.

Sale of Tangible Goods Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of or in any way involving the sale of tangible goods.

Securities Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense**, that, in whole or in part, is based upon, arises from, or in any way involves a **Securities Claim**.

Social Media Transfer Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of, or in any way involving the transfer of funds or currency through social media, including the **Company's** own **Social Networking** profiles and accounts.

Trade Secrets Exclusion – The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of or in any way involving actual or alleged misappropriation of trade secrets or proprietary information.

Trust Services Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of or in any way involving the rendering or failing to render **Trust Services**. But this exclusion does not apply to:

- (1) **Claims** alleging invasion of privacy; libel; slander; defamation; other actionable oral or written disparagement; loss or damage to **Electronic Data** of a **Customer**; unauthorized access to a **Customer** account maintained by the **Company**; infringement of copyright; misappropriation of ideas (other than patent infringement); plagiarism; or infringement of trademark, trade name or service mark; or
- (2) **Loss** covered under any Business Interruption or Cyber/Network Extortion Insuring Agreement attached to this **Policy** (if applicable).

Utility Service/Internet Failure Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of or in any way involving the interruption or failure of the Internet, any power or other utility service, any satellite, or any component part or infrastructure support thereof.

War Exclusion - The **Insurer** will not be liable to make any payment for **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** in connection with any **Claim, Privacy Breach Incident, or Denial of Service Attack** arising out of, or in any way involving or attributable to, acts of war, acts of foreign enemies, the acts of any military organization, or the acts of any government regardless of any other contributing cause or event.

SECTION VI - LIMIT OF LIABILITY AND RETENTION

A. LIMIT OF LIABILITY

- (1) Subject to paragraph A (2), below, if a **Claim, Privacy Breach Incident or Denial of Service Attack** is covered by more than one Insuring Agreement, the **Insurer's** maximum Limit of Liability for such **Claim, Privacy Breach Incident or Denial of Service Attack** shall not exceed the highest Limit of Liability provided by any Insuring Agreement providing coverage to the **Insured**.
- (2) In no event shall the **Insurer's** maximum aggregate Limit of Liability under this Policy for all

Claims made and all **Privacy Breach Incidents** and **Denial of Service Attacks** occurring in a **Policy Year** exceed the Total Policy Limit set forth in Item 3 of the Declarations.

B. RETENTION

- (1) The **Insurer** will pay for covered **Loss**, including covered **Defense Costs, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expenses** only to the extent that such **Loss, Public Relations Expense, Privacy Breach Response Expenses or Regulatory Correction Expense** exceeds the applicable Retention for each **Claim, Privacy Breach Incident or Denial of Service Attack** covered under Insuring Agreements (A), (B), (C), (D), (E), (F) or (G) as set forth in Item 5 of the Declarations.
- (2) In the event that **Loss, Regulatory Correction Expenses, Public Relations Expense, and Privacy Breach Response Expenses** arising out of a single **Claim, Privacy Breach Incident or Denial of Service Attack**, or an interrelated set of **Claims, Privacy Breach Incidents or Denial of Service Attacks** are subject to more than one Retention, the applicable Retention amounts shall apply to such **Loss, Regulatory Correction Expenses, Public Relations Expense and Privacy Breach Response Expenses**, provided that the sum of such Retention amounts shall not exceed the largest applicable Retention amount. If **Loss** from a **Claim** is covered under more than one Insuring Agreement, the **Claim** shall be subject to the highest applicable Retention.

C. SINGLE CLAIM - **Claims** based upon or arising out of the same **Wrongful Internet/Electronic Banking Acts or Interrelated Wrongful Internet/Electronic Banking Acts** committed by one or more **Insureds**, must be considered a single **Claim**, and only one Retention and Limit of Liability may apply to such single **Claim**. Each such single **Claim** will be deemed to be first made on the date the earliest of such **Claims** was first made, regardless of whether such date is before or during the **Policy Period**.

D. SINGLE INCIDENT – **Privacy Breach Incidents** and **Denial of Service Attacks** that have as a common nexus any related fact, circumstance, situation, event, or transaction, or series of related facts, circumstances, situations, events, or transactions will be considered a single **Privacy Breach Incident or Denial of Service Attack** and only one Retention and Limit of Liability may apply to such single **Privacy Breach Incident or Denial of Service Attack**. Each such single **Privacy Breach Incident or Denial of Service Attack** will be deemed to be first made on the date the earliest of such **Privacy Breach Incident or Denial of Service Attack** was first discovered, regardless of whether such date is before or during the **Policy Period**.

SECTION VII - DEFENSE AND SETTLEMENTS

A. NO DUTY TO DEFEND

- (1) Amounts incurred as **Defense Costs** will reduce and will be part of and not in addition to the applicable Limit of Liability. It will be the duty of the **Insured** and not the duty of the **Insurer** to defend **Claims** unless Item 8 of the Declarations page provides otherwise. The **Insured** may only retain counsel that is mutually agreed upon with the **Insurer**, consent for which will not be unreasonably withheld.
- (2) The **Insured** will not incur **Defense Costs**, admit liability for, settle, or offer to settle any **Claim** without the **Insurer's** prior written consent, which will not be unreasonably withheld. The **Insurer** will be entitled to full information and all particulars it may request in order to reach a decision as to such consent.
- (3) The **Insurer** will have the right but not the duty to associate with the **Insured** in the settlement and defense of any **Claim** that appears reasonably likely to involve the **Insurer**. Such association will include, but not be limited to, participation in the formation of litigation strategy, review of pleadings and other pertinent papers prior to filing, and participation in settlement negotiations and any mediation.

B. ADVANCEMENT OF DEFENSE COSTS

- (1) Subject to Section VIII, the **Insurer**, if requested by the **Insured**, will advance covered **Defense Costs** on a current basis, except when advancement of **Defense Costs** is prohibited by law or regulation. The **Insured** must repay any advanced **Defense Costs** to the **Insurer** in the event it is established that the **Insurer** has no liability under this **Policy** for such **Defense Costs**.
- (2) Prior to advancing or indemnifying **Defense Costs**, the **Insurer** will be entitled to sufficient information and documentation as to the amount and purpose of any **Defense Costs** to enable it to evaluate the reasonableness and necessity of such **Defense Costs** and to verify that such **Defense Costs** were actually incurred.

C. DUTY TO COOPERATE - The **Insured** must promptly furnish the **Insurer** with all information reasonably requested by the **Insurer** including, but not limited to, copies of reports, investigations, pleadings and other papers. As a condition precedent to coverage under this **Policy**, the **Insured** must provide the **Insurer** with such information, assistance and cooperation as the **Insurer** may reasonably request.

SECTION VIII - ALLOCATION AND ARBITRATION

A. ALLOCATION

If any **Insured** incurs a loss that is partially covered by this **Policy** either because such **Claim** includes both covered and uncovered matters or because such **Claim** is made against covered and uncovered parties, then such loss incurred by the **Insured** on account of such **Claim** will be allocated by the **Insurer** between covered **Loss** and uncovered loss based on the relative legal exposures of the parties to covered and uncovered matters.

B. ARBITRATION

The **Insurer** and the **Insured** agree to use their best efforts to reach a proper allocation of **Defense**

Costs. If the **Insured** and the **Insurer** cannot agree on an allocation:

- (1) no presumption as to allocation will exist in any arbitration, suit or other proceeding;
- (2) the **Insurer** will advance on a current basis **Defense Costs** that the **Insurer** believes to be covered under this **Policy** until a different allocation is negotiated, arbitrated or judicially determined; and
- (3) the **Insurer**, if requested by the **Insured**, will submit the allocation dispute to binding arbitration. The rules of the American Arbitration Association will apply except with respect to the selection of the arbitration panel. The arbitration panel will consist of one arbitrator selected by the **Insured**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.

Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** will be applied retroactively to all **Defense Costs**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** will not apply to or create any presumption with respect to the allocation of other **Loss** arising out such **Claim** or any other **Claim**.

SECTION IX - NOTICE OF CLAIMS AND POTENTIAL CLAIMS

- A. The **Insured**, as a condition precedent to any rights under this **Policy**, must give the **Insurer** written notice, as soon as practicable, of any **Claim** first made and brought to the attention of an **Executive Officer** during the **Policy Period** or the Extended Reporting Period, but in no event later than sixty (60) days after the **Claim** is first made.
- B. If during the **Policy Period**, an **Executive Officer** first becomes aware of circumstances that may give rise to a **Claim** and gives written notice to the **Insurer** of the circumstances and reasons for anticipating a **Claim**, then any **Claim** subsequently made based upon such circumstances will be deemed to have been first made during the **Policy Year** in which notice was first given to the **Insurer**. As a condition precedent to any coverage hereunder for such **Claims**, such notice must be specific and contain full particulars as to the names, dates, and persons involved in the underlying facts potentially giving rise to the **Claim**, as well as the identity of the potential plaintiffs and the causes of action to be asserted.
- C. If during the **Policy Period**, the **Insured** first becomes aware of circumstances that indicate a **Privacy Breach Incident** or **Denial of Service Attack** may have occurred, and gives written notice to the **Insurer** of the circumstances and reasons indicating a **Privacy Breach Incident** or **Denial of Service Attack** may have occurred, then any notification subsequently made based upon such circumstances will be deemed to have been first made during the **Policy Year** in which notice was first given to the **Insurer**. As a condition precedent to any coverage hereunder for such **Privacy Breach Incident** or **Denial of Service Attack**, such notice must be specific and contain full particulars as to the names, dates, and persons involved in the underlying facts potentially giving rise to the **Privacy Breach Incident** or **Denial of Service Attack**.
- D. All notices required to be given to the **Insurer** under this **Policy** must be given to the **Insurer** at the address set forth in Item 11 of the Declarations.

SECTION X – MERGERS, ACQUISITIONS AND CHANGES IN BUSINESS ACTIVITIES

- A. If during the **Policy Period**, the **Company** acquires or merges with another entity whereby the **Company** is the surviving entity, or creates or acquires a **Subsidiary**, the **Insurer** reserves the right to amend the **Policy**, decline to provide coverage for the acquired, merged or created entity, or assess additional premium. No coverage will be afforded under this **Policy** for any **Loss, Regulatory Correction Expense, Public Relations Expense, or Privacy Breach Response Expense** incurred by such entity or **Subsidiary** resulting from any **Claim, Privacy Breach Incident or Denial of Service Attack** first made more than ninety (90) days after the acquisition, merger or creation unless:
- (1) the **Company** provides written notice of such transaction, including any requested information regarding the transaction, to the **Insurer** as soon as practicable;
 - (2) the **Insurer**, at its sole discretion, agrees in writing to provide such coverage; and
 - (3) the **Company** accepts any special terms, conditions and/or exclusions and pays any additional premium required by the **Insurer**.
- B. Any coverage otherwise afforded under this **Policy** for **Loss, Regulatory Correction Expense, Public Relations Expense or Privacy Breach Response Expense** in any way involving the **Company**, any **Subsidiary**, or any acquired, merged or created entity or its **Insured Persons** will not apply to any **Claim, Privacy Breach Incident or Denial of Service Attack** arising out of or directly or indirectly resulting from:
- (1) any **Wrongful Internet/Electronic Banking Acts** or any fact, circumstance or situation committed or allegedly committed prior to the effective date of such acquisition, merger or creation;
 - (2) any other **Wrongful Internet/Electronic Banking Acts**, which, together with a **Wrongful Internet/Electronic Banking Acts** committed or allegedly committed prior to effective date of such acquisition, merger or creation constitute **Interrelated Wrongful Internet/Electronic Banking Acts**; or
 - (3) any **Privacy Breach Incident or Denial of Service Attack** that began or occurred on or before the effective date of such acquisition, merger or creation.

SECTION XI - CANCELLATION/ NONRENEWAL/ TERMINATION

- A. **NAMED INSURED CANCELLATION** - The **Named Insured** may cancel this **Policy** by providing written notice to the **Insurer**. If the **Named Insured** cancels this **Policy**, the **Insurer** will return only 90% of the unearned premium. For multi-year **Policies**, the **Insurer** will return only 90% of the unearned premium if the cancellation occurs before the first anniversary. If the cancellation occurs after the first anniversary, unearned premium will be returned on a pro-rata basis as soon as practicable.
- B. **INSURER NONRENEWAL/CANCELLATION**

- (1) **NONRENEWAL** - The **Insurer** will not be required to renew this **Policy** upon expiration of the **Policy Period**. This **Policy** may be nonrenewed by the **Insurer** by giving to the **Named Insured** written notice stating when such nonrenewal will become effective and the reason(s) for the nonrenewal. The **Insurer** must give the **Named Insured** at least sixty (60) days' notice of a nonrenewal.
- (2) **CANCELLATION**
 - (a) This **Policy** may be cancelled by the **Insurer** by giving to the **Named Insured** written notice stating when such action will become effective and the reason(s) therefor.
 - (b) The **Insurer** must provide at least twenty (20) days' notice of its intent to cancel for nonpayment of premium and sixty (60) days' notice of its intent to cancel for any other reason.
 - (c) If the **Insurer** cancels this **Policy**, the **Insurer** will return 100% of the unearned premium. The return of any unearned premium by the **Insurer** will not be a condition precedent to the effectiveness of cancellation, but such payment will be made as soon as practicable.
- (3) **NOTICE** - All notices pursuant to Section XI (B) will be mailed to the **Named Insured** by certified mail at the address set forth in Item 1 of the Declarations. The mailing of such notice as aforesaid will be sufficient proof of notice, and this **Policy** will terminate at the date and hour specified in such notice.

C. **TERMINATION**

- (1) Upon the occurrence of any of the following events, this **Policy** shall be deemed terminated:
 - (a) **Financial Impairment** of the **Company** or any **Subsidiary** comprising more than fifty percent (50%) of the **Company's** total assets;
 - (b) acquisition of the **Company** by another entity or the merger or consolidation of the **Company** into another entity such that the **Company** is not the surviving entity or acquisition of substantially all of the assets of the **Company** by another entity; or
 - (c) the **Company** ceasing to engage actively in its primary business.
- (2) Pursuant to Subsection (C)(1) above, the **Insurer** shall refund the unearned premium, calculated on a pro-rata basis. The return of any unearned premium shall not be a condition precedent to the effectiveness of the termination but such payment shall be returned as soon as practicable. The occurrence of any of the foregoing events shall not affect the **Insured's** right to purchase the Extended Reporting Period pursuant to Section III.
- (3) In the event of **Financial Impairment** or sale of a **Subsidiary** comprising less than fifty percent (50%) of the **Company's** total assets, this termination provision shall apply only to the **Subsidiary** and its **Insured Persons** and the **Policy** shall continue in full force with respect to all other **Insureds**.

SECTION XII - REPRESENTATIONS AND SEVERABILITY

A. **REPRESENTATIONS** - It is agreed and represented that the particulars and statements contained in the **Application** are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**. By acceptance of this **Policy**, the **Insured** agrees that:

- (1) such **Application** will be construed as a separate **Application** for coverage by each **Insured Person**;
- (2) this **Policy** will not be deemed to be a series of individual insurance contracts with the **Company** and each of the **Insured Persons**; and
- (3) the statements in the **Application** are their representations, that they are material to the acceptance of the risk or hazard assumed by the **Insurer** under this **Policy**, and that this **Policy** is issued in reliance upon the truth of such representations.

B. **SEVERABILITY** - The **Insureds** agree that in the event the **Application** contains misrepresentations made with the actual intent to deceive, no coverage will be provided for any **Claim** under this **Policy** with respect to:

- (1) any **Insured Person** who knew of any fact, circumstance or situation that was not truthfully disclosed in the **Application**;
- (2) the **Company**, to the extent the **Company** indemnifies the **Insured Person** reflected in Subpart (1) above; or
- (3) the **Company** if any past, present, or future chief financial officer, in-house counsel, chief executive officer, President or Chairman of the Board of the **Company**, or any person holding any equivalent position within the **Company** (regardless of title), knew of any fact, circumstance or situation that was not truthfully disclosed in the **Application**.

The foregoing conditions will apply whether or not the **Insured Person** actually knew whether, the misrepresentation or untruthful disclosure was made in the **Application** for coverage.

C. **SEVERABILITY OF EXCLUSIONS** - With respect to the exclusions herein, in order to determine if coverage is available:

- (1) no **Wrongful Internet/Electronic Banking Acts**, fact pertaining to, or knowledge possessed by any **Insured Person** will be imputed to any other **Insured Person**; and
- (2) all facts pertaining to and knowledge possessed by any past, present, or future chief financial officer, in-house counsel, chief executive officer, President or Chairman of the Board of the **Company**, or any person holding any equivalent position within the **Company** (regardless of title), must be imputed to the **Company** with respect to the Fraud/Violation of Law and Illegal Profit/Payment exclusions.

SECTION XIII - GENERAL CONDITIONS

- A. **SUBROGATION** - In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured Persons'** and the **Company's** rights to recovery therefor, and the **Insured** shall execute all papers required and shall do everything that may be necessary to secure the **Insurer's** rights, including the execution of such documents as may be necessary to enable the **Insurer** effectively to bring suit in the name of the **Insured Persons** or the **Company**. Recovery of any **Loss** paid under the **Policy**, regardless of whether effected by the **Insurer** or **Insureds**, less the cost of making such recovery, shall be distributed first to the **Insureds** for any amounts which are in excess of the limits of liability of this **Policy** and would have been covered by this **Policy** otherwise, next to the **Insurer** for the amount of such **Loss** paid hereunder, next to the **Insureds** for any retention, and lastly to the **Insureds** for the amount of **Loss** excluded, or otherwise not covered, under this **Policy**. Recovery by the **Insurer** from reinsurance or indemnity shall not be a recovery hereunder.
- B. **ASSIGNMENT AND ACCEPTANCE** - By acceptance of this **Policy**, the **Insured** and the **Insurer** agree that this **Policy**, the **Application** and any written Endorsements attached thereto constitute the entire agreement between the parties. Assignment of interest under this **Policy** may not bind the **Insurer** until its consent is endorsed hereon.
- C. **CONFORMITY TO STATUTE** - Any terms of this **Policy** that are in conflict with the terms of any applicable laws governing this **Policy** are amended to conform to such laws.
- D. **AUTHORIZATION** - By acceptance of this **Policy**, the **Insureds** agree that the **Named Insured** will act on behalf of all **Insureds** for all purposes under this **Policy** including, but not limited to, giving and receiving of all notices and correspondence, cancellation, nonrenewal or termination of this **Policy**, payment of premiums, the negotiation and acceptance of Endorsements, and receipt of any return premiums that may be due under this **Policy**.
- E. **CHANGES** - Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Insurer** will not affect a waiver or a change in any part of this **Policy** or estop the **Insurer** from asserting any right under the terms of this **Policy**, nor will the terms, conditions and limitations of this **Policy** be waived or changed, except by written Endorsement issued to form a part of this **Policy**.
- F. **ACTION AGAINST THE INSURER** - No action may be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all the terms of this **Policy**, and until the **Insureds'** obligation to pay is finally determined, either by adjudication or by written agreement of the **Insureds**, the claimant, and the **Insurer**.
- No person or organization has any right under this **Policy** to join the **Insurer** as a party to any **Claim** against the **Insured** nor may the **Insurer** be impleaded by the **Insureds**, or their legal representatives in any such **Claim**.
- G. **OTHER INSURANCE OR INDEMNIFICATION** - This **Policy** will not be subject to the terms of any other insurance. All **Loss**, including **Defense Costs**, as well as all **Regulatory Correction Expense**, **Public Relations Expense** and **Privacy Breach Response Expense**, payable under this **Policy** must be specifically excess to, and paid only after all available payments are made under:

- (1) other existing insurance including, but not limited to, any insurance under which there is a duty to defend; and
- (2) indemnification to which the **Company** or **Insured Persons** are entitled from any entity other than the **Company**.

- H. **LOSS INFORMATION** - The **Insurer** will provide **Loss Information** to the **Company** within ten (10) days of the **Company's** request or, if required by statute, at the same time as any notice of cancellation or nonrenewal of this **Policy**. However, Loss Information shall not include information on any reserve.
- I. **INSOLVENCY/BANKRUPTCY** - The **Financial Impairment** of the **Insured** or of the estate of such **Insured** will not release the **Insurer** from its obligations nor deprive the **Insurer** of its rights under this **Policy**.
- J. **COVERAGE TERRITORY** - This **Policy** provides worldwide coverage for **Claims** resulting from **Wrongful Internet/Electronic Banking Acts** occurring anywhere in the world, but only with respect to **Claims** made, or **Privacy Breach Incidents** and **Denial of Service Attacks** occurring, in the United States of America or its states, territories, or possessions or in Canada.
- K. **HEADINGS AND SUB-HEADINGS** - The descriptions in the headings and sub-headings of this **Policy** are solely for convenience and form no part of the terms and conditions of coverage. Please note that terms in boldface type shall have the meaning set forth in Section IV. of the Definitions.