

# CYBER/NETWORK EXTORTION INSURING AGREEMENT

Policy Number: [POLICYNBR]

In consideration of the premium paid and in reliance upon all statements made and information contained in the Declarations and **Application**, the **Insurer** and the **Insured** agree that coverage will be provided subject to all of the terms, conditions and limitations of this Insuring Agreement, as follows:

1. The attached **Policy** is amended by adding an additional Insuring Agreement as follows:

## **CYBER/NETWORK EXTORTION INSURING AGREEMENT**

The **Insurer** will indemnify the **Company** for **Loss of Property** surrendered by the **Company** as a direct result of any threat first made during the **Policy Period** by a person other than a director or officer of the **Company** to:

- (1) **Damage** the **Company's Computer System** through use of or access to an Internet website or private computer network owned, operated or controlled by the **Company**; or
- (2) cause an **Interruption** of the **Company's Internet/Electronic Banking Services**; or
- (3) publish, utilize or disclose any **Confidential Information** obtained from the **Company's Computer System** or from an Internet website owned, operated or controlled by the **Company**; or
- (4) commit **Theft** of money or other **Property** owned or controlled by the **Company** or for which the **Company** is legally responsible through use of or access to the **Company's Computer System**;

provided that, as conditions precedent to coverage, prior to the surrender of **Property**:

- (a) the person receiving the threat has made a reasonable effort to notify a director, officer or employee of the **Company** of the threat; and
- (b) the person receiving the threat has made a reasonable effort to report the threat to the Federal Bureau of Investigation or foreign equivalent thereof, and local law enforcement authorities.

2. For the purpose of the coverage afforded by this Insuring Agreement, all of the terms and conditions set forth in the **Policy** and any amendments thereto shall apply except:

A. Section II, entitled "Additional Coverages", and Section III, entitled "Discovery Period", are deleted in their entirety.

B. All the definitions set forth in Section IV, entitled "Definitions", shall apply except:

- (1) The definition of **Insured Person** is deleted in its entirety.
- (2) The definition of **Loss** is deleted and replaced as follows:

**Loss** means the amount of money or monetary value of other **Property** surrendered as a result of a threat covered under this Insuring Agreement.

C. Section IV, entitled "Definitions", is amended to add the following:

**Confidential Information** means any secret, confidential or sensitive information maintained by, and within the control of, the **Company** with respect to its own business activities or those of its customers, and where the unauthorized publication of such information would ordinarily constitute a breach of statutory or regulatory law.

**Damage** means:

- (1) physical damage to or destruction of the **Company's Computer System**; or
- (2) the irreversible corruption or irretrievable loss of **Electronic Data** which results in an **Interruption of Internet/Electronic Banking Services**.

**Interruption** means a suspension, cessation or delay in the **Company's** provision of **Internet/Electronic Banking Services** due to failure or impairment of an Internet website, the address of which is listed in Item 1(b) of the Declarations, or of a private computer network controlled by the **Company**, due to:

- (1) unauthorized taking of or access to **Electronic Data** within any **Computer System** operated by or on behalf of the **Company**;
- (2) malicious or unauthorized introduction or implantation of any computer code, program, virus or other data into any **Computer System** operated by or on behalf of the **Company**;
- (3) an intentional attack, through the transmission of **Electronic Data**, upon any **Computer System** operated by or on behalf of the **Company** that results in loss of access to **Internet/Electronic Banking Services**;
- (4) inability of any **Computer System** operated by or on behalf of the **Company** to provide proof of the origin and/or delivery of any message or data necessary to provide **Internet/Electronic Banking Services**; or
- (5) the **Company's** intentional limitation of access to the website or any **Computer System** in an attempt to protect **Electronic Data** or any **Computer System** or secure confidential information from an extortion threat;

provided, however, that the **Electronic Data** and **Computer System** are protected by security measures in conformity with currently accepted industry standards at the time the **Policy** was issued.

**Property** means tangible personal property of any kind and includes money, securities, negotiable instruments, gems, jewelry or precious metals.

**Theft** means the unlawful taking of money or other **Property**.

- D. All of the exclusions set forth in Section V, entitled "Exclusions", shall apply and the following are added:

**Consequential/Incidental/Potential Loss Exclusion.** The **Insurer** shall not be liable to make any payment for **Loss** other than the actual amount of money or value of other **Property** surrendered as a result of a threat covered under this Insuring Agreement. The **Insurer** shall not be liable for incidental or consequential loss of any kind or for loss of potential income, including interest.

**Mechanical Malfunction Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** resulting directly or indirectly from mechanical failure, faulty construction, fire, wear or tear, gradual deterioration, electrical disturbance or electrical surge.

**Prior Dishonesty Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** based upon, attributable to or arising out of any intentional, willful, deliberate, malicious, fraudulent, dishonest or criminal act by any directors, officers, employees, consultants or independent contractors of the **Company** if such act occurs after any of the **Company's** officers or directors not in collusion with such person learn of any other fraudulent, dishonest or criminal act by such person, regardless of whether the fraudulent, dishonest or criminal act would be covered under this **Policy**.

E. Section VI is deleted and replaced as follows:

**SECTION VI – LIMIT OF LIABILITY AND RETENTION**

- A. The Limit of Liability for all **Loss** first discovered during each **Policy Year** shall not exceed the amount set forth in Item 4 of the Declarations as to each Insuring Agreement, regardless of the time of payment by the **Insurer**. The Limit of Liability under this Insuring Agreement constitutes a sublimit which does not increase the **Insurer's** maximum liability under the **Policy**.
- B. **Loss** resulting from the same act or series of related acts shall be considered a single **Loss**, and only one Retention and Limit of Liability shall be applicable. However, each such single **Loss** shall be deemed to be first discovered on the date the earliest of such **Loss** was first discovered, regardless of whether such date is before or during the **Policy Period**.
- C. The **Insurer** shall only be liable under this Insuring Agreement for the amount by which any single **Loss** exceeds the Retention amount for the Insuring Agreement applicable to such **Loss**. One Retention amount shall apply to the covered portion of each and every single **Loss**.

F. Section VII, entitled "Defense and Settlements", and Section VIII, entitled "Allocation and Arbitration", are deleted in their entirety.

G. Section IX is deleted and replaced as follows:

**SECTION IX – NOTICE OF LOSS AND PROOF OF LOSS**

- A. The **Company**, as a condition precedent to any rights under this Insuring Agreement, shall give the **Insurer** written notice, as soon as practicable, of any **Loss** discovered during the **Policy Period**, but in no event later than sixty (60) days after such **Loss** is first discovered. Discovery occurs when the **Company** first becomes aware of facts which would cause a reasonable person to assume that a **Loss** of a type covered by this Insuring Agreement has been or will be incurred, even though the exact amount or details of **Loss** may not then be known.
- B. Within six (6) months after discovery of any **Loss**, the **Company** shall furnish to the **Insurer** Proof of Loss, duly sworn to, with full particulars.
- C. In addition to furnishing the notice as provided in (A) above, the **Company** shall cooperate fully with the **Insurer** in all matters pertaining to the **Loss** and shall 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 in connection therewith.

H. Section X is deleted and replaced as follows:

**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 this Insuring Agreement, decline to provide coverage for the acquired, merged or created entity, or assess additional premium. No coverage shall be afforded under this Insuring Agreement for any **Loss** incurred by such entity or **Subsidiary** 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 afforded under this Insuring Agreement, either during the ninety (90) day period described in (A) above or thereafter if the **Insurer** has agreed to provide coverage, for any **Loss** in any way involving the assets or entity acquired or the assets or liabilities of the entity merged with shall not apply to any **Loss** arising out of or directly or indirectly resulting from facts, circumstances or conditions of which the entity or the **Company** were aware, or of which they reasonably should have been aware, prior to the effective date of acquisition, merger or creation.
- C. If the **Company** offers **Internet/Electronic Banking Services** either directly or through a **Subsidiary** or through agreement with another person or entity, other than the services specified on the **Application**, the **Insurer** reserves the right to amend this Insuring Agreement, assess additional premium or decline to provide coverage for the changed business activity. No coverage for such changed business activity shall be afforded under this **Policy** for any **Loss** incurred more than ninety (90) days after initiation of such activity unless:
- (1) the **Company** provides written notice, including any requested information, 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**.
- D. If during the **Policy Period**, the **Company** is acquired by or merges or consolidates with another entity whereby the **Company** is not the surviving entity, this Insuring Agreement will terminate.
- I. Section XIII, entitled "General Conditions", Subsections (A) and (F) are deleted and replaced as follows:
- A. **SUBROGATION AND ASSIGNMENT** – In the event of any payment under this Insuring Agreement:
- (1) the **Company** shall deliver, if so requested by the **Insurer**, an assignment of such of the **Company's** rights, title, interest and causes of action as it has against any person or entity to the extent of the **Loss** payment; and

(2) the **Insurer** shall be subrogated to the extent of such payment to all of the **Company's** rights to recovery therefor, and the **Company** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** effectively to bring suit in the name of the **Company**. Recoveries from any other person for **Loss** paid under this Insuring Agreement, whether effected by the **Insurer** or the **Company**, shall be applied net of the expense of such recovery: first, to the satisfaction of the **Company's Loss** which would have otherwise been paid but for the fact that it is in excess of the Limit of Liability; secondly, to the **Insurer** as reimbursement of amounts paid to the **Company** under this Insuring Agreement; and thirdly, to the **Company** in satisfaction of its Retention amount.

F. **ACTION AGAINST THE INSURER** – Legal proceedings for the recovery of any **Loss** under this Insuring Agreement shall not be brought prior to the expiration of sixty (60) days after the Proof of Loss, with full particulars, is filed with the **Insurer** or after the expiration of twenty-four (24) months from the discovery of such **Loss**.

This Insuring Agreement affords coverage only in favor of the **Company**. No suit, action or legal proceedings shall be brought hereunder by anyone other than the **Company**.

J. Section XIII, entitled "General Conditions", is further amended to add the following:

**VALUATION** - In the event of **Loss** of **Property** other than money, the **Insurer** shall not be liable for more than the actual cash value of such **Property**, calculated as of the date upon which the **Property** was surrendered. In the event of any dispute between the **Insurer** and the **Company** as to actual cash value, the parties agree to use their best efforts to resolve the dispute through negotiation and, if such efforts are not successful, any dispute shall be resolved through arbitration.

This Insuring Agreement shall be effective as of 12:01 a.m. on [endorsementeffdt].

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the **Policy** other than as above stated.