



# ACE EXPRESS Private Company Management Indemnity Package

## General Terms and Conditions

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows:

### A. SEVERABILITY OF GENERAL TERMS AND CONDITIONS

These General Terms and Conditions apply to each and every Coverage Section of this **Policy**. The terms and conditions of each Coverage Section apply only to that Coverage Section and shall not be construed to apply to any other Coverage Section.

### B. DEFINITIONS

Whenever used in this **Policy**, the terms that appear below in **boldface** type shall have the meanings set forth in this Definitions subsection of the General Terms and Conditions. However, if a term also appears in **boldface** type in a particular Coverage Section and is defined in that Coverage Section, that definition shall apply for purposes of that particular Coverage Section. Terms that appear in **boldface** in the General Terms and Conditions but are not defined in this Definitions subsection and are defined in other Coverage Sections of the **Policy** shall have the meanings ascribed to them in those Coverage Sections.

1. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy with an inception date within thirty-six months prior to the inception date of this **Policy**, of which this **Policy** is a renewal or replacement. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.
2. **Company** means:
  - a) the **Parent Company**; and
  - b) any **Subsidiary**,and includes any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.
3. **Discovery Period** means one of the periods described in Item E of the Declarations which is elected and purchased pursuant to subsection H below.
4. **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**.
5. **Extended Period** means the **Discovery Period** or the **Run-Off Period**, if such provision is elected and purchased pursuant to subsections H or I, respectively, below.
6. **Insurer** means the insurance company providing this insurance.
7. **Parent Company** means the entity first named in Item A of the Declarations.
8. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements.

9. **Policy Period** means the period from the effective date and hour of the inception of this **Policy** to the **Policy** expiration date and hour as set forth in Item B of the Declarations, or its earlier cancellation date and hour, if any.
10. **Run-Off Period** means one of the periods described in Item F of the Declarations, which is elected and purchased pursuant to subsection I below.
11. **Subsidiary** means:
- a) any entity of which the **Parent Company** owns more than 50% of the outstanding securities representing the present right to vote for the election of such entity's directors or managers, or has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of the **Company**, to elect, appoint or designate a majority of the board of directors or managers, directly or indirectly, if such entity:
    - (i) was so owned on or prior to the inception date of this **Policy**; or
    - (ii) becomes so owned after the inception date of this **Policy**; and
  - b) any joint venture entity in which the **Parent Company**, or an entity described in a) above, has an exact fifty percent (50%) ownership of the interests of such joint venture entity and where, pursuant to a written joint venture agreement, the **Parent Company** or entity described in a) above solely controls the management and operations of such joint venture entity.

12. **Takeover** means:

- a) the acquisition by any person or entity of all or substantially all of the **Parent Company's** assets, or of more than 50% of the outstanding securities of the **Parent Company** representing the present right to vote for the election of directors; or
- b) the merger or consolidation of the **Parent Company** into another entity such that the **Parent Company** is not the surviving entity.

All definitions shall apply equally to the singular and plural forms of the respective words.

### C. LIMITS OF LIABILITY, RETENTIONS AND DEDUCTIBLES

1. The Limits of Liability, Retentions and Deductibles for each Coverage Section are separate Limits of Liability, Retentions and Deductibles pertaining only to the Coverage Section for which they are shown. The application of a Retention or Deductible to **Loss** under one Coverage Section shall not reduce the Retention or Deductible under any other Coverage Section, and no reduction in the Limit of Liability applicable to one Coverage Section shall reduce the Limit of Liability under any other Coverage Section.
2. In the event that any **Claim** is covered, in whole or in part, under two or more Insuring Clauses or more than one Coverage Section, the total applicable Retention or Deductible shall not exceed the single largest applicable Retention or Deductible. The largest applicable Retention or Deductible shall apply only once to such **Claim**.

### D. WARRANTY AND NON-RESCINDABILITY

It is warranted 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** and each Coverage Section. By acceptance of this **Policy**, the **Insureds** agree that the statements in the **Application** are their representations, that such representations shall be deemed material to the acceptance of the risk or the hazard assumed by **Insurer** under this **Policy**, and that this **Policy** and each Coverage Section are issued in reliance upon the truth of such representations.

This **Policy** and any Coverage Sections shall not be rescinded by the **Insurer** in whole or in part for any reason.

#### E. CANCELLATION

1. By acceptance of this **Policy**, the **Insureds** hereby confer to the **Parent Company** the exclusive power and authority to cancel this **Policy** on their behalf. The **Parent Company** may cancel this **Policy** in its entirety or any of the applicable Coverage Sections individually by surrender thereof to the **Insurer**, or by mailing written notice to the **Insurer** stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation shall be the date the **Insurer** received such notice or any later date specified in the notice, and such effective date shall become the end of the **Policy Period** or applicable Coverage Section. Delivery of such written notice shall be equivalent to mailing.
2. This **Policy** may be cancelled by the **Insurer** only for nonpayment of premium, by mailing written notice to the **Parent Company** stating when such cancellation shall be effective, such date to be not less than thirty (30) days from the date of the written notice. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the **Insurer** shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then the notice period shall be deemed to be the minimum notice period permitted under the governing law or regulation.
3. If this **Policy** or any Coverage Section is cancelled, the **Insurer** shall retain the pro rata proportion of the premium therefore. Payment or tender of any unearned premium by **Insurer** shall not be a condition precedent to the effectiveness of cancellation.

#### F. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of natural persons who are **Insureds** shall be considered **Insureds** under this **Policy**; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the natural person who is an **Insured** to the spouse or **Domestic Partner**. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All of the terms and conditions of this **Policy** including, without limitation, the Retentions and Deductibles applicable to **Loss** incurred by natural persons who are **Insureds** shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

#### G. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Parent Company** agrees to act on behalf of all **Insureds**, and the **Insureds** agree that the **Parent Company** will act on their behalf, with respect to the giving of all notices to **Insurer**, the receiving of notices from **Insurer**, the agreement to and acceptance of endorsements, the payment of the premium and the receipt of any return premium.

#### H. DISCOVERY PERIOD

1. If this **Policy** or any Coverage Section is cancelled or is not renewed by the **Insurer**, for reasons other than non-payment of premium or if the **Parent Company** elects to cancel or not to renew this **Policy** or a Coverage Section, then the **Parent Company** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item E of the Declarations of the total premium for this **Policy**, or the total premium for the cancelled or not renewed Coverage Section, whichever is applicable, to purchase an extension of the coverage granted by this **Policy** or the applicable cancelled or not renewed Coverage Section with respect to any **Claim** first made during the period of time set forth in Item E of the Declarations

after the effective date of such cancellation or, in the event of a refusal to renew, after the **Policy** expiration date, but only with respect to any **Wrongful Act** committed before such date. The **Parent Company** shall have the right to elect only one of the **Discovery Periods** set forth in Item E of the Declarations.

2. As a condition precedent to the right to purchase the **Discovery Period** set forth in subsection H1 above, the total premium for the **Policy** must have been paid. Such right to purchase the **Discovery Period** shall terminate unless written notice, together with full payment of the premium for the **Discovery Period**, is received by **Insurer** within 30 days after the effective date of cancellation, or, in the event of a refusal to renew, within 30 days after the **Policy** expiration date. If such notice and premium payment is not so given to **Insurer**, there shall be no right to purchase the **Discovery Period**.
3. In the event of the purchase of the **Discovery Period**, the entire premium therefore shall be deemed earned at the commencement of the **Discovery Period**.
4. The exercise of the **Discovery Period** shall not in any way increase or reinstate the limit of **Insurer's** liability under any Coverage Section.

#### I. RUN-OFF COVERAGE AND TERMINATION OF A SUBSIDIARY

1. In the event of a **Takeover**:
  - a) The **Parent Company** shall have the right, upon payment of an additional premium calculated at the percentage of the total premium for this **Policy** set forth in Item F of the Declarations, to an extension of the coverage granted by this **Policy** with respect to any **Claim** first made during the **Run-Off Period**, as set forth in Item F of the Declarations, but only with respect to any **Wrongful Act** committed before the effective date of the **Takeover** (herein defined as Run-Off Coverage"); provided, however, such additional premium shall be reduced by the amount of the unearned premium from the date of the **Takeover** or the date of notice of the election of the Run-Off Coverage, whichever is later, through the expiration date set forth in Item B of the Declarations.
  - b) The **Parent Company** shall have the right to elect only one of the periods designated in Item F of the Declarations. The election must be made prior to the expiration of the **Policy Period**. The right to purchase a **Run-Off Period** shall terminate on the expiration of the **Policy Period**.
  - c) If a **Run-off Period** is elected and purchased:
    - (i) Subsection E, above, is deleted in its entirety and neither the **Insureds** nor the **Insurer** may cancel this **Policy** or any Coverage Section thereof;
    - (ii) Subsection H, above, is deleted in its entirety; and
    - (iii) the maximum aggregate Limit of Liability of the **Insurer** for each Coverage Section purchased and set forth on the Declarations shall be twice the otherwise applicable maximum aggregate Limit of Liability set forth in Item C of the Declarations for such Coverage Section; provided, however, the maximum aggregate Limit of Liability of the **Insurer** in connection with any one **Claim** shall be amount originally shown as the maximum aggregate Limit of Liability for each Coverage Section purchased and set forth on the Declaration.
2. If **before** or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its natural person **Insureds** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts**, or **Employment Practices Wrongful Acts**, taking place prior to the date such organization ceased to be a **Subsidiary**.

#### J. ALTERNATIVE DISPUTE RESOLUTION

The **Insureds** and the **Insurer** shall submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination or invalidity thereof to the alternative dispute resolution ("ADR") process described in this subsection.

Either an **Insured** or the **Insurer** may elect the type of ADR process discussed below; provided, however, that the **Insured** shall have the right to reject the choice by the **Insurer** of the type of ADR process at any time prior to its commencement, in which case the choice by the **Insured** of ADR process shall control.

There shall be two choices of ADR process: (1) non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility; or (2) arbitration submitted to any arbitration facility to which the **Insured** and the **Insurer** mutually agree, in which the arbitration panel shall consist of three disinterested individuals. In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, and insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs. In the event of mediation, either party shall have the right to commence arbitration in accordance with this section; provided, however, that no such arbitration shall be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

Either ADR process may be commenced in New York, New York or in the state indicated in Item A of the Declarations as the principal address of the **Parent Company**. The **Parent Company** shall act on behalf of each and every **Insured** in connection with any ADR process under this section.

#### K. TERRITORY

Coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

#### L. ASSISTANCE, COOPERATION AND SUBROGATION

The **Insureds** agree to provide **Insurer** with such information, assistance and cooperation as **Insurer** reasonably may request, and they further agree that they shall not take any action which in any way increases **Insurer's** exposure under this **Policy**. In the event of any payments under this **Policy**, **Insurer** shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents as are necessary to enable **Insurer** effectively to bring suit or otherwise pursue subrogation in the name of the **Insureds**, and shall provide all other assistance and cooperation which **Insurer** may reasonably require.

#### M. ACTION AGAINST INSURER, ALTERATION AND ASSIGNMENT

Except as provided in subsection J above, Alternative Dispute Resolution, no action shall lie against **Insurer** unless, as a condition precedent thereto, there shall have been compliance with all of the terms of this **Policy**. No person or organization shall have any right under this **Policy** to join **Insurer** as a party to any action against the **Insureds** to determine their liability, nor shall **Insurer** be impleaded by the **Insureds** or their legal representative. No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**.

#### N. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the natural person **Insureds** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Insuring Clause A.1 of the Directors & Officers and Company Coverage Section, and under the Employment Practices Coverage Section for which the **Company** is not permitted or required to indemnify the natural person **Insured**, prior to paying **Loss** under any other Insuring Clause.

If a liquidation or reorganization proceeding is commenced by the **Parent Company** or any other **Company** (whether voluntary or involuntary) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively, "**Bankruptcy Law**") then, in regard to a covered **Claim** under this **Policy**, the **Insureds** hereby waive and release any automatic stay or injunction ("**Stay**") to the extent such **Stay** may apply to the proceeds of this **Policy** under such **Bankruptcy Law**, and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from the **Stay** applicable to the proceeds of this **Policy** as a result of such **Bankruptcy Law**.

#### O. ENTIRE AGREEMENT

By acceptance of this **Policy**, the **Insureds** agree that this **Policy** embodies all agreements existing between them and **Insurer** or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of **Insurer** shall not effect a waiver or a change in any part of this **Policy** or estop **Insurer** from asserting any right under the terms of this **Policy** or otherwise, nor shall the terms be deemed waived or changed except by written endorsement or rider issued by **Insurer** to form part of this **Policy**.

SPECIMEN





# ACE EXPRESS Private Company Management Indemnity Package

## Crime Coverage Section

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows.

### A. INSURING CLAUSES

#### 1. **Employee Theft** Coverage

##### a) **Employee Theft**

The **Insurer** will pay for loss of or damage to **Money**, **Securities** and **Other Property** resulting directly from **Theft** or **Forgery** by any identifiable **Employee** while acting alone or in collusion with others.

##### b) **Employee Benefit Plan**

In the event **Employee Benefit Plan** Coverage is affirmatively designated in Item C of the Declarations relating to this Coverage Section, then the **Insurer** will pay for loss to the **Employee Benefit Plan** of **Money**, **Securities** and **Other Property** resulting directly from **Theft** by an identifiable **Employee** while acting alone or in collusion with others.

#### 2. **Premises** Coverage

##### a) Loss of **Money** and **Securities**

The **Insurer** will pay for loss of **Money** and **Securities** resulting directly from **Robbery**, **Safe Burglary**, disappearance or destruction thereto, or **Theft** while such **Money** or **Securities** is or are upon the **Premises** of the **Insured** or any **Banking Premises**.

##### b) Loss of or damage to **Other Property**

The **Insurer** will pay for loss of or damage to **Other Property** resulting directly from an actual or attempted **Robbery** or **Safe Burglary** within the **Insured's Premises**; provided, that the **Insured** is the owner of the **Premises** or is legally liable to the owner of the **Premises** for such loss or damage.

#### 3. Transit Coverage

The **Insurer** will pay for loss of or damage to **Money**, **Securities** and **Other Property** outside the **Premises** in the care of a **Messenger** or armored motor vehicle company resulting directly from the actual destruction, disappearance, misappropriation, actual or attempted **Robbery** or **Theft**.

#### 4. **Forgery**, **Alteration** and Counterfeit **Money**

The **Insurer** will pay for direct loss resulting from **Forgery**, **Alteration**, or counterfeiting of or in any **Financial Instrument** and from counterfeit **Money**.

For the purposes of this Insuring Clause 4, mechanically reproduced or facsimile signatures shall be treated the same as handwritten signatures.

#### 5. **Computer Theft** and **Funds Transfer Fraud**

The **Insurer** will pay for loss of or damage to **Money** and **Securities** owned by the **Insured** resulting directly from **Computer Theft** or **Funds Transfer Fraud**.

## B. DEFINITIONS

1. **Alteration** means the material modification of a **Financial Instrument** for a fraudulent purpose by a person other than the person who prepared the **Financial Instrument**.
2. **Banking Premises** means the interior of the portion of any building(s) occupied by any **Financial Institution**, or similarly recognized place of safe deposit, including any night depository chute or safe maintained by any **Financial Institution**.
3. **Computer Theft** means the unauthorized and fraudulent taking of **Money** and **Securities** directly through the use of a computer located anywhere.
4. **Employee** means:
  - a) any natural person while in the service of the **Insured**, including sixty (60) days after termination of service; provided the **Insured**:
    - (i) compensates such person directly by salary, wages or commissions; and
    - (ii) has the right to direct and control such person while performing services for the **Insured**;
  - b) any natural person furnished temporarily to or hired by the **Insured**:
    - (i) to substitute for a permanent **Employee** who is on leave or vacation;
    - (ii) as part-time help or to meet seasonal or short-term workload conditions;provided that person is subject to the **Insured's** direction and control and performing services for the **Insured**;
  - c) any student or volunteer who performs services for the **Insured** without compensation; and
  - d) any director or trustee of the **Insured**, but only while performing acts within the scope of the usual duties of an **Employee**.

**Employee** does not mean any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character.
5. **Employee Benefit Plan** means a benefit plan subject to the requirements of the **Employee** Retirement Income Act of 1974, as amended, which is sponsored by the **Company** for its **Employees**.
6. **Financial Institution** means:
  - a) a banking, savings or thrift institution; or
  - b) a stock broker, mutual fund, liquid assets fund or similar institution at which the **Insured** maintains a **Transfer Account**.
7. **Financial Instruments** means checks, drafts or promissory notes, or similar written promises, orders or directions to pay a sum certain in **Money**, that are:
  - a) made or drawn upon by the **Insured**; or
  - b) made or drawn upon by one acting as the **Insured's** agent, or that are purported to have been so made or drawn upon.

**Financial Instruments** shall also mean written instruments required in conjunction with any credit, debit or charge card issued to the **Insured**, or any **Employee** on behalf of the **Insured**; provided, that the **Insurer** shall not pay for loss arising from any credit, debit or charge card if the **Insured** or the **Employee** has not fully complied with the provisions, conditions or other terms under which the card was issued.



8. **Forgery** means the signing of the name of another person or organization with intent to deceive. **Forgery** does not mean a signature which consists in whole or in part of one's own name signed, with or without authority, in any capacity, for any purpose.
9. **Funds Transfer Fraud** means:
- a) electronic, telegraphic, cable, telefacsimile, teletype or telephone instructions fraudulently transmitted to a **Financial Institution** directing such institution to debit a **Transfer Account** and to transfer, pay or deliver **Money** or **Securities** from such **Transfer Account** to any person, entity or account, which instructions purport to have been transmitted by an **Insured** but were in fact fraudulently transmitted by someone other than the **Insured** without the **Insured's** knowledge or consent; or
  - b) fraudulent written instructions, other than those covered under Insuring Clause 4, issued to a **Financial Institution** directing such institution to debit a **Transfer Account** by use of an electronic funds transfer system at specified intervals or under specified conditions, which instructions purport to have been issued by an **Insured** but were in fact fraudulently issued, forged or altered by someone other than the **Insured** without the **Insured's** knowledge or consent.
10. **Insured** means the **Company** and any **Employee Benefit Plan**.
11. **Messenger** means any partner or **Employee** of the **Insured** or other natural person duly authorized by the **Insured** to have custody for the purposes of conveying property, while said person has custody of the property outside the **Premises**.
12. **Money** means:
- a) currency, bullion, coins and bank notes; and
  - b) travelers checks, register checks and money orders held for sale to the public.
13. **Other Property** means any tangible property other than **Money** and **Securities** that has intrinsic value but does not include any property excluded under this Crime Coverage Section.
14. **Premises** means the interior of that portion of any building that is occupied by the **Insured** in conducting its business.
15. **Robbery** means the taking of property of the **Insured** from the care and custody of the **Insured**, an **Employee**, or any person who holds such property under authorization by the **Insured**, by one who has:
- a) caused or threatened to cause such person bodily harm; or
  - b) committed an unlawful act witnessed by such **Insured**, **Employee**, or person.
16. **Safe Burglary** means the taking of the **Insured's Money**, **Securities** or **Other Property** from within a vault or safe located within the **Premises** by a person making entry into such vault or safe, and any vault containing the safe, when all doors thereof are duly closed and locked by at least one combination or time lock, provided that such entry shall be made by actual force and violence upon the exterior of:
- a) a door or doors of such vault or safe, and any vault containing the safe, if entry is made through such doors; or
  - b) the top, bottom or walls of such vault or safe, and any vault containing the safe through which entry is made, if not made through such doors.
17. **Securities** means negotiable and non-negotiable instruments representing **Money** or **Other Property** and includes:
- a) stock certificates, tokens, tickets, revenue and other stamps, whether represented by actual stamps or unused value in a meter, in current use; and

b) evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Insured**.

**Securities** does not mean **Money**.

18. **Single Loss** means all loss caused by, resulting from or involving an act or event, or a series of related acts or events, whether or not involving one or more specific persons.
19. **Theft** means the unlawful taking of **Money, Securities, or Other Property** from the **Insured** to the deprivation of the **Insured**. For purposes of Insuring Clause 1b) only, **Theft** means the unlawful taking by any **Employee** of **Money, Securities or Other Property** that was intended to be paid as benefits by an **Employee Benefit Plan**.
20. **Transfer Account** means an account maintained by the **Insured** at a **Financial Institution** from which the **Insured** can initiate the transfer, payment or delivery of **Money or Securities**:
- a) by means of electronic, telegraphic, telefacsimile, cable or telephone instructions communicated directly or through an electronic funds transfer system; or
  - b) by means of written instructions, other than those covered under Insuring Clause 4, establishing the conditions under which such transfers are to be initiated by such **Financial Institution** through an electronic funds transfer system.

### C. EXCLUSIONS

The **Insurer** will not pay for:

1. loss resulting from the acts, or based on the authority, of any government, or any agency, department or division thereof;
2. loss that is an indirect or consequential result of any act or **Single Loss** covered by this Crime Coverage Section;
3. loss of potential income, including but not limited to, interest and dividends, not realized by the **Insured** because of a loss covered under this Crime Coverage Section;
4. loss of trade secrets, confidential processing methods, or other confidential or proprietary information of any kind;
5. loss resulting from pollution, nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident;
6. loss resulting from war, whether or not declared, warlike action, insurrection, rebellion or revolution or any related act or incident;
7. loss resulting from any dishonest or criminal act committed by any of the **Insured's Employees**, directors or trustees whether acting alone or in collusion with others and whether committed while performing services for the **Insured** or otherwise, except to the extent coverage is afforded under Insuring Clause 1;
8. loss resulting from any dishonest or fraudulent act committed by the **Insured** whether acting alone or in collusion with others;
9. loss, or that part of any loss, the proof of which involves in any manner a profit and loss computation or comparison, or a comparison of inventory records with an actual physical count; provided, however, that where the **Insured** establishes wholly apart from such comparison that it has sustained a loss covered under Insuring Clause 1 and it has identified the **Employee** involved, then it may offer its inventory records and actual physical count of inventory in support of the amount claimed;
10. loss resulting directly or indirectly from trading, whether or not in the name of the **Insured** and whether or not in a genuine or fictitious account, except to the extent coverage is afforded under Insuring Clause 1 as a consequence of **Employee Theft**;
11. loss of any intangible property;

12. expenses and costs incurred in the defense of any legal proceedings brought against the **Insured**, or to fees, costs or expenses incurred or paid by the **Insured** in prosecuting or defending any legal proceeding;
13. expenses and costs incurred by the **Insured** in investigating or establishing the existence of or the amount of any loss covered under this Crime Coverage Section;
14. damages of any type for which the **Insured** is legally liable, except direct compensatory damages arising from a loss covered under this Crime Coverage Section;
15. loss of **Money, Securities or Other Property** while in the custody or control of the United States Postal Service or other parcel delivery service;
16. loss for which the **Insured** could recover under a contract with an armored motor vehicle company or under any insurance or indemnity carried by or for the benefit of customers of an armored motor vehicle company;
17. loss due to fire however caused;
18. loss resulting directly or indirectly from **Computer Theft or Funds Transfer Fraud**, except and to the extent coverage is afforded under Insuring Clause 1 or 5;
19. loss resulting directly or indirectly from **Forgery, Alteration** or counterfeiting except and to the extent coverage is afforded under Insuring Clause 1 or 4;
20. loss of or damage to **Money, Securities or Other Property** as a result of kidnap, ransom or other extortion payments surrendered to any person because of a threat to do:
  - a) bodily harm; or
  - b) damage to the **Premises or Other Property** owned by the **Insured**;  
except and to the extent coverage is afforded under Insuring Clause 2;
21. loss resulting from any civil, criminal or other legal proceeding in which the **Insured** is adjudicated to have engaged in "racketeering activity" as that term is defined in 18 United States Code 1961, et seq., as amended; or
22. loss resulting from damage to any property, safe, vault, or to the **Premises** or its exterior, by vandalism or malicious mischief.

#### D. OTHER CONDITIONS

##### 1. Joint **Insured**

- a) If there is more than one **Insured**, the **Parent Company** that is named first in the Declarations will act for itself and for every other **Insured** for all purposes of this Crime Coverage Section. If the first **Parent Company** ceases to be covered, then the next **Parent Company** will become the first **Parent Company** for the purposes of this subsection 1.
- b) If any **Insured**, or any partner, officer or director of that **Insured**, has knowledge of any information relevant to this Crime Coverage Section, that knowledge is considered knowledge of every **Insured**.
- c) An **Employee** of any **Insured** is considered to be an **Employee** of every **Insured**.
- d) If a loss is sustained by more than one **Insured**, the **Insurer** will not pay more for loss sustained by more than one **Insured** than the amount the **Insurer** would have paid if all loss had been sustained by one **Insured**.

##### 2. Discovery

The **Insurer** will pay for loss sustained by the **Insured** through acts committed or events occurring at any time and discovered by the **Insured** during the **Policy Period**. Discovery of loss occurs when an officer, director,

Insurance Manager or Risk Manager first becomes aware of facts which would cause a reasonable person to assume that a loss covered by this Crime Coverage Section has been or will be incurred, even though the exact amount or details of such loss may not then be known. Discovery also occurs when the **Insured** receives notice of an actual or a potential claim against it alleging facts that, if true, would constitute a covered loss under this Crime Coverage Section.

3. Other Insurance

This insurance does not apply to loss recoverable or recovered under any other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the loss, this Crime Coverage Section will apply to that part of the loss, other than that falling within any deductible amount, not recoverable or recovered under the other insurance or indemnity. This Crime Coverage Section will not apply to the amount of loss that is more than the applicable Limit of Liability as stated in the Declarations.

4. Interests Covered; Ownership of Property

This Crime Coverage Section is for the exclusive benefit of the **Insured**. It provides no rights or benefits to any other person or organization. The property covered under this Crime Coverage Section is limited to **Money, Securities or Other Property** that the **Insured** owns.

5. Termination as to any **Employee**

This Crime Coverage Section shall terminate as to any **Employee** from and after the time that the **Insured** or any officer or director thereof not in collusion with such **Employee** shall have knowledge or information that such **Employee** has committed any fraudulent or dishonest act in the service of the **Insured** or otherwise, whether such act be committed before or after the date of employment by the **Insured**.

If, prior to the issuance of this Crime Coverage Section, any fidelity insurance in favor of the **Insured** or any predecessor in interest of the **Insured** and covering one or more of the **Insured's Employees** shall have been cancelled as to any of such **Employees** by reason of the giving of written notice of cancellation by the **Insurer** issuing such fidelity insurance, whether the **Insurer** or not, and if such **Employees** shall not have been reinstated under the coverage of such fidelity insurance or superseding fidelity insurance, **Insurer** shall not be liable on account of such **Employees** unless the **Insurer** shall agree in writing to include such **Employees** within the coverage of this Crime Coverage Section.

6. Termination of this Coverage Section

This Coverage Section shall terminate in its entirety:

- a) thirty days after the receipt by the **Parent Company** of a written notice of termination from the **Insurer**;
  - b) upon receipt by the **Insurer** of a written notice of termination from the **Parent Company**;
  - c) at such other time as may be agreed upon by the **Insurer** and the **Parent Company**;
  - d) upon the voluntary liquidation or dissolution of the **Company**;
  - e) upon the appointment of:
    - (i) a receiver, trustee, or other fiduciary of the property of the **Company**;
    - (ii) a committee for the dissolution thereof; or
  - f) as to any of the **Insureds**, other than the **Company**, upon the appointment of:
    - (i) a receiver, trustee or other fiduciary of the property of any such **Insureds**, or
    - (ii) a committee for the dissolution thereof;
- whichever occurs first.

## E. PROVISIONS AFFECTING LOSS SETTLEMENT

### 1. Limit of Liability

The amount shown in Item C of the Declarations relating to this Coverage Section shall be the maximum aggregate Limit of Liability of the **Insurer** under all Insuring Clauses for this Coverage Section.

### 2. Deductible

The **Insurer** will not pay for loss resulting from a **Single Loss** unless the amount of such loss exceeds the applicable **Single Loss** deductible shown in the Declarations. The **Insurer** will then pay the amount in excess of such deductible, subject to the applicable Limit of Liability of this Crime Coverage Section.

### 3. Duties in the Event of Loss

After the **Insured** discovers a loss or a situation that may result in a loss of **Money**, **Securities** or **Other Property** that may be covered under this Crime Coverage Section, the **Insured** must:

- a) provide to the **Insurer**, at the address set forth in Item G of the Declarations, written notice of such loss as soon as practicable, but in no event later than sixty (60) after such discovery;
- b) submit to an examination under oath at the **Insurer's** request and give the **Insurer** a sworn statement of the answers of the **Insured**;
- c) provide the **Insurer** with a sworn proof of loss within one hundred eighty (180) days after discovery which shall provide, at a minimum:
  - (i) the date and circumstances surrounding discovery, including the name(s) of the person(s) making the discovery;
  - (ii) details of how the subject loss occurred or will occur;
  - (iii) the amount of actual loss known and an estimate of the total loss expected to result; and
  - (iv) a description of all known sources of recovery to reduce the loss;
- d) provide the **Insurer** with all information, assistance and cooperation as the **Insurer** may reasonably request in the investigation and settlement of any claim;
- e) notify the police or other appropriate law enforcement authority(ies) if the **Insured** has reason to believe that loss covered by any Insuring Clause(s) involves a violation of law; and
- f) keep accurate records of all covered property so that the **Insurer** can verify the amount of any claimed loss.

### 4. Valuation

- a) Subject to the Limit of Liability, the **Insurer** will pay for:
  - (i) loss of **Money**, but only up to and including its face value. In the event of loss of **Money** in any currency other than United States dollars, the **Insurer** may, at its option, pay for loss of such **Money**:
    - (a) at face value in the **Money** issued by that country; or
    - (b) in the United States dollar equivalent of the currency in which the loss occurred determined by the rate of exchange as of 12:01 a.m. on the day the loss was discovered;
  - (ii) loss of **Securities**, but only up to and including their value at the close of business on the day the loss was discovered. The **Insurer** may, at its option:
    - (a) pay the value of such **Securities** or replace them in kind, in which event the **Insured** must assign to the **Insurer** all its rights, title and interest in and to such **Securities**; or

(b) pay the cost of any Lost Instrument Bond, subject to the applicable deductible, required in connection with issuing duplicates of the **Securities**. However, the **Insurer** will be liable only for payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of:

- i. the value of the **Securities** at the close of business on the day the loss was discovered; or
- ii. the Limit of Liability of this Crime Coverage Section;

(iii) loss of, or loss from damage to, **Other Property** including damage to the **Premises** for not more than:

- (a) the actual cash value of the property on the day the loss was discovered;
- (b) the cost of repairing the property or **Premises**; or
- (c) the cost of replacing the property with property of like kind and quality.

The **Insurer** may, at its option, pay the actual cash value of the property or repair or replace it. If the **Insurer** cannot agree with the **Insured** upon the actual cash value or the cost of repair or replacement, the value or cost of repair or replacement will be determined by arbitration in accordance with the rules of the American Arbitration Association.

With respect to loss of or damage to electronic data, books of account or other records, tapes, disks or similar electronic media, the **Insurer** will only pay for the cost of blank books, blank pages, blank tapes, or blank disks, plus the cost of labor and computer time for the actual transcription or copying of data furnished by the **Insured** in order to reproduce such data, books, records, tapes, disks or similar electronic media.

b) The **Insurer** may, at its option, pay for loss of, or loss from damage to, property other than **Money**:

- (i) in the original currency in which the loss occurred; or
- (ii) in the United States dollar equivalent of the currency in which the loss occurred determined by the rate of exchange as of 12:01 a.m. on the day the loss was discovered.

c) Any property that the **Insurer** pays for or replaces shall become the **Insurer's** property.

## 5. Recoveries

a) Any recoveries, less the reasonable cost of obtaining them, made after settlement of loss covered by this Crime Coverage Section will be distributed in the following order:

- (i) to the **Insured**, until the **Insured** is reimbursed for any covered loss that it sustained in excess of the Limit of Liability and the deductible amount, if any;
- (ii) to the **Insurer**, until it is reimbursed for all amounts paid under this Crime Coverage Section; and
- (iii) to the **Insured**, until it is reimbursed for that part of the loss equal to the deductible amount, if any.

b) Recoveries do not include any recovery:

- (i) from insurance, suretyship, reinsurance, security or indemnity taken for the **Insurer's** benefit; or
- (ii) of original **Securities** after duplicates of them have been issued.

## 6. Legal Action against the **Insurer**

The **Insured** may not bring any legal action against the **Insurer** involving a claimed loss:

a) until ninety (90) days after the **Insured** has filed a sufficient proof of loss with the **Insurer**;



- b) unless the **Insured** has complied with all of the terms of the **Policy**; and
- c) unless brought within two (2) years from the date the **Insured** discovered the loss.

#### F. GENERAL TERMS AND CONDITIONS SECTION

Subsection H. and I. of the General Terms and Conditions section of the **Policy** shall not apply to this Crime Coverage Section.

#### G. EMPLOYEE BENEFIT PLAN

In compliance with certain provisions of the Employee Retirement Income Security Act of 1974, as amended (ERISA):

1. If the **Insured** first named in Item A. of the Declarations is an entity other than the **Employee Benefit Plan**, any payment the **Insurer** makes for loss sustained by any **Employee Benefit Plan** will be held by that **Insured** for the use and benefit of the **Employee Benefit Plan** sustaining the loss.
2. If two or more **Employee Benefit Plans** are **Insured** under this insurance, any payment the **Insurer** makes for loss:
  - a) sustained by two or more **Employee Benefit Plans**; or
  - b) of commingled funds or other property of two or more **Employee Benefit Plans**is to be shared by each **Employee Benefit Plan** sustaining loss in the proportion that the amount of insurance required for each such **Employee Benefit Plan** under ERISA bears to the total of those amounts.
3. The deductible applicable to any Insuring Clause does not apply to loss sustained by any **Employee Benefit Plan** covered under this Crime Coverage Section that is subject to ERISA.

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