

LIABILITY MITIGATION EXPENSE 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:

LIABILITY MITIGATION EXPENSE INSURING AGREEMENT

The **Insurer** will indemnify the **Company** for **Liability Mitigation Expense** incurred arising out of its provision of **Internet/Electronic Banking Services**.

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 **Liability Mitigation Expense**.

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

Liability Mitigation Expense means:

- (1) In the case of unauthorized access to **Confidential Customer Information** in the custody or control of the **Insured** or any **Electronic Data Processor**, or unauthorized access to **Confidential Customer Information** arising from the negligent management or oversight of such **Confidential Customer Information** by the **Insured**, actual, reasonable and necessary expenses in excess of the **Company's** normal operating costs, incurred to:

- (a) notify those persons who may be directly affected by the unauthorized access of the **Confidential Customer Information**;

- (b) change account numbers and related information, including the reissuance of debit/credit/ATM cards for those persons who may be directly affected; and

- (c) with prior consent of the **Insured**, provide basic credit monitoring or other services to prevent fraudulent use of the **Confidential Customer Information**.

- (2) actual, reasonable and necessary expenses incurred by the **Company**, in excess of expenses budgeted or incurred by the **Company** for publicity or advertising in the absence of **Negative Publicity**, to protect or restore the professional reputation of the **Company** solely in response to **Negative Publicity**. **Liability Mitigation Expense** shall include, but not be limited to, expenses incurred by the **Company** to hire a public relations consultant; provided, however, that if a public relations consultant is used, such consultant shall be mutually agreed upon by the **Insurer** and the **Company**. The **Company** shall not hire a public relations consultant without the **Insurer's** prior written consent, which shall not be unreasonably withheld.

Electronic Data Processor means a natural person, partnership or corporation with the **Insured's** written authorization to perform services as data processor of checks or other accounting records of the **Insured**. A Federal Reserve Bank or clearinghouse shall not be an **Electronic Data Processor**.

Confidential Customer Information means any customer name, address, telephone number, social security number, driver's license number, account number, credit or debit card number, PIN, password, account history or any other nonpublic customer information.

Negative Publicity means information associated with or resulting from the provision of **Internet/Electronic Banking Services** which is publicized by persons other than the **Company** through newspapers, radio, television or other similar print, broadcast or electronic media that has caused or is reasonably likely to cause decline or deterioration in the reputation of the **Company**.

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

Customer Disclosure Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** arising from the unauthorized access to **Confidential Customer Information** where such **Confidential Customer Information** was obtained from the customer, regardless of whether this information was obtained through trick, artifice, fraud or false pretenses.

Plastic Card Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** arising from the unauthorized access to **Confidential Customer Information** where the **Confidential Customer Information** was obtained through the fraudulent use of debit, credit or ATM cards.

- 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 this 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 its 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 XI (C), entitled "Conversion", is deleted in its entirety.
- J. 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**.

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.