



CRIMEGUARD CHOICESM
FIDELITY & CRIME INSURANCE POLICY

In consideration of the **Policyholder** paying the premium and in reliance upon the statements made to the **Company** by application forming a part hereof, the **Company** agrees to indemnify the **Policyholder** subject to the declarations, exclusions, terms and conditions of the policy, for losses first discovered by the **Insured** during the policy period or applicable discovery period.

The terms and conditions set forth in the Loss of Assets Coverage Section below shall apply to all additional Coverage Sections that are made a part of this policy, except where such terms and conditions are explicitly limited to one or more Coverage Sections. The terms and conditions set forth in each Coverage Section, with the exception of the Loss of Assets Coverage Section, shall apply only to that particular Coverage Section and shall in no way be construed to apply to any other Coverage Section of this policy.

**LOSS OF ASSETS
COVERAGE SECTION**

I. INSURING AGREEMENT

The following Insuring Agreement shall apply only to the coverage afforded by this Loss of Assets Coverage Section:

The **Company** will indemnify the **Insured** for the **Loss of Assets**, excess of any applicable deductible, resulting directly from **Agent Theft, Computer Fraud, Dishonesty, Forgery, Funds Transfer Fraud, Impairment, or Non-Payment of Money Order/Counterfeit Paper Currency**, which is first discovered by the **Insured** pursuant to Clause VII(a) *Discovery of Loss* of this Loss of Assets Coverage Section.

II. DEFINITIONS

The following Definitions shall apply to the coverage afforded by all Coverage Sections made a part of this policy:

Agent means a natural person, entity, firm, company, organization or association duly authorized by written contract to hold **Money** or **Securities** for the **Insured**.

Agent Theft means loss of **Money** or **Securities** resulting directly from **Theft** by an **Agent** in excess of the amount of the **Agent's** contracted indemnity obligation or in excess of any insurance provided by the **Agent**. It shall be a condition precedent to the **Company's** obligation to pay any amount for such loss of **Money** or **Securities** that the **Insured** shall exhaust all remedies against the **Agent** and any other responsible parties and be paid under all such **Agent's** contracts, indemnities or insurance, first, then the

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Company's liability for **Agent Theft** shall be only the excess over the amount of such contracts, indemnities or insurance.

Assets means **Money**, **Securities** or other tangible property owned by the **Insured** or held by the **Insured**, whether pursuant to a written contract or not. **Assets** do not include income, interest or dividends that was not in fact earned or that potentially could have been earned by the **Insured** on such **Money**, **Securities** or other tangible property.

Company means the insurer issuing this policy.

Computer Fraud means the unlawful taking of **Assets** under the direct or indirect control of a **Computer System** by means of:

1. the fraudulent accessing of such **Computer System**;
2. the insertion of fraudulent data or instructions into such **Computer System**; or
3. the fraudulent alteration of data, programs, or routines in such **Computer System**.

Computer System means computer hardware, software and firmware and data stored thereon, which are linked together through a network of two or more computers, or accessible through the internet, including network infrastructure, input, output, processing, storage and off-line media libraries. **Computer System** shall also include those written policies and procedures applicable to the security of a computer network.

Consultant means a natural person professional consultant under contract, either directly or through such **Consultant's** company or firm, with the **Insured** to provide solely expert or professional advice regarding the improved operation of the **Insured's** business ("**Consulting Services**"). **Consultant** shall not mean any individual or entity providing professional services, including but not limited to legal or accounting services, to the **Insured**, in whole or in part, other than **Consulting Services**.

Counterfeit Paper Currency means an imitation of a paper currency in actual use as a medium of exchange, and which is intended to deceive.

Dishonesty means the **Theft** by an **Employee** of the **Insured** acting alone or in collusion with others. If a loss is alleged to have been caused by the **Dishonesty** of any one or more **Employees** and the **Insured** is unable to designate the specific **Employee** or **Employees** causing such loss, the **Insured** shall nevertheless have the benefit of this Loss of Assets Coverage Section, provided that the evidence submitted reasonably proves that the loss was in fact due to the **Dishonesty** of one or more of the said **Employees**, and provided further that the aggregate liability of the **Company** for any such loss shall not exceed the Limit of Liability for this Loss of Assets Coverage Section as set forth in Item 3(a) of the Declarations.

Employee means any natural person while in the regular service of the **Insured** (and the first 90 days following termination) in the ordinary course of the **Insured's** business during the policy period whom the **Insured** compensates by salary, wages or commissions and has the right to govern and direct in the performance of service.

Additionally, **Employee** shall also include:

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1. part-time and temporary **Employees** of the **Insured**;
2. students and volunteers gaining work experience with the **Insured**;
3. any individual assigned to perform **Employee's** for the **Insured** by any agency furnishing either temporary personnel on a contingent or part-time basis of leased personnel on a full-time basis; provided this policy will be excess of any other insurance or suretyship held by the agency furnishing the temporary or leased personnel to the **Insured**;
4. an independent contractor with whom the **Insured** has a written services contract in effect to perform **Employee's** duties for the **insured**, who is working within the **Insured's Premises**, and who is performing acts within the scope of such services contract under the supervision of the **Insured**; provided, however, that such independent contractor is not a **Consultant** (as defined below); and provided further that this policy will be excess of any other insurance or suretyship held by or providing coverage for such independent contractor;
5. a director, trustee or non-compensated officer of the **Insured** while performing acts within the scope of the usual duties of an **Employee**;
6. any natural person while acting as fiduciary, trustee, administrator, officer or **Employee** while servicing any Employee Benefit Plan sponsored by the **Insured**;
7. an **Employee** of the **Insured** on military leave of absence;
8. a **Consultant**, but only while: 1) a consultancy agreement is in effect between the **Insured** and such consultant or between the **Insured** and such consultant's company or firm; 2) such consultant is performing acts within the scope of such consultancy agreement; and 3) such consultant is working within the **Insured's** premises and under the supervision, direction and control of the **Insured**;

Employee shall include any natural person holding a position with an **Insured** organized and operating in a jurisdiction outside the United States or any of its territories or possessions that is equivalent to a position listed in subparagraphs 1 through 8 above.

Employee does not mean any **Agent**, broker, factor, commission merchant, consignee, or other agent or representative who performs services for the **Insured**.

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Financial Institution means:

1. a banking, savings or thrift institution; or
2. a stockbroker, mutual fund, liquid assets fund or similar investment institution; at which the **Insured** maintains a **Transfer Account**.

Financial Instrument means any check, draft, promissory note, bill of exchange, or similar written promise, order or direction to pay a sum certain in **Money**; provided, however, **Financial Instrument** shall not mean any written instructions to a **Financial Institution** to debit a **Transfer Account** and to transfer, pay or deliver **Funds** from said **Transfer Account** through an electronic funds transfer system.

Forgery means the unauthorized signing of another person's name upon, counterfeiting of or alteration of any **Financial Instrument** made or drawn by, upon, to the order of or for the benefit of the **Insured**. Additionally, mechanically or electronically reproduced signatures are treated the same as handwritten signatures.

Funds means a credit balance in a **Transfer Account** maintained by the **Insured** at a **Financial Institution**.

Funds Transfer Fraud means:

1. fraudulent electronic, e-mail, telegraphic, cable, teletype, telefacsimile, or telephone instructions issued to a **Financial Institution** to debit a **Transfer Account** and to transfer, pay or deliver **Funds** from said **Transfer Account** which instructions purport to have been transmitted by the **Insured** or by a person duly authorized by the **Insured** to issue such instructions but which have been fraudulently transmitted by another; and
2. fraudulent written instructions to a **Financial Institution** to debit a **Transfer Account** and to transfer, pay or deliver **Funds** from said **Transfer Account** through an electronic funds transfer system at specified times or under specified conditions, which written instructions purport to have been duly issued by the **Insured** but which have been fraudulently issued, forged or altered by another.

Impairment means:

1. the actual destruction or disappearance of **Money** or **Securities** owned or held by the **Insured**; or
2. the wrongful abstraction of **Assets** resulting from **Theft** by any natural person other than an **Employee**.

Insured means:

1. in all Coverage Sections except the Personal Identity Event Coverage Section, the **Policyholder** and any **Subsidiary**; and
2. in the Personal Identity Event Coverage Section, each **Employee** (as defined in solely the first paragraph of the **Employee** definition above) who was employed with the **Policyholder** or any **Subsidiary** both at the time a **Personal Identity Event** occurred with regard to such **Employee** and at the time such **Personal Identity Event** was discovered by such **Employee**.

Loss of Assets means the direct deprivation of the **Insured** of **Assets** by a single act or a series of related acts resulting directly from **Agent Theft**, **Computer Fraud**, **Dishonesty**, **Forgery**, **Funds Transfer Fraud**, **Impairment**, or **Non-Payment of Money**

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Order/Counterfeit Paper Currency that occurred prior to the effective date of termination or cancellation of this policy.

Messenger means:

1. the **Insured** or a partner of the **Insured**;
2. any **Employee** who is duly authorized by the **Insured** to have the care and custody of the insured property outside the **Premises**; and
3. any armored motor vehicle company under contract with the **Insured** to transport the insured property outside the **Premises**, but solely while transporting **Assets** of the **Insured** outside of the **Premises**.

Money means currency, coins, bank notes and bullion, traveler's checks, registered checks and money orders held for sale to the public.

Money Order means any post office or express money order.

Non-Payment of Money Order/Counterfeit Paper Currency means the acceptance of any **Money Order** in good faith, in exchange for merchandise, **Money** or services, which **Money Order** has been issued or is purported to have been issued by any post office or express company, if such **Money Order** is not paid upon presentation, or due to the acceptance in good faith in the regular course of business of **Counterfeit Paper Currency**.

Policyholder means the organization named in item 1 of the declarations.

Premises mean the portion of the interior of any enclosed building occupied by the **Insured** in conducting its business, including the office of the corporate registrar or transfer agent.

Securities mean all negotiable and non-negotiable instruments or contracts representing either money or property and include revenue and other stamps in current use, tokens and tickets, but do not include **Money**.

Subsidiary means any entity, firm, company, organization or association, other than a **Financial Institution**, investment bank, hedge fund, private equity fund, exchange traded fund, insurance or reinsurance company or a holding company with insurance or reinsurance subsidiaries or operations, or any similar institution engaged in the exchange or investment of assets, whether or not owned or held by an **Insured**, in which the **Policyholder** on the inception date of this policy:

1. owns more than a 50% financial interest; or
2. has an ownership interest of less than 50% through outstanding securities or voting rights, but where the **Policyholder's** policies and procedures and internal audit controls are established and adhered to for the operation of the entity; or
3. the **Policyholder** (i) has the largest interest of any owner of the entity, (ii) is contractually obligated to manage and supervise the operation, and (iii) the **Policyholder's** policies and procedures and internal audit controls are established and adhered to for the operation of the entity.

With regard to a **Subsidiary** as defined in subparagraphs (2) and (3) above, the **Policyholder** shall be entitled to indemnification of loss under this policy to the extent

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of the **Policyholder's** interest in such **Subsidiary**, unless the **Policyholder** is contractually required to provide fidelity insurance for the entire **Subsidiary**.

Theft means the unlawful taking to the deprivation of the **Insured**, including by violence or threat of violence, of **Assets** (other than any salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment).

Transfer Account means an account, maintained by the **Insured** at a **Financial Institution**, from which the **Insured** or the **Insured's** authorized representatives may cause the transfer, payment or delivery of **Funds**:

1. by means of electronic, e-mail, telegraphic, cable, teletype or telephone instructions (communicated directly or through a cash management service or funds transfer system); or
2. by means of written instructions establishing the conditions under which such transfers are to be initiated by such **Financial Institution** through an electronic funds transfer system.

III. EXCLUSIONS

The coverage afforded by each Coverage Section made a part of this policy does not apply to:

- a. loss or damage caused by fire, other than loss of or damage to **Money, Securities**, safes or vaults;
- b. loss resulting from **Theft** or any other fraudulent, dishonest or criminal act by the **Insured**, or any partner, owner, trustee, governor, management committee members, members of the management board, or director, of the **Insured**, except while any director is acting within the scope of the usual duties of an employee, and whether acting alone or in collusion with others;
- c. loss of potential income, including interest and dividends, of the **Insured**, a **Client** or any third party;
- d. loss or damage arising out of war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to the foregoing;
- e. loss resulting from the loss of or damage to manuscripts, books of account or records maintained in any format or medium; provided, however, this exclusion shall not apply to the cost of the manuscripts, books of account or records plus the cost of labor and computer time for the actual transcription or copying of data maintained in any format or medium in order to reproduce such manuscripts, books of account or records;
- f. loss resulting from, arising out of, based upon, attributable to, related to, in connection with, or from, directly or indirectly, the loss of or damage to proprietary information, trade secrets, confidential processing methods, patents, service marks, trademarks, copyrights, or other confidential information or

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intellectual property of any kind, or infringement of copyright, patent, service mark, trademark, trade secret or other intellectual property rights;

- g. loss resulting from the surrendering of **Assets** away from the **Premises** or any other location resulting from a threat to do:

- bodily harm to any person; or
- damage to the **Premises** or property owned or held by the **Insured**;

provided, however, this exclusion does not apply to loss resulting from **Impairment** while being conveyed by a **Messenger** when the **insured** had no knowledge of any threat at the time of the incident;

- h. loss, the proof of which is dependent solely upon:

- a profit and loss computation or comparison, or
- a comparison of inventory records with an actual physical count;

provided, however, where an **Employee** is involved, inventory records and actual physical count of inventory can be submitted as supporting documentation;

- i. loss caused by any **Employee** from the time that an individual, as described in Clause VII(a) *Discovery of Loss*, not in collusion with the **Employee** shall have knowledge or information that the **Employee** has committed any **Theft** or fraudulent or dishonest act.

- j. loss or damage to **Assets** while in the custody of any armored car company unless loss or damage is in excess of the amount recovered, recoverable or received by the **Insured** under:

- the **Insured's** contract with the armored car company; and
- any indemnity or insurance carried by the armored car company;

- k. loss or damage resulting from **Impairment** of **Money** or **Securities** which benefits any party (other than the **Insured's** bank) acting in the capacity of a broker, factor, commission merchant, consignee, contractor or other agent or representative of the **Insured** except an **Agent**;

- l. loss or damage to other tangible property while in the custody of any party other than the **Insured** or a **Messenger**;

- m. loss or damage resulting from **Impairment** as a result of the unauthorized access and use of the **Insured's** telephone system;

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- n. the costs of defending any legal proceeding brought against the **Insured**, or the fees, costs or expenses incurred or paid by the **Insured** in prosecuting or defending any legal proceeding;
- o. loss or damage resulting from nuclear reaction, nuclear radiation or radioactive contamination, or to any act or condition incident to any of the foregoing;
- p. fines, penalties, consequential damages, punitive damages, expenses as a result of regularly scheduled recurring or routine regulatory examinations, or compliance activities or non-monetary relief, including without limitation, injunctive relief, or other equitable remedies of any type for which the **Insured** is legally liable.

Solely with respect to the coverage afforded by this Loss of Assets Coverage Section, the following additional exclusions shall apply. Coverage under this Loss of Assets Coverage Section does not apply to:

- q. loss or damage resulting from **Impairment** or **Computer Fraud** arising out of the giving or surrendering of **Assets** in any exchange or purchase, whether legitimate or fraudulent;
- r. loss resulting from **Impairment** or **Computer Fraud** which induces the **Insured** to make any purchase or sale, whether legitimate or fraudulent;
- s. loss caused by **Forgery** or the alteration of **Assets** received by the **Insured** in purported payment for property or services sold and delivered on credit;
- t. loss or damage resulting from **Impairment** relating to the **Theft** of other tangible property within the **Premises**, while the **Premises** are not open for business, except other tangible property found within a safe, vault, cash box, locked cash drawer or cash register;
- u. loss or damage resulting from **Computer Fraud** arising out of unintentional errors or omissions;
- v. loss of computer time or use due to **Computer Fraud**;
- w. loss or damage resulting from **Funds Transfer Fraud** caused by a **Financial Institution**, or any electronic funds transfer system, or electronic data processor, except to the extent that it is excess of any indemnity or other insurance provided for the benefit of customers of any of the aforesaid;
- x. to loss resulting directly or indirectly from any authorized or unauthorized trading of **Money**, **Securities** or other tangible property whether or not in the name of the **Insured** and whether or not in a genuine or fictitious account; provided, however, this exclusion shall not apply to direct losses caused by **Dishonesty**. Direct losses as used herein shall mean only the amount of improper financial gain to the **Employee**;

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- y. loss caused by any **Agent** from the time the **Insured** or any owner, partner or officer not in collusion with the **Agent** shall have knowledge or information that the **Agent** has committed any **Agent Theft**, or fraudulent or dishonest act;
- z. loss or damage resulting from **Credit Card Forgery**.

IV. LIMIT OF LIABILITY

Any payment under this policy for a covered loss shall not reduce the **Company's** liability for other covered loss arising from unrelated acts, except as noted in the Declarations. The maximum liability of the **Company** for any single loss shall not exceed the applicable Limit of Liability amount stated in Item 3 of the Declarations.

The Limit of Liability stated in Item 3 of the Declarations for a Coverage Section shall be the maximum liability of the **Company** for all loss arising from a single act or series of related acts under such Coverage Section. In the event a loss triggers coverage under multiple Coverage Sections and all such Coverage Sections are subject to equal Limits of Liability, then the most the **Company** will pay for all loss arising from any single act or series of related acts shall be an amount equal to one such Limit of Liability regardless of the Coverage Section(s) under which payment is made. In the event a loss triggers coverage under multiple Coverage Sections that are subject to Limits of Liability that are not equal, then the most the **Company** will pay for all loss arising from any single act or series of related acts shall be an amount equal to the highest applicable Limit of Liability set forth in the Declarations for such Coverage Sections; provided, however, the lower applicable Limit(s) of Liability for such Coverage Sections shall serve as a sublimit(s) of liability for loss covered under the respective Coverage Section(s) and such sublimit(s) of liability shall be part of and not in addition to the Limit of Liability applicable to all loss arising from such single act or series of related acts.

Regardless of the number of years this policy is in force and the number of premiums paid, the limit of the **Company's** liability as specified in the Declarations shall not be cumulative over policy periods.

This Clause IV shall not apply to the Personal Identity Event Expenses Coverage Section.

V. DEDUCTIBLE AND OTHER INSURANCE

For each covered loss, coverage under this policy will be in excess of the greater of the following amounts:

- the deductible amount set forth in the Declarations for the applicable Coverage Section, and
- the amount of any other valid and collectible insurance or indemnity available to the **Insured**.

If a loss is covered partly under this policy and partly under a prior policy written by another carrier, the deductible amount under this policy applicable to the loss will be reduced by the amount of any deductible amount actually applied to loss under such prior policy. If the amount of any deductible amount actually applied to loss under such other carrier's prior policy is greater than the deductible amount under this policy, then no deductible shall apply to the amount of covered loss under this policy.

The deductible amounts stated in the Declarations are separate deductibles applicable to each Coverage Section. The application of a deductible to loss covered under one Coverage Section shall not reduce the deductible under any other Coverage Section. In the event a loss triggers coverage under multiple Coverage Sections, then as to such loss the highest applicable deductible set forth in the Declarations for such Coverage Sections shall be deemed the deductible applicable to all loss arising from a single act or series of related acts.

This Clause V shall not apply to the Personal Identity Event Expenses Coverage Section.

VI. WORLDWIDE TERRITORY

Except for the Personal Identity Event Expenses Coverage Section, this policy shall apply to loss incurred by an **Insured** anywhere in the world unless prohibited by law.

VII. LOSS PROVISIONS

(a) *Discovery of Loss*

Discovery of loss by the **Insured** occurs when the **Insured's** Corporate Insurance Risk Management Department, Internal Audit Department, Human Resources/Personnel Department or General Counsel, or any officer to whom they report, or any partner or owner of the **Insured**, first becomes aware of facts which would cause a reasonable person to believe that a loss covered by this insurance has been or will be incurred, even though the exact amount or details may not then be known.

The **Company** will pay the **Insured** for loss sustained as a direct result of acts committed prior to the effective date of termination or cancellation of this policy (except when cancellation is due to non-payment of premium), which is discovered by the **Insured** during the policy period or within 90 days after the effective date of such termination or cancellation; provided, however, the 90-day extended period set forth

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herein to discover loss terminates immediately upon the effective date of any other fidelity and crime insurance obtained by the **Insured**.

This Clause VII(a) shall not apply to the Personal Identity Event Expenses Coverage Section or the Loss of Employee Benefit Plan Assets Coverage Section.

(b) Notification & Proof of Loss

Upon knowledge or discovery of loss by the **insured** or of an occurrence which would cause a reasonable person to believe that such loss or occurrence would give rise to a covered loss in the amount of 50% of the applicable deductible or more, the **Policyholder** shall, on behalf of any **Insured**:

- give notarized written notice to the **Company** of such loss or occurrence, at the address stated in Item 5(b) of the Declarations, no later than 90 days after such discovery or first obtaining such knowledge, on the form provided;
- give notice to the police if loss results from **Agent Theft, Computer Fraud, Forgery, Funds Transfer Fraud, Impairment, or Non-Payment of Money Order/Counterfeit Paper Currency**;
- provide all requested information and documents and cooperate with the **Company** in all matters pertaining to such loss or occurrence; and
- give written notice to the **Company** of the **Insured's** election to apply to such loss either Loss Settlement Clause 1 or Loss Settlement Clause 2, as set forth below, no later than 30 days after the submission of the notarized written notice of such loss to the **Company** and no later than 90 days after knowledge or discovery of such loss. If the **Policyholder** fails to give written notice to the **Company** of such election, this policy shall apply as if the **Insured** had elected to apply Loss Settlement Clause 2 to such loss.

1) **LOSS SETTLEMENT CLAUSE 1: Election of the Fidelity Research & Investigative Settlement Clause (FRISC)**

An independent investigative specialist will investigate the facts and determine the quantum of loss. The **Policyholder** and the **Company** shall jointly task and budget the investigative specialist regarding the scope and cost of the investigation to be performed. The final report issued by the investigative specialist will be definitive as respects the facts and the quantum of loss and shall be provided to both the **Insured** and the **Company**.

Upon receipt and acceptance of written notification by the **Company**, the **Policyholder** shall choose an investigative specialist from the attached endorsement, provided the choice does not present a clear conflict of interest. The **Company** and the **Policyholder** will share equally the cost of the investigative specialist. The deductible amount is not applicable to the cost of

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the investigative specialist, and the expense paid by the **Company** will be a part of, and not in addition to, the applicable Limit of Liability.

After a joint review of the investigative report, if the **Policyholder** disputes the **Company's** coverage determination, the **Company**, at the **Policyholder's** request, will submit the dispute to mediation and/or arbitration (if applicable). The rules of the American Arbitration Association shall apply to this proceeding except for the selection of the mediator and/or arbitrator.

Upon receipt and acceptance of written notification by the **Company**, the **Policyholder** shall choose a mediator and/or arbitrator from the attached endorsement, provided the choice does not present a clear conflict of interest. The **Company** and the **Policyholder** will bear their own costs, in the event of a mediation and/or arbitration.

2) LOSS SETTLEMENT CLAUSE 2: Waiver of FRISC

(A) The **Insured** shall be required to meet the following conditions in presenting loss to the **Company**: (i) the **Insured** shall give notarized written notice to the **Company** no later than 90 days after knowledge or discovery of the loss; ii) the **Insured** shall give notice to the police if the loss results from **agent theft, Computer Fraud, Forgery, Funds Transfer Fraud, Impairment, or non-Payment of Money Order/Counterfeit Paper Currency**; (iii) the **Insured** shall file a detailed proof of loss, duly sworn to, with the **Company** within 120 days after knowledge or discovery of the loss; and (iv) the **Insured** shall provide all requested information and documents and cooperate with the **Company** in all matters pertaining to the loss.

Upon the **Company's** request, the **insured** shall submit to examination by the **Company**, subscribe the same, under oath if required, and produce for the **Company's** examination all pertinent records, all at such reasonable times and places as the **Company** shall designate, and shall cooperate with the **Company** in all matters pertaining to the loss or the claim.

(B) Claims Expense: Coverage is extended to include reasonable expenses (excluding the cost of services rendered by **Employees** of the **Insured**) incurred by the **Insured** for producing and certifying particulars or details of the **Insured's** business required by the **Company** in order to arrive at a covered loss payable under this policy ("Claims Expense Coverage"). If no covered loss is established hereunder, then the **Insured** will bear all such expenses. The Limit of Liability for all Claims Expense Coverage provided hereunder shall be \$10,000, which shall be part of and not in addition to the applicable Limit of Liability. There shall be no coverage hereunder for any expenses arising out of any legal dispute, suit or arbitration with the **Company**. The Claims Expense Coverage afforded hereunder shall be subject to a deductible in the amount of \$1,000.

(C) No action shall lie against the **Company** unless, as a condition precedent thereto: (i) the **Insured** has complied with all the terms and conditions of this policy; (ii) 90 days have elapsed after the date the required proof of loss

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was filed with the **Company**; and (iii) such action is commenced within two years after knowledge or discovery of the loss.

If any limitation is prohibited by any law controlling the construction of this policy, the limitation shall be deemed to be amended to comply with the minimum period of limitation permitted by law.

Any dispute between the **Insured** and the **Company** involving the amount or valuation of the covered loss will be submitted to mediation or arbitration for resolution.

This Clause VII(b) shall not apply to the Loss of Client Assets Coverage Section, the Personal Identity Event Expenses Coverage Section or the Credit Card Forgery Coverage Section.

(c) Settlement of Loss

The **Company** may, with the **Insured's** consent, settle any claim for covered loss of property with the owner. Any property for which the **Company** has made indemnification shall become the property of the **Company**. At its discretion, the **Company** may pay the actual cash value or make applicable repairs or replacements.

(d) Basis of Valuation

In no event shall the **Company** be liable for more than:

- at the sole discretion of the **Company**, the actual cash value of **Securities** at the close of business on the day the covered loss was discovered subject to the limits of liability, or the actual cost of replacing the **Securities**, whichever is less, plus the cost to post any required lost instrument bonds. The costs of posting any required lost instrument bonds and replacing the **Securities** shall be paid by the **Insured** and the **Company**. The **Insured** shall pay the costs related to the value of covered loss within its deductible and the costs related to any amount of covered loss in excess of the limits of liability and the **Company** shall pay the costs related to the covered loss in excess of the deductible and up to the limits of liability;
- the cost of blank books, blank pages or other materials plus the cost of labor and computer time for the actual transcription or copying of data maintained in any format or medium in order to reproduce books and records;
- the cost of labor for the actual transcription or copying of electronic data, furnished by the **Insured**, in order to reproduce such electronic data;
- the actual cash value of other tangible property at the time of loss or the actual cost of repairing or replacing the other tangible property with other tangible property or material of like quality or value, whichever is less.

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The actual cash value of other tangible property if held by the **Insured** as a pledge, or as collateral for an advance or a loan, shall be considered not to exceed the value of the other tangible property as determined and recorded by the **Insured** when making the advance or loan, or in the absence of a record, the unpaid portion of the advance or loan plus accrued interest at legal rates;

- if a foreign currency (a currency other than the currency in which this policy is written) is involved in a covered loss sustained by the **Insured**, then for the purpose of any required calculation in the settlement of covered loss, the rate of exchange shall be the rate as published in the Wall Street Journal on the date of discovery;
- the selling price of inventory that is held for sale or the cost of the inventory plus 5%, whichever is less; and
- if the loss of the value of services provided by the **Insured** is the subject of loss, then the actual cost to the **Insured** of providing such services.

VIII. CANCELLATION CLAUSE

A. This policy shall be canceled:

- upon receipt by the **Company** of written notice of cancellation from the **Policyholder**;
- in the event the **Policyholder** shall consolidate with or merge into another entity such that the **Policyholder** is not the surviving parent entity, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert;
- for reason of non-payment of premium, 10 days after the receipt by the **Policyholder** of written notice from the **Company**; or
- for reasons other than non-payment, 60 days after the receipt by the **Policyholder** of a written notice from the **Company**.

Upon cancellation by either the **Policyholder** or the **Company** for any reason other than non-payment of premium, the **Company** shall refund any applicable unearned premium computed pro rata. Upon cancellation by the **Company** for non-payment of premium, the **Company** shall be due the premium computed at customary short rates for the time period that the policy was in effect.

B. This policy shall be canceled as respects any **Employee** or **Agent**:

- immediately upon discovery of any dishonesty by an individual, as described in Clause VII(a) *Discovery of Loss*, not in collusion with the **Employee**; or

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- immediately from the time the **Insured** or any owner, partner or officer not in collusion with **Agent** shall have knowledge or information that the **Agent** has committed any **Agent Theft** or fraudulent or dishonest act; or
- 60 days after the receipt by the **Policyholder** of written notice of cancellation from the **Company**.

C. This policy shall be canceled as respects any **Subsidiary** immediately as of:

- the time that such entity, firm, company, organization or association no longer meets the definition of “**Subsidiary**” in this policy;
- the effective time of any sale of all or substantially all of such **Subsidiary’s** assets; or
- the effective time of any liquidation or dissolution of such **Subsidiary**.

Notice of cancellation will be mailed or delivered to the mailing address shown on the Declarations. Proof of mailing or delivery will be sufficient proof of notice.

IX. CONSOLIDATION, MERGER OR ACQUISITION

If the total assets of the **Insured** (as stated in the application for this policy) increase more than 15%, through any consolidation or merger with, purchase of assets of, or acquisition of the majority stock ownership of an organization, then the **Policyholder** shall:

- within 90 days of the effective date of the transaction give the **Company** written notice of the transaction;
- within 90 days of the effective date of the transaction provide to the **Company** any additional information it may request;

and shall pay the **Company** any additional premium calculated pro rata from the date of the transaction to the end of the policy period.

Notwithstanding the above, any entity acquired during the policy period shall be subject to coverage only for covered loss sustained as a direct result of acts committed subsequent to the effective date of the acquisition and during the policy period. There is no coverage for loss incurred prior to the acquisition of any said entity. If an entity was acquired before the policy effective date, then there is no coverage for loss incurred prior to the acquisition of any said entity. Such insurance as is provided by this policy to a **Subsidiary** acquired by an **Insured** shall apply only as specifically excess over any representations and warranties insurance issued in connection with such acquisition.

X. SUBROGATION

In the event of any payment under this policy, the **Company** shall be subrogated to the extent of the payment to all of the **Insured's** rights of recovery. The **Insured** shall execute all papers required and shall do everything necessary to secure and preserve the rights, including the execution of the documents necessary to enable the **Company** effectively to bring suit in the name of the **Insured**. And, the **Insured** shall do nothing after discovery of loss to prejudice the rights of recovery.

Recoveries (except from sureties, insurance, reinsurance or indemnity), less the actual cost of recovery, made after a covered loss will be distributed as follows:

- first, the **Insured** shall be reimbursed for covered loss exceeding the applicable Limit of Liability and the deductible amount (if applicable);
- second, the **Company** shall be reimbursed for the settlement made; and
- third, the **Insured** shall be reimbursed for covered loss equal to the deductible amount.

XI. JOINT INSURED

If more than one **Insured** is covered under this policy, the **Policyholder** shall act for itself and for every other **Insured** for all purposes of this policy.

If any **Insured** or officer of that **Insured** has knowledge of any information relevant to this policy, that knowledge is considered knowledge of every **Insured**.

An **Employee** of any **Insured** is considered to be an **Employee** of every **Insured**.

If this policy or any of its coverage sections is cancelled or terminated as to any **Insured**, loss sustained by such **Insured** is subject to coverage only if discovered prior to the effective date of cancellation or termination.

The **Company** will not pay more for loss sustained by more than one **Insured** than the amount the **Company** would pay if all the loss had been sustained by one **Insured**.

XII. ASSIGNMENT AND CHANGES

No changes, modifications or assignments of interest of this policy shall be effective except when made by a written endorsement to this policy which is signed by an authorized representative of the **Company**. Additionally, notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this policy or estop the **Company** from asserting any right under the terms of this policy.

By acceptance of this policy, the **Policyholder** agrees the policy embodies all agreements existing between the **Insured** and the **Company** or any of its agents relating to this insurance.

XIII. ACTION AGAINST THE COMPANY

The **Insured** cannot bring an action against the **Company** unless:

- the **Insured** has complied with all the terms and conditions of this policy;
- the action is brought within 90 days after the **Policyholder's** receipt of the issued investigative specialist's report outlining a loss, or within 90 days after the **Company's** receipt of the proof of loss; or, with respect to the Personal Identity Event Expenses Coverage Section, within 90 days after the **Policyholder's** receipt of the issued **Personal Identity Event** investigative specialist's report outlining a loss; and
- the action is brought within two (2) years after knowledge or discovery of the loss or, with respect to the Personal Identity Event Expenses Coverage Section, the **Personal Identity Event**.

If any limitation listed above is prohibited by any law controlling the construction of this policy, the limitation shall be deemed to be amended to comply with the minimum period of limitation permitted by law. This policy is for the sole benefit of the **Insured**. No suit, action or legal proceedings shall be brought hereunder by anyone other than the **Insured**.

XIV. HEADINGS

The headings of the various clauses and paragraphs of this policy and endorsements, if any, attached to this policy, are inserted solely for convenience or reference and are not to be deemed in any way to limit or expand the provisions to which they relate, and are not part of this policy.