

COMMERCIAL CRIME POLICY (LOSS SUSTAINED FORM)

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is or is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. Definitions.

A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which a Limit of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place during the Policy Period shown in the Declarations, except as provided in Condition E.1.o. or E.1.p., which is "discovered" by you during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition E.1.j.:

1. Employee Theft

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from "theft" committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, "theft" shall also include forgery.

2. Forgery Or Alteration

a. We will pay for loss resulting directly from "forgery" or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:

- (1) Made or drawn by or drawn upon you; or
- (2) Made or drawn by one acting as your agent;

or that are purported to have been so made or drawn.

For the purposes of this Insuring Agreement, a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original it replaced.

b. If you are sued for refusing to pay any instrument covered in Paragraph 2.a., on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur and pay in that defense. The amount that we will pay is in addition to the Limit of Insurance applicable to this Insuring Agreement.

3. Inside The Premises – Theft Of Money And Securities

a. We will pay for loss of "money" and "securities" inside the "premises" or "banking premises":

- (1) Resulting directly from "theft" committed by a person present inside such "premises" or "banking premises"; or
- (2) Resulting directly from disappearance or destruction.

b. We will pay for loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "theft" of "money" and "securities", if you are the owner of the "premises" or are liable for damage to it.

c. We will pay for loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the "premises" resulting directly from an actual or attempted "theft" of or unlawful entry into those containers.

4. Inside The Premises – Robbery Or Safe Burglary Of Other Property

a. We will pay for loss of or damage to "other property":

- (1) Inside the "premises" resulting directly from an actual or attempted "robbery" of a "custodian"; or
- (2) Inside the "premises" in a safe or vault resulting directly from an actual or attempted "safe burglary".

b. We will pay for loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "robbery" or "safe burglary" of "other property", if you are the owner of the "premises" or are liable for damage to it.

- c. We will pay for loss of or damage to a locked safe or vault located inside the "premises" resulting directly from an actual or attempted "robbery" or "safe burglary".

5. Outside The Premises

- a. We will pay for loss of "money" and "securities" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from "theft", disappearance or destruction.
- b. We will pay for loss of or damage to "other property" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from an actual or attempted "robbery".

6. Computer Fraud

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from the use of any computer to fraudulently cause a transfer of that property from inside the "premises" or "banking premises":

- a. To a person (other than a "messenger") outside those "premises"; or
- b. To a place outside those "premises".

7. Funds Transfer Fraud

We will pay for loss of "funds" resulting directly from a "fraudulent instruction" directing a financial institution to transfer, pay or deliver "funds" from your "transfer account".

8. Money Orders And Counterfeit Money

We will pay for loss resulting directly from your having accepted in good faith, in exchange for merchandise, "money" or services:

- a. Money orders issued by any post office, express company or bank that are not paid upon presentation; or
- b. "Counterfeit money" that is acquired during the regular course of business.

B. Limit Of Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit of Insurance shown in the Declarations.

If any loss is covered under more than one Insuring Agreement or Coverage, the most we will pay for such loss shall not exceed the largest Limit of Insurance available under any one of those Insuring Agreements or Coverages.

C. Deductible

We will not pay for loss resulting directly from an "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. Exclusions

1. This policy does not cover:

a. Acts Committed By You, Your Partners Or Your Members

Loss resulting from "theft" or any other dishonest act committed by:

- (1) You; or
- (2) Any of your partners or "members"; whether acting alone or in collusion with other persons.

b. Acts Of Employees Learned Of By You Prior To The Policy Period

Loss caused by an "employee" if the "employee" had also committed "theft" or any other dishonest act prior to the effective date of this policy and you or any of your partners, "members", "managers", officers, directors or trustees, not in collusion with the "employee", learned of that "theft" or dishonest act prior to the Policy Period shown in the Declarations.

c. Acts Of Employees, Managers, Directors, Trustees Or Representatives

Loss resulting from "theft" or any other dishonest act committed by any of your "employees", "managers", directors, trustees or authorized representatives:

- (1) Whether acting alone or in collusion with other persons; or
- (2) While performing services for you or otherwise;

except when covered under Insuring Agreement **A.1.**

d. Confidential Information

Loss resulting from:

- (1) The unauthorized disclosure of your confidential information including, but not limited to, patents, trade secrets, processing methods or customer lists; or
- (2) The unauthorized use or disclosure of confidential information of another person or entity which is held by you including, but not limited to, financial information, personal information, credit card information or similar non-public information.

e. Governmental Action

Loss resulting from seizure or destruction of property by order of governmental authority.

f. Indirect Loss

Loss that is an indirect result of an "occurrence" covered by this policy including, but not limited to, loss resulting from:

- (1) Your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property".
- (2) Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this policy.
- (3) Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this policy.

g. Legal Fees, Costs And Expenses

Fees, costs and expenses incurred by you which are related to any legal action, except when covered under Insuring Agreement A.2.

h. Nuclear Hazard

Loss or damage resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

i. Pollution

Loss or damage caused by or resulting from pollution. Pollution means the discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

j. War And Military Action

Loss or damage resulting from:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

2. Insuring Agreement A.1. does not cover:

a. Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed.

b. Trading

Loss resulting from trading, whether in your name or in a genuine or fictitious account.

c. Warehouse Receipts

Loss resulting from the fraudulent or dishonest signing, issuing, cancelling or failing to cancel, a warehouse receipt or any papers connected with it.

3. Insuring Agreements A.3., A.4. and A.5. do not cover:

a. Accounting Or Arithmetical Errors Or Omissions

Loss resulting from accounting or arithmetical errors or omissions.

b. Exchanges Or Purchases

Loss resulting from the giving or surrendering of property in any exchange or purchase.

c. Fire

Loss or damage resulting from fire, however caused, except:

- (1) Loss of or damage to "money" and "securities"; and
- (2) Loss from damage to a safe or vault.

d. Money Operated Devices

Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

e. Motor Vehicles Or Equipment And Accessories

Loss of or damage to motor vehicles, trailers or semi-trailers or equipment and accessories attached to them.

f. Transfer Or Surrender Of Property

- (1) Loss of or damage to property after it has been transferred or surrendered to a person or place outside the "premises" or "banking premises":
 - (a) On the basis of unauthorized instructions;
 - (b) As a result of a threat to do bodily harm to any person;
 - (c) As a result of a threat to do damage to any property;
 - (d) As a result of a threat to introduce a denial of service attack into your computer system;
 - (e) As a result of a threat to introduce a virus or other malicious instruction into your computer system which is designed to damage, destroy or corrupt data or computer programs stored within your computer system;
 - (f) As a result of a threat to contaminate, pollute or render substandard your products or goods; or
 - (g) As a result of a threat to disseminate, divulge or utilize:
 - (i) Your confidential information; or
 - (ii) Weaknesses in the source code within your computer system.
- (2) But, this Exclusion does not apply under Insuring Agreement **A.5.** to loss of "money", "securities" or "other property" while outside the "premises" in the care and custody of a "messenger" if you:
 - (a) Had no knowledge of any threat at the time the conveyance began; or
 - (b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

g. Vandalism

Loss from damage to the "premises" or its exterior, or to any safe, vault, cash register, cash box, cash drawer or "other property" by vandalism or malicious mischief.

h. Voluntary Parting Of Title To Or Possession Of Property

Loss resulting from your, or anyone acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

4. Insuring Agreement A.6. does not cover:

a. Credit Card Transactions

Loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value or other cards or the information contained on such cards.

b. Funds Transfer Fraud

Loss resulting from a "fraudulent instruction" directing a financial institution to transfer, pay or deliver "funds" from your "transfer account".

c. Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

5. Insuring Agreement A.7. does not cover:

COMPUTER FRAUD

Loss resulting from the use of any computer to fraudulently cause a transfer of "money", "securities" or "other property".

E. Conditions

1. Conditions Applicable To All Insuring Agreements

a. Additional Premises Or Employees

If, while this policy is in force, you establish any additional "premises" or hire additional "employees", other than through consolidation or merger with, or purchase or acquisition of assets or liabilities of, another entity, such "premises" and "employees" shall automatically be covered under this policy. Notice to us of an increase in the number of "premises" or "employees" need not be given and no additional premium need be paid for the remainder of the Policy Period shown in the Declarations.

b. Cancellation Of Policy

- (1) The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- (2) We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - (a) 10 days before the effective date of cancellation if we cancel for non-payment of premium; or

- (b) 30 days before the effective date of cancellation if we cancel for any other reason.
- (3) We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- (4) Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- (5) If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- (6) If notice is mailed, proof of mailing will be sufficient proof of notice.

c. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

d. Concealment, Misrepresentation Or Fraud

This policy is void in any case of fraud by you as it relates to this policy at any time. It is also void if you or any other Insured, at any time, intentionally conceal or misrepresent a material fact concerning:

- (1) This policy;
- (2) The property covered under this policy;
- (3) Your interest in the property covered under this policy; or
- (4) A claim under this policy.

e. Consolidation – Merger Or Acquisition

If you consolidate or merge with, or purchase or acquire the assets or liabilities of, another entity:

- (1) You must give us written notice as soon as possible and obtain our written consent to extend the coverage provided by this policy to such consolidated or merged entity or such purchased or acquired assets or liabilities. We may condition our consent by requiring payment of an additional premium; but

- (2) For the first 90 days after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities, the coverage provided by this policy shall apply to such consolidated or merged entity or such purchased or acquired assets or liabilities, provided that all "occurrences" causing or contributing to a loss involving such consolidation, merger or purchase or acquisition of assets or liabilities, must take place after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities.

f. Cooperation

You must cooperate with us in all matters pertaining to this policy as stated in its terms and conditions.

g. Duties In The Event Of Loss

After you "discover" a loss or a situation that may result in loss of or damage to "money", "securities" or "other property" you must:

- (1) Notify us as soon as possible. If you have reason to believe that any loss (except for loss covered under Insuring Agreement A.1. or A.2.) involves a violation of law, you must also notify the local law enforcement authorities.
- (2) Submit to examination under oath at our request and give us a signed statement of your answers.
- (3) Produce for our examination all pertinent records.
- (4) Give us a detailed, sworn proof of loss within 120 days.
- (5) Cooperate with us in the investigation and settlement of any claim.

h. Employee Benefit Plans

- (1) The "employee benefit plans" shown in the Declarations (hereafter referred to as Plan) are included as Insureds under Insuring Agreement A.1.
- (2) If any Plan is insured jointly with any other entity under this policy, you or the Plan Administrator must select a Limit of Insurance for Insuring Agreement A.1. that is sufficient to provide a Limit of Insurance for each Plan that is at least equal to that required if each Plan were separately insured.

- (3) With respect to loss sustained or "discovered" by any such Plan, Insuring Agreement **A.1.** is replaced by the following:

We will pay for loss of or damage to "funds" and "other property" resulting directly from fraudulent or dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

- (4) If the first Named Insured is an entity other than a Plan, any payment we make for loss sustained by any Plan will be made to the Plan sustaining the loss.
- (5) If two or more Plans are insured under this policy, any payment we make for loss:
- (a) Sustained by two or more Plans; or
 - (b) Of commingled "funds" or "other property" of two or more Plans;
- resulting directly from an "occurrence" will be made to each Plan sustaining loss in the proportion that the Limit of Insurance required for each Plan bears to the total Limit of Insurance of all Plans sustaining loss.
- (6) The Deductible Amount applicable to Insuring Agreement **A.1.** does not apply to loss sustained by any Plan.

i. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the Policy Period shown in the Declarations and up to 3 years afterward.

j. Extended Period To Discover Loss

We will pay for loss that you sustained prior to the effective date of cancellation of this policy, which is "discovered" by you:

- (1) No later than 1 year from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by you, whether from us or another insurer, replacing in whole or in part the coverage afforded under this policy, whether or not such other insurance provides coverage for loss sustained prior to its effective date.

- (2) No later than 1 year from the date of that cancellation with regard to any "employee benefit plans".

k. Inspections And Surveys

- (1) We have the right to:
- (a) Make inspections and surveys at any time;
 - (b) Give you reports on the conditions we find; and
 - (c) Recommend changes.
- (2) We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
- (a) Are safe or healthful; or
 - (b) Comply with laws, regulations, codes or standards.
- (3) Paragraphs **k.(1)** and **k.(2)** apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

l. Joint Insured

- (1) If more than one Insured is named in the Declarations, the first Named Insured will act for itself and for every other Insured for all purposes of this policy. If the first Named Insured ceases to be covered, then the next Named Insured will become the first Named Insured.
- (2) If any Insured, or partner, "member" or officer of that Insured has knowledge of any information relevant to this policy, that knowledge is considered knowledge of every Insured.
- (3) An "employee" of any Insured is considered to be an "employee" of every Insured.

(4) If this policy or any of its coverages is cancelled as to any Insured, loss sustained by that Insured is covered only if it is "discovered" by you:

(a) No later than 1 year from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by that Insured, whether from us or another insurer, replacing in whole or in part the coverage afforded under this policy, whether or not such other insurance provides coverage for loss sustained prior to its effective date.

(b) No later than 1 year from the date of that cancellation with regard to any "employee benefit plans".

(5) We will not pay more for loss sustained by more than one Insured than the amount we would pay if all such loss had been sustained by one Insured.

(6) Payment by us to the first Named Insured for loss sustained by any Insured, other than an "employee benefit plan", shall fully release us on account of such loss.

m. Legal Action Against Us

You may not bring any legal action against us involving loss:

(1) Unless you have complied with all the terms of this policy;

(2) Until 90 days after you have filed proof of loss with us; and

(3) Unless brought within 2 years from the date you "discovered" the loss.

If any limitation in this Condition is prohibited by law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

n. Liberalization

If we adopt any revision that would broaden the coverage under this policy without additional premium within 45 days prior to or during the Policy Period shown in the Declarations, the broadened coverage will immediately apply to this policy.

o. Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate

(1) Loss Sustained Partly During This Policy And Partly During Prior Insurance

If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place:

(a) Partly during the Policy Period shown in the Declarations; and

(b) Partly during the Policy Period(s) of any prior cancelled insurance that we or any affiliate issued to you or any predecessor in interest;

and this policy became effective at the time of cancellation of the prior insurance, we will first settle the amount of loss that you sustained during this Policy Period. We will then settle the remaining amount of loss that you sustained during the Policy Period(s) of the prior insurance.

(2) Loss Sustained Entirely During Prior Insurance

If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place entirely during the Policy Period(s) of any prior cancelled insurance that we or any affiliate issued to you or any predecessor in interest, we will pay for the loss, provided:

(a) This policy became effective at the time of cancellation of the prior insurance; and

(b) The loss would have been covered under this policy had it been in effect at the time of the "occurrence".

We will first settle the amount of loss that you sustained during the most recent prior insurance. We will then settle any remaining amount of loss that you sustained during the Policy Period(s) of any other prior insurance.

(3) In settling loss subject to this Condition:

(a) The most we will pay for the entire loss is the highest single Limit of Insurance applicable during the period of loss, whether such limit was written under this policy or was written under the prior insurance issued by us.

- (b) We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under this policy. If no loss was sustained under this policy, we will apply the Deductible Amount shown in the Declarations to the amount of loss sustained under the most recent prior insurance.

If the Deductible Amount is larger than the amount of loss sustained under this policy, or the most recent prior insurance, we will apply the remaining Deductible Amount to the remaining amount of loss sustained during the prior insurance.

We will not apply any other Deductible Amount that may have been applicable to the loss.

- (4) The following examples demonstrate how we will settle losses subject to this Condition E.1.o.:

EXAMPLE NO. 1:

The insured sustained a covered loss of \$10,000 resulting directly from an "occurrence" taking place during the terms of Policy A and Policy B.

POLICY A

The current policy. Written at a Limit of Insurance of \$50,000 and a Deductible Amount of \$5,000.

POLICY B

Issued prior to Policy A. Written at a Limit of Insurance of \$50,000 and a Deductible Amount of \$5,000.

The amount of loss sustained under Policy A is \$2,500 and under Policy B is \$7,500.

The highest single Limit of Insurance applicable to this entire loss is \$50,000 written under Policy A. The Policy A Deductible Amount of \$5,000 applies. The loss is settled as follows:

1. The amount of loss sustained under Policy A (\$2,500) is settled first. The amount we will pay is nil (\$0.00) because the amount of loss is less than the Deductible Amount (i.e., \$2,500 loss - \$5,000 deductible = \$0.00).

2. The remaining amount of loss sustained under Policy B (\$7,500) is settled next. The amount recoverable is \$5,000 after the remaining Deductible Amount from Policy A of \$2,500 is applied to the loss (i.e., \$7,500 loss - \$2,500 deductible = \$5,000).

The most we will pay for this loss is \$5,000.

EXAMPLE NO. 2:

The insured sustained a covered loss of \$250,000 resulting directly from an "occurrence" taking place during the terms of Policy A and Policy B.

POLICY A

The current policy. Written at a Limit of Insurance of \$125,000 and a Deductible Amount of \$10,000.

POLICY B

Issued prior to Policy A. Written at a Limit of Insurance of \$150,000 and a Deductible Amount of \$25,000.

The amount of loss sustained under Policy A is \$175,000 and under Policy B is \$75,000.

The highest single Limit of Insurance applicable to this entire loss is \$150,000 written under Policy B. The Policy A Deductible Amount of \$10,000 applies. The loss is settled as follows:

1. The amount of loss sustained under Policy A (\$175,000) is settled first. The amount we will pay is the Policy A Limit of \$125,000 because \$175,000 loss - \$10,000 deductible = \$165,000 which is greater than the \$125,000 policy limit.
2. The remaining amount of loss sustained under Policy B (\$75,000) is settled next. The amount we will pay is \$25,000 (i.e., \$150,000 Policy B limit - \$125,000 paid under Policy A = \$25,000).

The most we will pay for this loss is \$150,000.

EXAMPLE NO. 3:

The insured sustained a covered loss of \$2,000,000 resulting directly from an "occurrence" taking place during the terms of Policies A, B, C and D.

POLICY A

The current policy. Written at a Limit of Insurance of \$1,000,000 and a Deductible Amount of \$100,000.

POLICY B

Issued prior to Policy **A**. Written at a Limit of Insurance of \$750,000 and a Deductible Amount of \$75,000.

POLICY C

Issued prior to Policy **B**. Written at a Limit of Insurance of \$500,000 and a Deductible Amount of \$50,000.

POLICY D

Issued prior to Policy **C**. Written at a Limit of Insurance of \$500,000 and a Deductible Amount of \$50,000.

The amount of loss sustained under Policy **A** is \$350,000, under Policy **B** is \$250,000, under Policy **C** is \$600,000 and under Policy **D** is \$800,000.

The highest single Limit of Insurance applicable to this entire loss is \$1,000,000 written under Policy **A**. The Policy **A** Deductible Amount of \$100,000 applies. The loss is settled as follows:

1. The amount of loss sustained under Policy **A** (\$350,000) is settled first. The amount we will pay is \$250,000 (i.e., \$350,000 loss - \$100,000 deductible = \$250,000).
2. The amount of loss sustained under Policy **B** (\$250,000) is settled next. The amount we will pay is \$250,000 (no deductible is applied).
3. The amount of loss sustained under Policy **C** (\$600,000) is settled next. The amount we will pay is \$500,000, the policy limit (no deductible is applied).
4. We will not make any further payment under Policy **D** as the maximum amount payable under the highest single Limit of Insurance applying to the loss of \$1,000,000 under Policy **A** has been satisfied.

The most we will pay for this loss is \$1,000,000.

p. Loss Sustained During Prior Insurance Not Issued By Us Or Any Affiliate

- (1) If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place during the Policy Period of any prior cancelled insurance that was issued to you or a predecessor in interest by another company, and the period of time to discover loss under that insurance had expired, we will pay for the loss under this policy, provided:
 - (a) This policy became effective at the time of cancellation of the prior insurance; and
 - (b) The loss would have been covered under this policy had it been in effect at the time of the "occurrence".
- (2) In settling loss subject to this Condition:
 - (a) The most we will pay for the entire loss is the lesser of the Limits of Insurance applicable during the period of loss, whether such limit was written under this policy or was written under the prior cancelled insurance.
 - (b) We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under the prior cancelled insurance.
- (3) The insurance provided under this Condition is subject to the following:
 - (a) If loss covered under this Condition is also partially covered under Condition **E.1.o.**, the amount recoverable under this Condition is part of, not in addition to, the amount recoverable under Condition **E.1.o.**
 - (b) For loss covered under this Condition that is not subject to Paragraph **(3)(a)**, the amount recoverable under this Condition is part of, not in addition to, the Limit of Insurance applicable to the loss covered under this policy and is limited to the lesser of the amount recoverable under:
 - (i) This policy as of its effective date; or
 - (ii) The prior cancelled insurance had it remained in effect.

q. Other Insurance

If other valid and collectible insurance is available to you for loss covered under this policy, our obligations are limited as follows:

(1) Primary Insurance

When this policy is written as primary insurance, and:

(a) You have other insurance subject to the same terms and conditions as this policy, we will pay our share of the covered loss. Our share is the proportion that the applicable Limit of Insurance shown in the Declarations bears to the total limit of all insurance covering the same loss.

(b) You have other insurance covering the same loss other than that described in Paragraph **(1)(a)**, we will only pay for the amount of loss that exceeds:

(i) The Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not; or

(ii) The Deductible Amount shown in the Declarations;

whichever is greater. Our payment for loss is subject to the terms and conditions of this policy.

(2) Excess Insurance

(a) When this policy is written excess over other insurance, we will only pay for the amount of loss that exceeds the Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not. Our payment for loss is subject to the terms and conditions of this policy.

(b) However, if loss covered under this policy is subject to a Deductible, we will reduce the Deductible Amount shown in the Declarations by the sum total of all such other insurance plus any Deductible Amount applicable to that other insurance.

r. Ownership Of Property; Interests Covered

The property covered under this policy is limited to property:

(1) That you own or lease; or

(2) That you hold for others whether or not you are legally liable for the loss of such property.

However, this policy is for your benefit only. It provides no rights or benefits to any other person or organization. Any claim for loss that is covered under this policy must be presented by you.

s. Premiums

The first Named Insured shown in the Declarations:

(1) Is responsible for the payment of all premiums; and

(2) Will be the payee for any return premiums we pay.

t. Records

You must keep records of all property covered under this policy so we can verify the amount of any loss.

u. Recoveries

(1) Any recoveries, whether effected before or after any payment under this policy, whether made by us or you, shall be applied net of the expense of such recovery:

(a) First, to you in satisfaction of your covered loss in excess of the amount paid under this policy;

(b) Second, to us in satisfaction of amounts paid in settlement of your claim;

(c) Third, to you in satisfaction of any Deductible Amount; and

(d) Fourth, to you in satisfaction of any loss not covered under this policy.

(2) Recoveries do not include any recovery:

(a) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or

(b) Of original "securities" after duplicates of them have been issued.

v. Territory

This policy covers loss that you sustain resulting directly from an "occurrence" taking place within the United States of America (including its territories and possessions), Puerto Rico and Canada.

w. Transfer Of Your Rights And Duties Under This Policy

(1) Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured.

- (2) If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having temporary custody of your property will have your rights and duties but only with respect to that property.

x. Transfer Of Your Rights Of Recovery Against Others To Us

You must transfer to us all your rights of recovery against any person or organization for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.

y. Valuation – Settlement

- (1) The value of any loss for purposes of coverage under this policy shall be determined as follows:
- (a) Loss of "money" but only up to and including its face value. We will, at your option, pay for loss of "money" issued by any country other than the United States of America:
 - (i) At face value in the "money" issued by that country; or
 - (ii) In the United States of America dollar equivalent determined by the rate of exchange published in *The Wall Street Journal* on the day the loss was "discovered".
 - (b) Loss of "securities" but only up to and including their value at the close of business on the day the loss was "discovered". We may, at our option:
 - (i) Pay the market value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities"; or
 - (ii) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, we will be liable only for the 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 the:
 - i. Market value of the "securities" at the close of business on the day the loss was "discovered"; or
 - ii. The Limit of Insurance applicable to the "securities".
- (c) Loss of or damage to "other property" or loss from damage to the "premises" or its exterior for the replacement cost of the property without deduction for depreciation. However, we will not pay more than the least of the following:
- (i) The cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose;
 - (ii) The amount you actually spend that is necessary to repair or replace the lost or damaged property; or
 - (iii) The Limit of Insurance applicable to the lost or damaged property.
- With regard to Paragraphs **y.(1)(c)(i)** through **y.(1)(c)(iii)**, we will not pay on a replacement cost basis for any loss or damage:
- i. Until the lost or damaged property is actually repaired or replaced; and
 - ii. Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.
- If the lost or damaged property is not repaired or replaced, we will pay on an actual cash value basis.
- (2) We will, at your option, settle loss or damage to property other than "money":
- (a) In the "money" of the country in which the loss or damage occurred; or
 - (b) In the United States of America dollar equivalent of the "money" of the country in which the loss or damage occurred determined by the rate of exchange published in *The Wall Street Journal* on the day the loss was "discovered".
- (3) Any property that we pay for or replace becomes our property.

2. Conditions Applicable To Insuring Agreement A.1.

a. Termination As To Any Employee

This Insuring Agreement terminates as to any "employee":

(1) As soon as:

- (a) You; or
- (b) Any of your partners, "members", "managers", officers, directors, or trustees not in collusion with the "employee";

learn of "theft" or any other dishonest act committed by the "employee" whether before or after becoming employed by you.

(2) On the date specified in a notice mailed to the first Named Insured. That date will be at least 30 days after the date of mailing.

We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

b. Territory

We will pay for loss caused by any "employee" while temporarily outside the territory specified in the Territory Condition **E.1.v.** for a period of not more than 90 consecutive days.

3. Conditions Applicable To Insuring Agreement A.2.

a. Deductible Amount

The Deductible Amount does not apply to legal expenses paid under Insuring Agreement **A.2.**

b. Electronic And Mechanical Signatures

We will treat signatures that are produced or reproduced electronically, mechanically or by other means the same as handwritten signatures.

c. Proof Of Loss

You must include with your proof of loss any instrument involved in that loss, or, if that is not possible, an affidavit setting forth the amount and cause of loss.

d. Territory

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition **E.1.v.** does not apply to Insuring Agreement **A.2.**

4. Conditions Applicable To Insuring Agreements A.4. And A.5.

a. Armored Motor Vehicle Companies

Under Insuring Agreement **A.5.**, we will only pay for the amount of loss you cannot recover:

- (1) Under your contract with the armored motor vehicle company; and
- (2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

b. Special Limit Of Insurance For Specified Property

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to:

- (1) Precious metals, precious or semi-precious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles; or
- (2) Manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

5. Conditions Applicable To Insuring Agreement A.6.

a. Special Limit Of Insurance For Specified Property

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

b. Territory

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition **E.1.v.** does not apply to Insuring Agreement **A.6.**

F. Definitions

- 1. "Banking premises" means the interior of that portion of any building occupied by a banking institution or similar safe depository.
- 2. "Counterfeit money" means an imitation of "money" that is intended to deceive and to be taken as genuine.
- 3. "Custodian" means you, or any of your partners or "members", or any "employee" while having care and custody of property inside the "premises", excluding any person while acting as a "watchperson" or janitor.

4. "Discover" or "discovered" means the time when you first become aware of facts which would cause a reasonable person to assume that a loss of a type covered by this policy has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

"Discover" or "discovered" also means the time when you first receive notice of an actual or potential claim in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a loss under this policy.

5. "Employee":

a. "Employee" means:

(1) Any natural person:

(a) While in your service and for the first 30 days immediately after termination of service, unless such termination is due to "theft" or any other dishonest act committed by the "employee";

(b) Who you compensate directly by salary, wages or commissions; and

(c) Who you have the right to direct and control while performing services for you;

(2) Any natural person who is furnished temporarily to you:

(a) To substitute for a permanent "employee" as defined in Paragraph **a.(1)**, who is on leave; or

(b) To meet seasonal or short-term workload conditions;

while that person is subject to your direction and control and performing services for you, excluding, however, any such person while having care and custody of property outside the "premises";

(3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary employee as defined in Paragraph **a.(2)**;

(4) Any natural person who is:

(a) A trustee, officer, employee, administrator or manager, except an administrator or manager who is an independent contractor, of any "employee benefit plan"; and

(b) A director or trustee of yours while that person is engaged in handling "funds" or "other property" of any "employee benefit plan";

(5) Any natural person who is a former "employee", partner, "member", "manager", director or trustee retained as a consultant while performing services for you;

(6) Any natural person who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody of property outside the "premises";

(7) Any "employee" of an entity merged or consolidated with you prior to the effective date of this policy; or

(8) Any of your "managers", directors or trustees while:

(a) Performing acts within the scope of the usual duties of an "employee"; or

(b) Acting as a member of any committee duly elected or appointed by resolution of your board of directors or board of trustees to perform specific, as distinguished from general, directorial acts on your behalf.

b. "Employee" does not mean any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in Paragraph **5.a**.

6. "Employee benefit plan" means any welfare or pension benefit plan shown in the Declarations that you sponsor and which is subject to the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments thereto.

7. "Forgery" means the signing of the name of another person or organization with intent to deceive; it 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.

8. "Fraudulent instruction" means:
- a. An electronic, telegraphic, cable, teletype, telefacsimile or telephone instruction which purports to have been transmitted by you, but which was in fact fraudulently transmitted by someone else without your knowledge or consent;
 - b. A written instruction (other than those described in Insuring Agreement **A.2.**) issued by you, which was forged or altered by someone other than you without your knowledge or consent, or which purports to have been issued by you, but was in fact fraudulently issued without your knowledge or consent; or
 - c. An electronic, telegraphic, cable, teletype, telefacsimile, telephone or written instruction initially received by you which purports to have been transmitted by an "employee" but which was in fact fraudulently transmitted by someone else without your or the "employee's" knowledge or consent.
9. "Funds" means "money" and "securities".
10. "Manager" means a person serving in a directorial capacity for a limited liability company.
11. "Member" means an owner of a limited liability company represented by its membership interest, who also may serve as a "manager".
12. "Messenger" means you, or a relative of yours, or any of your partners or "members", or any "employee" while having care and custody of property outside the "premises".
13. "Money" means:
- a. Currency, coins and bank notes in current use and having a face value; and
 - b. Travelers checks, register checks and money orders held for sale to the public.
14. "Occurrence" means:
- a. Under Insuring Agreement **A.1.:**
 - (1) An individual act;
 - (2) The combined total of all separate acts whether or not related; or
 - (3) A series of acts whether or not related; committed by an "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.o.** or **E.1.p.**
- b. Under Insuring Agreement **A.2.:**
 - (1) An individual act;
 - (2) The combined total of all separate acts whether or not related; or
 - (3) A series of acts whether or not related; committed by a person acting alone or in collusion with other persons, involving one or more instruments, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.o.** or **E.1.p.**
- c. Under All Other Insuring Agreements:
 - (1) An individual act or event;
 - (2) The combined total of all separate acts or events whether or not related; or
 - (3) A series of acts or events whether or not related; committed by a person acting alone or in collusion with other persons, or not committed by any person, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.o.** or **E.1.p.**
15. "Other property" means any tangible property other than "money" and "securities" that has intrinsic value. "Other property" does not include computer programs, electronic data or any property specifically excluded under this policy.
16. "Premises" means the interior of that portion of any building you occupy in conducting your business.
17. "Robbery" means the unlawful taking of property from the care and custody of a person by one who has:
- a. Caused or threatened to cause that person bodily harm; or
 - b. Committed an obviously unlawful act witnessed by that person.
18. "Safe burglary" means the unlawful taking of:
- a. Property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
 - b. A safe or vault from inside the "premises".
19. "Securities" means negotiable and nonnegotiable instruments or contracts representing either "money" or property and includes:
- a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and

