



TOKIO MARINE
HCC

Tokio Marine Europe S.A.

Spanish Branch

Torre Diagonal Mar, Josep Pla 2, Planta 10

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tmhcc.com

POLICY DOCUMENT
CRIME INSURANCE FOR FINANCIAL INSTITUTIONS

PLEASE NOTE:

THIS IS A LOSSES DISCOVERED AND REPORTED POLICY

THE COVER PROVIDED BY THIS POLICY IS AFFORDED SOLELY WITH RESPECT TO LOSSES DISCOVERED DURING THE POLICY PERIOD AND NOTIFIED IN ACCORDANCE WITH THE NOTIFICATION PROVISIONS PROVIDED THAT SUCH LOSSES WERE SUSTAINED AFTER ANY RETROACTIVE DATE (IF APPLICABLE) STATED IN THE SCHEDULE.

THE LIMIT OF LIABILITY AVAILABLE SHALL BE REDUCED, AND MAY BE EXHAUSTED, BY THE PAYMENT OF LOSSES.

THE POLICYHOLDER IS REQUESTED TO READ THIS POLICY AND SCHEDULE CAREFULLY AND TO REVIEW THE COVERAGE WITH AN INSURANCE AGENT OR BROKER TO ENSURE THAT THE POLICYHOLDER UNDERSTANDS THE CONTENTS AND THE TERMS AND CONDITIONS OF COVER.

IF THE POLICY OR SCHEDULE IS INCORRECT PLEASE RETURN IT IMMEDIATELY FOR ALTERATION TO: TOKIO MARINE EUROPE S.A. SUCURSAL EN ESPAÑA, TORRE DIAGONAL MAR, JOSEP PLA 2, PLANTA 10, 08019 BARCELONA, SPAIN.



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SAMPLE



SCHEDULE

POLICY NUMBER:

ITEM 1 POLICYHOLDER:

- (a) Name:
- (b) Principal Address:

ITEM 2 POLICY PERIOD:

- (a) Inception Date:
- (b) Expiration Date:

both days inclusive at local standard time at the Principal Address stated in ITEM 1.

ITEM 3 LIMIT OF LIABILITY:

EUR in the aggregate, for all insurance covers combined

ITEM 4 AGGREGATE SUB-LIMITS:

- (a) Insuring Agreement 1(B)(i)(b) – Cash Letters: EUR 0
- (b) Extension 4(A)(ii) – **Computer Programs** related costs: Not applicable:
- (c) Extension 4(C) – Lost or Paid Interest: EUR 0
- (d) Extension 4(E) – Erroneous Funds Transfer: EUR 0

All Sub-Limits are part of and not in addition to the **Limit of Liability**.

ITEM 5 RETENTION: EUR 0 each and every **Loss**

ITEM 6 PREMIUM: EUR 0 plus applicable tax

ITEM 7 INSURER: TOKIO MARINE EUROPE S.A.

ITEM 8 REQUIRED NOTICES TO BE ADDRESSED TO:

TOKIO MARINE EUROPE S.A. SUCURSAL EN ESPAÑA
Torre Diagonal Mar
Josep Pla, 2, Planta 10
08019 Barcelona, Spain
Attention: Claims Manager



ITEM 9 APPLICABLE LAW AND EXCLUSIVE JURISDICTION:

- (a) Applicable Law:
- (b) Exclusive Jurisdiction:
- (c) Dispute Resolution:

ITEM 10 RETROACTIVE DATE:

Not applicable / EUR

ITEM 11 ENDORSEMENTS ATTACHED AT ISSUANCE:

ENDORSEMENT NO. 1:

ENDORSEMENT NO. 2:

INFORMATION FOR THE POLICYHOLDER REGARDING THE INSURER:

In accordance with Spanish Law, the **Insurer** is required to provide the **Policyholder** with the following information in written form before the conclusion of this Policy:

The risk is insured by TOKIO MARINE EUROPE S.A. having its registered office at 26, Avenue de la Liberté, L-1930, Luxembourg authorised by the Luxembourg Minister of Finance and regulated by the Commissariat aux Assurances (CAA), acting through its Spanish Branch with registered office at Torre Diagonal Mar, Josep Pla 2, Planta 10, 08019 Barcelona, Spain.

The **Policyholder** hereby confirms that it has received the foregoing information in written form before the conclusion of this Policy.

IN WITNESS WHEREOF, the **Insurer** has caused this Policy to be signed in the SCHEDULE by a duly authorised representative of the **Insurer**.



THIS IS A LOSSES DISCOVERED AND REPORTED POLICY.

PLEASE READ IT CAREFULLY.

In consideration of the payment of the premium or agreement to pay the premium, in reliance upon the representations and statements contained in the **Proposal**, which shall be deemed to be incorporated herein and to form part of this Policy, and subject to the terms, conditions, definitions and exclusions contained in this Policy and any endorsements attached thereto, the **Insurer** and the **Policyholder** agree as follows:

1. INSURING AGREEMENTS

The **Insurer** shall indemnify the **Insured** for **Loss** first **Discovered** during the **Policy Period** resulting directly from:

(A) EMPLOYEE DISHONESTY

any dishonest, fraudulent or malicious acts of any **Employee**, whether acting alone or in collusion with any other natural person(s).

In respect of **Loans** and **Trading**, however, this INSURING AGREEMENT (A) covers only those dishonest or fraudulent acts committed by an **Employee** for and which results in an improper financial gain for:

- (i) the **Employee**; or
- (ii) any other natural person acting in collusion with the **Employee** in respect of such dishonest or fraudulent act.

For the purposes of this INSURING AGREEMENT (A), salaries, bonuses, commissions, profit sharing, and any other emoluments or benefits to an **Employee** do not constitute improper financial gain.

Notwithstanding the above, any bonuses, commissions or profit sharing which the **Insured** has paid to an **Employee** for specific transactions in which it is subsequently determined that the **Employee** committed dishonest, fraudulent or malicious acts of a type covered by this INSURING AGREEMENT (A) shall be included in the calculation of the **Loss**.

(B) PHYSICAL LOSS

(i) loss of **Property**:

(a) whilst within **Premises**, or within any automated teller machine of the **Insured** as a result of:

1. actual or attempted burglary, robbery, hold-up, false pretences or theft committed by any natural person physically present on the premises; or
2. mysterious unexplainable disappearance; or
3. being damaged, destroyed or misplaced.

(b) whilst in **Transit** anywhere.

In respect of cash letters lost whilst in **Transit**, coverage under this INSURING AGREEMENT (B)(i)(b) shall apply subject to the **Insured**



having made and retained a legible electronic or photographic record of each negotiable item contained in such cash letter. However, in the event that any required electronic or photographic record is unavailable due to:

1. an electrical, mechanical or other failure of the equipment used in making or retaining such record; or
2. damage to or destruction of such record from any cause,

coverage under this INSURING AGREEMENT (B)(i)(b) in respect such lost cash letters will be subject to the maximum aggregate Sub-Limit stated in ITEM 4(a) of the SCHEDULE.

(ii) loss or destruction of, or damage to:

- (a) furnishings, fixtures, equipment, tangible computer related equipment, alarms, stationery, record books, supplies or safes and vaults, either owned by the **Insured** or for which the **Insured** is liable; or
- (b) the personal property of **Employees** or customers,

whilst within **Premises**, resulting directly from any actual or attempted burglary, robbery, hold-up, theft or larceny, vandalism or malicious mischief at such **Premises**.

(C) DOCUMENT AND WRITTEN INSTRUCTION FRAUD

the **Insured** (or, in respect of (i) and (ii) below, any **Financial Organisation** acting on behalf of the **Insured**) having in good faith and in the ordinary course of business:

(i) FRAUDULENT MEANS OF PAYMENT

given value for **Counterfeit** currency or any **Forged** or **Altered Document** received by such **Insured** or such **Financial Organisation**; or

(ii) FRAUDULENT SECURITIES

acted or relied upon:

- (a) any **Forged, Altered, Counterfeit**, lost or stolen **Security or Similar Written Instrument**; or
- (b) a genuine signature obtained through trick, artifice, fraud or false pretences on an **Original Mortgage Instrument** or an **Original** insurance (including life insurance) policy.

(iii) FRAUDULENT WRITTEN INSTRUCTIONS

acted or relied upon:

- (a) any **Forged** or **Altered Original**: written or printed instruction or advice addressed to the **Insured** which:
 1. requests, authorises, or acknowledges the transfer, payment, delivery or receipt of funds, **Uncertificated Securities** or **Property**; or



2. advises a change to material information upon which the **Insured**, in the normal course of business, would act or rely in relation to the transfer, payment, delivery or receipt of funds, **Uncertificated Securities** or **Property**.

(b) a **Forged** or **Altered Original** written or printed instruction from the **Insured** which contains the signature of an authorised signatory of the **Insured** and which authorises the transfer, payment or delivery of funds, **Uncertificated Securities** or **Property** by the **Insured**, or by the **Financial Organisation** acting on its behalf.

There shall be no liability on the part of the **Insurer** and the **Insured** shall not be entitled to indemnity under this INSURING AGREEMENT (C) save where the following have first been satisfied:

(1) the **Insured**, or the **Financial Organisation** acting on behalf of the **Insured**, is in actual physical possession of the **Document, Security or Similar Written Instrument** or instruction:

- i. when acting or relying thereupon; and
- ii. only in respect of a **Mortgage Instrument** or **Security or Similar Written Instrument** serving as a security for a **Loan**, has continuously had actual physical possession of the **Document, Security or Similar Written Instrument** at all times up until **Discovery**.

For the purposes of this subsection *ii*, physical possession shall be deemed continuous if the above instruments have been lodged with another **Financial Organisation** for safekeeping, exchange, custody, transfer or registration purposes by the **Insured** or the **Financial Organisation** acting on behalf of the **Insured**.

(2) prior to acting upon an instruction prepared by the **Insured**, the natural person acting or relying thereupon has verified the handwritten authorised signature(s) of the **Insured**.

(3) the natural person acting or relying upon the **Document, Security or Similar Written Instrument** or instruction is conversant with the nature thereof and with all written characters contained therein (unless such natural person has received a full translation thereof from a professional translator or from an in-house translation department prior to acting or relying thereupon).

(D) TELEPHONIC AND COMPUTER FRAUD

(i) the **Insured**, or any **Financial Organisation** acting on behalf of the **Insured**, having in good faith and in the ordinary course of business acted or relied upon any **Impaired**:

- (a) **Data**, including **Data** representing **Uncertificated Securities** and **Data** delivered to the **Insured** on **Data Processing Media**; or
- (b) **Electronic Instruction**; or
- (c) **Tested Telephonic Instruction** which purports to be, but which in fact is not, from the **Insured** or from any **Financial Organisation** acting on behalf of the **Insured**; or
- (d) **Computer Program**; or



- (ii) the established legal liability of the **Insured** to any customer of the **Insured**, any **Automated Clearing House**, any **Service Bureau** or any **Financial Organisation** arising solely and directly from any of them having in good faith and in the ordinary course of business acted or relied upon any **Tested Telephonic Instruction** which fraudulently purports to be, but which in fact was not, from the **Insured** or from any **Financial Organisation** acting on behalf of the **Insured**; or
- (iii) damage to or destruction of the **Data, Data Processing Media, Computer Programs** of the **Insured** or to the **Insured's Computer Systems**, resulting solely and directly from the introduction or activation within a **Computer System** of an unauthorised software designed to fraudulently or maliciously infiltrate a **Computer System** and/or to cause damage or destruction to **Data, Data Processing Media, Computer Programs** or **Computer Systems**.

In respect of INSURING AGREEMENT (D)(i)(a):

- (1) where any **Original** document or instrument was provided to the **Insured** together with **Impaired Data**, the liability of the **Insurer** shall be limited to that portion of **Loss** that results solely and directly from the **Insured**, or any **Financial Organisation** acting on behalf of the **Insured**, having actually relied or acted upon such **Impaired Data**;
- (2) where an **Original** document or instrument was used as a source for the preparation of **Data**, the liability of the **Insurer** shall be limited to that portion of **Loss** that would otherwise be covered under INSURING AGREEMENT (C) had the **Insured**, or the **Financial Organisation** acting on behalf of the **Insured**, been presented with such **Original** document or instrument and acted or relied upon it.

In respect of INSURING AGREEMENT (D)(i)(b), there shall be no liability on the part of the **Insurer** and the **Insured** shall not be entitled to indemnity in respect of any **Electronic Instruction** relied upon and which has been transmitted through a mobile and/or landline communications system or telex or telefacsimile, save where such **Electronic Instruction** has been **Tested**.

2. DEFINITIONS

In this Policy the following words in bold shall have the definitions that follow:

- (A) **Alteration** or **Altered** means the material amendment, modification or change of a previously authentic and valid instrument by any other person than the person authorised to prepare or sign such instrument, for a fraudulent purpose.
- (B) **Automated Clearing House** means any corporation or association which operates an electronic clearing and transfer mechanism for the transfer of pre-authorised debits and credits between **Financial Organisations** on behalf of customers of **Financial Organisations**.
- (C) **Certificated Security** means a share, participation or other interest in property of or an enterprise of the issuer or an obligation of the issuer, which is:
 - (i) represented by an instrument issued in bearer or registered form; and
 - (ii) of a type commonly traded on securities exchanges or markets or commonly recognised in any area in which it is issued or dealt in as a medium for investment; and



- (iii) either one of a class or series or by its terms is divisible into a class or series of shares, participations, interest or obligations.
- (D) **Change in Control** means:
 - (i) the appointment of an administrator, receiver, or liquidator or the equivalent in any jurisdiction by or on behalf of the **Policyholder**; or
 - (ii) the **Policyholder** entering into any scheme of arrangement with its creditors; or
 - (iii) the **Policyholder** merging with or consolidating into any other company; or
 - (iv) any person or company other than any **Insured(s)** acting alone or in concert:
 - (a) acquiring ownership or control or assuming control pursuant to a written agreement with other shareholders of more than 50% of the voting rights in the **Policyholder** and/or more than 50% of the outstanding securities representing the present right to vote for the election of the board of directors of the **Policyholder** and/or assuming the right to appoint or remove the majority of the board of directors of the **Policyholder**; or
 - (b) acquiring ownership of all or the majority of the assets of the **Policyholder**.
- (E) **Computer Program** means a collection of instructions that describe a task, or set of tasks, to be carried out by a **Computer System**, including application software, operating systems, firmware and compilers.
- (F) **Computer System** means a computer and all input, output, processing, storage (including off-line media libraries), intranets and communication facilities including related communication or open systems networks and extranets which are connected directly or indirectly to such computer.
- (G) **Counterfeit** means an imitation of currency or any instrument intended to deceive and of such quality as to be taken as **Original** and authentic by the **Insured**.
Counterfeit does not mean:
 - (i) a photocopy or document that has been printed from a scanned or digital copy that has been received via the internet, a mobile or telephone communication system, telex, telefacsimile or a **Computer System**; or
 - (ii) a fictitious instrument which merely contains a fraudulent misrepresentation of fact and is genuinely signed or endorsed.
- (H) **Data** means facts or information converted to a form readily usable within the **Insured's Computer Systems** and which are run and stored therein for use by a **Computer Program**.
Data shall not include any **Electronic Instruction** or **Telephonic Instruction**.
- (I) **Data Processing Media** means the physical components or materials, whether magnetic or optical, on which **Data** or **Computer Programs** are recorded.
- (J) **Discovered** or **Discovery** means the time when the **Insured's** Risk Manager, Head of Audit, Head of Legal or a member of the Board of Directors, or the equivalent, not in collusion with any person committing or implicated in any dishonest, fraudulent or



malicious act covered under this Policy, first becomes aware of facts or circumstances which would cause a reasonable person to believe that a **Loss** of the kind covered under this Policy may have been or may be sustained, regardless of when the acts, transactions or events causing or contributing to such **Loss** occurred, and regardless of whether the knowledge of the **Insured** is sufficient at such time to prove that such **Loss** meets the terms and conditions of this Policy or to establish the amount or details of the **Loss**.

- (K) **Document** means any **Original**: cheque, money order, bill of exchange, banker's draft, banker's acceptance, certificate of deposit issued by the **Insured**, order upon public treasuries, withdrawal order or receipt, or any promissory note which is payable at the **Insured**.
- (L) **Electronic Instruction** means any instruction, message, information or payment transmitted or communicated in digital form to the **Insured** or any **Financial Organisation** acting on behalf of the **Insured**, or purportedly sent by the **Insured** through the internet, a mobile and landline communication system, telex, telefacsimile, a **Computer System** which operates automated teller machines or point of sale terminals or any other system that permits the digital transmission of such an instruction, message, information or payment.
- (M) **Employee** means any natural person who is:
- (i) under any express or constructive contract of employment (whether full time, part-time or temporary) with the **Insured**;
 - (ii) any director, officer, partner or trustee of the **Insured** (which shall be deemed to include a member of a partnership as determined by the Limited Liability Partnership Act 2000 (UK) (or any equivalent enactment in any other relevant jurisdiction) and any subsequent amendments thereto) but only while performing acts within the scope of the usual duties of an **Employee** as defined under (M)(i) above; or
 - (iii) any guest student, intern, secondee or volunteer pursuing studies or gaining work experience while performing services or duties for or on behalf of the **Insured** at any of the **Premises** of the **Insured**; or
 - (iv) any trustee, fiduciary, administrator, or officer of any **Plan**; or
 - (v) authorised by a written contract with the **Insured** to perform accounting services, data processing services, payroll services, or support and maintenance services in respect of the **Insured's Computer System**, outsourced by the **Insured**, whilst providing such services; or
 - (vi) any former **Employee** within the meaning of (M)(i) to (v) above, for a period not exceeding sixty (60) days following termination of such person's services and/or employment with the **Insured**, except when such termination involves an actual, alleged or suspected dishonest, fraudulent or malicious act.

Unless specifically agreed by the **Insurer** and endorsed to this Policy, **Employee** does not include any person who is or acts on behalf of any external auditor, accountant, data processor, solicitor or attorney, nor shall it include any independent:

- (1) broker; or
- (2) financial advisor; or
- (3) representative; or



- (4) agent; or
 - (5) contractor, other than those listed in (v) above,
- of the **Insured** remunerated solely on a sales or commission basis.

(N) **Financial Organisation** means:

- (i) any regulated: bank credit institution, financial institution, undertaking for collective investment in securities, investment firm or similar entity; or
- (ii) any regulated: stock exchange, commodities or mercantile exchange, futures or derivatives exchange, clearing house, mutual trading facility (MTF), alternative trading system (ATS), electronic communication network (ECN), central securities depository, or international central securities depository; or
- (iii) any custodian with which the **Insured** has a written or electronic agreement for the provision of purchasing services, safekeeping, registration and entitlement records for the **Insured** in connection with securities, or any person or organisation subject to regulation and supervision of a regulatory body with which such custodian has a written or electronic agreement to provide the same services and of which the custodian has notified the **Insured** in writing.

(O) **Forgery** or **Forged** means the handwritten signing or endorsing of the name of a genuine natural person, or a copy of the handwritten signature of said person, without authority and with the intent to deceive.

Forgery or **Forged** does not mean the signing or endorsing in whole or in part of one's own name, with or without authority, in any capacity, for any purpose.

Mechanically or electronically reproduced signatures shall be treated the same as a handwritten signature.

(P) **Impaired** means fraudulently or dishonestly: input, modified, extracted, corrupted or deleted or, in respect of **Computer Programs** only, fraudulently prepared or, in respect of **Telephonic Instructions** only, fraudulently or dishonestly initiated.

(Q) **Insurance Instrument** means any:

- (i) written or printed request for a change of beneficiary in any life insurance policy issued by the **Insured**; or
- (ii) policy loan agreement made by the **Insured**; or
- (iii) written or printed assignment to the **Insured** of any life insurance policy; or
- (iv) any death certificate, official declaration of the presumption of death, marriage certificate, civil partnership certificate (pursuant to the Civil Partnership Act 2004 (UK) or any equivalent enactment in any other relevant jurisdiction), birth certificate or other official identification document used in association with any of the items listed in (i), (ii) and (iii) above.

(R) **Insured** means the **Policyholder** or any **Subsidiary** or **Plan**.

(S) **Insured's Computer Systems** means any **Computer System**:

- (i) operated or used by the **Insured** as owner, lessee or authorised user; or
- (ii) operated by a **Service Bureau**; or



- (iii) operated by or on behalf of any custodian with which the **Insured** has a written or electronic agreement for the provision of purchasing services, safekeeping, registration and entitlement records for the **Insured** in connection with securities; or
 - (iv) operated by or on behalf of any **Automated Clearing House**.
- (T) **Insurer** means Tokio Marine Europe S.A., as named in **Error! Reference source not found.** of the SCHEDULE, having its registered office 26, Avenue de la Liberté, L-1930, Luxembourg, acting through its Spanish Branch with registered office at Torre Diagonal Mar, Josep Pla 2, Planta 10, 08019 Barcelona, Spain.
- (U) **Limit of Liability** means the amount stated in ITEM 3 of the SCHEDULE.
- (V) **Loan** means:
- (i) any loan or transaction in the nature of, or amounting to, a loan or extension of credit, including a lease, made by or obtained by or from the **Insured**; or
 - (ii) any note, account, invoice, agreement or other evidence of debt, assigned or sold by or to, or discounted or otherwise acquired by the **Insured**.
- (W) **Loss** means any:
- (i) direct financial loss suffered by the **Insured**; or
 - (ii) compensatory amounts that the **Insured** is legally liable to pay, but solely to the extent covered under INSURING AGREEMENT (D)(ii) or EXTENSION (B); or
 - (iii) amounts covered under EXTENSION (A) or (C).
- Loss** shall not include:
- (a) any form of remuneration, including, but not limited to, salaries, salary increases and promotions, fees, commissions, bonuses, stock options, pensions and any other employee benefit or profit sharing whether earned or not in the normal course of employment, except to the extent covered under INSURING AGREEMENT (A); or
 - (b) any third party liability, except to the extent covered under INSURING AGREEMENT (D)(ii) or EXTENSION (B).
 - (c) indirect or consequential loss.
- All **Loss** arising from one originating cause or source shall be considered one single **Loss** for the purpose of this Policy and will be considered sustained and **Discovered** respectively at the time of the earliest sustaining or **Discovery** of **Loss**.
- (X) **Mortgage Instrument** means any **Original** recorded:
- (i) deed of trust or like instrument pertaining to real property; or
 - (ii) mortgage upon, or interest in, real property; or
 - (iii) assignment of mortgage upon, or interest in, real property; or
 - (iv) deed conveying real property to the mortgagor or provider of the deed of trust or mortgage,



in connection with a **Loan**.

- (Y) **Original** means, in respect of any physical: document, instrument or currency, genuine and not copied, imitated or translated from any other document, instrument or currency, or purporting to be genuine and not copied, imitated or translated from genuine currency or from any other document, instrument or currency.

Original shall not include any photocopy, any scanned or digital copy, or any document printed from such scanned or digital copy.

- (Z) **Phishing** means the attempted or actual dishonest, fraudulent, malicious or criminal obtaining of personal or confidential client or customer account access information through electronic or telephonic means by misleading or deceiving the client or customer as to the origin of a communication (including through the impersonation of the **Insured**, its website or an alleged agent of the **Insured**).

- (AA) **Plan** means any pension, employee benefit, welfare benefit, share saver or share option plan or charitable fund or foundation maintained by the **Policyholder** or any **Subsidiary** for the benefit of past, present and/or future directors and/or **Employees** or their respective beneficiaries, existing on or before the Inception Date of this Policy.

- (BB) **Policyholder** means the entity named in ITEM 1 of the SCHEDULE.

- (CC) **Policy Period** means the period set forth in ITEM 2 of the SCHEDULE.

- (DD) **Premises** means the interior portion of any building owned or occupied by the **Insured** and in which it conducts its business, and, for the purposes of INSURING AGREEMENT (B)(i)(a) only, means the interior portion of any building owned or occupied by any **Financial Organisation** and in which it conducts its business but only whilst that **Financial Organisation** is acting on behalf of the **Insured**.

- (EE) **Property** means the following items, but only to the extent that they are in physical form:

(i) cash (including currency, coins and banknotes), bullion, precious metals of all kinds and in whatsoever form and articles made therefrom, jewellery, gems (including uncut gem stones), precious and semi-precious stones, stamps, postal orders, insurance policies; and

(ii) any **Certificated Security**; and

(iii) all other negotiable and non-negotiable instruments or contracts representing money or other property (real or personal) or interests therein, and other valuable papers, including books of account and other records used by the **Insured** in the conduct of their business; and

(iv) **Data Processing Media**,

and in which the **Insured** has an interest, or which are held by the **Insured** for any purpose or in any capacity and whether so held gratuitously or otherwise.

- (FF) **Proposal** means (i) any publicly available annual financial statements including the annual report of the **Policyholder**, (ii) any document, information or statement made available to the **Insurer** for the purpose of its assessment of the risk to be covered under this Policy, and (iii) any attachments, exhibits or appendices to any of the documents referred to in (i) or (ii).



- (GG) **Retention** means the amount set out in ITEM 5 of the SCHEDULE.
- (HH) **Retroactive Date** means the date set out in ITEM 10 of the SCHEDULE, if applicable.
- (II) **Security or Similar Written Instrument** means any **Original**:
- (i) **Certificated Security**; or
 - (ii) **Statement of Uncertificated Security**; or
 - (iii) **Insurance Instrument**; or
 - (iv) corporate or partnership guarantee; or
 - (v) letter of credit; or
 - (vi) promissory note, except when:
 - (a) issued or purporting to have been issued for use as a means of payment;
 - (b) secured or purporting to be secured directly or indirectly by assigned accounts or what purport to be assigned accounts; or
 - (c) payable at and paid by the **Insured**; or
 - (vii) certificate of deposit when serving as security for a **Loan**, except a certificate of deposit that has been issued by the **Insured**; or
 - (viii) written assignment, power of attorney, stock power, or guarantee presented to order:
 - (a) the transfer, pledge, or release from pledge of any **Certificated Security** or **Uncertificated Security**; or
 - (b) the registration of such transfer, pledge or release from pledge.
- (JJ) **Service Bureau** means a natural person, partnership or corporation authorised by written or electronic agreement with the **Insured** to perform data processing services using **Computer Systems**.
- (KK) **Statement of Uncertificated Security** means a written statement of the issuer of an **Uncertificated Security** containing:
- (i) a description of the issue of which the **Uncertificated Security** is a part; and
 - (ii) the number of shares or units;
 - (a) transferred to the registered owner; or
 - (b) pledged by the registered owner to the registered pledgee; or
 - (c) released from the pledge by the registered pledgee; or
 - (d) registered in the name of the registered owner on the date of the statement; or
 - (e) subject to pledge on the date of the statement; and



- (iii) the name and address of the registered owner and registered pledgee; and
 - (iv) a notation of any liens and restrictions of the issuer and any adverse claims to which the **Uncertificated Security** is or may be subject or a statement that there are no such liens, restriction or adverse claims; and
 - (v) the date:
 - (a) the transfer of the shares or units to the new registered owner of the share or units is registered; or
 - (b) the pledge of the registered pledgee was registered; or
 - (c) of the statement, if it is a periodic or annual statement.
- (LL) **Subsidiary** means:
- (i) any entity in which, at or before the inception of the **Policy Period**, the **Policyholder**, either directly or through one or more Subsidiaries:
 - (a) owns more than 50% of the issued and outstanding shares; or
 - (b) controls more than 50% of the voting rights; or
 - (c) controls the right to vote for the election or removal of the majority of the board of directors; and
 - (ii) by way of automatic extension, any entity acquired or created by the **Policyholder** or any **Subsidiary** during the **Policy Period** in respect to which at least one of (i)(a), (i)(b), or (i)(c) above applies, unless such entity:
 - (a) at the date of its acquisition or creation by the **Policyholder** or **Subsidiary**:
 1. has total gross assets that exceed 15% of the total consolidated assets of the **Policyholder** as reported in its latest audited Annual Report and Accounts (or equivalent in any other relevant jurisdiction), as calculated in accordance with the usual accounting policies, principles and practices of **Policyholder**; or
 2. derives more than 20% of its overall revenue from its operations in the United States of America its territories and possessions; or
 3. generates the majority of its gross revenue from transactions via the internet, or from factoring, accounts receivable financing or invoice discounting; or
 4. has incurred any loss of the type covered by this Policy with a quantum greater than the **Retention** within the past five (5) years of operating as the former business; or
 - (b) is created or acquired by the **Policyholder** or any **Subsidiary** for the purpose of acquiring assets and liabilities (that are not assets and liabilities of a Company), and which after such acquisition of assets or liabilities, shall fulfil any of 1 to 4 above; and



- (iii) by way of optional extension, any entity created or acquired by the **Policyholder** during the **Policy Period** whereby either (ii)(a) or (ii)(b) above applies, but for which the **Insurer** has at its sole discretion agreed, by endorsement to this Policy, to include as a **Subsidiary**, provided that coverage shall only apply in respect of such entity after the **Policyholder**:
 - (a) has provided sufficient details to permit the **Insurer** to assess and evaluate the potential increase in exposure; and
 - (b) has paid any reasonable additional premium and accepted any amendment to the Policy terms required by the **Insurer**.

Cover for any **Subsidiary** shall only apply to **Loss** which results directly from any acts, omissions or events taking place and **Discovered** while such entity is a **Subsidiary**.

(MM) **Telephone Account Code** means a confidential and protected string of characters that identifies or authenticates a person and permits said person to gain access to a **Telephone System**:

- (i) for the purpose of making long distance toll calls or utilising voice mail box messaging capabilities or other similar functional features of said system; or
- (ii) in order to perform security functions, system administration or maintenance functions,

which, upon a maximum of three (3) unsuccessful input attempts, causes access to the **Telephone System** to be automatically terminated.

(NN) **Telephone System** means any private branch exchange (PBX), third party hosted telephony service, voice mail processor, automated call attendant or a **Computer System** (including IP telephony) that provides similar capability for the direction or routing of telephone calls in a voice communication network, owned or operated by or for the exclusive benefit of the **Insured**.

(OO) **Telephonic Instruction** means any instruction or advice made by voice over the telephone, including by voice over internet protocol (VoIP) or other forms of IP or broadband telephony.

(PP) **Terrorism** means:

- (i) the actual or attempted:
 - (a) use or threatened use of force or violence against a person or property; or
 - (b) commission of an act dangerous to human life or property; or
 - (c) commission of an act that interferes with or disrupts an electronic or communication system,

undertaken by any person or group of persons, whether or not acting on behalf of or in connection with any organisation, government, power, authority or military force, committed for political, religious, ideological or similar reasons for the purpose of intimidating, coercing or harming a government or international organisation, a population or any segment thereof, or to disrupt any segment of the economy; or

- (ii) any act which is verified or recognised by the Government of the country designated in ITEM 9(b) of the Schedule as an act of terrorism.



- (QQ) **Tested** means the authentication and confirmation of the contents, unaltered transmission and originator, of a **Telephonic Instruction**:
- (i) by the use of digital signatures, public key cryptography, asymmetric cryptography, a Personal Identification Number (PIN), or other similar technologies or encryption methods; or
 - (ii) by the use of a 'call back' to an authorised person other than the individual initiating the communication; or
 - (iii) from or purported to be from any private natural person customers or client, by the use of unique password or security code or unique personal security details.
- (RR) **Trade or Trading** means all types of purchase, sale or exchange transactions or other dealing in securities, commodities, derivatives, foreign or federal funds, currencies, foreign exchange and interest therein, and the like (including but not limited to the purchase of inventories).
- (SS) **Transit** means any moving of **Property** outside the **Premises** by:
- (i) an **Employee** duly authorised by the **Insured** to have the care and custody of such **Property** for this purpose; or
 - (ii) any security or armoured motor vehicle company for the purpose of transportation on behalf of the **Insured**.
- Transit** is deemed to commence upon receipt of the **Property** from or on behalf of the **Insured** by the transporting person or company and to end immediately upon delivery to the designated recipient or its agent.
- (TT) **Uncertificated Security** means a share, participation or other interest in property of or an enterprise of the issuer or an obligation of the issuer which:
- (i) does not qualify as a **Certificated Security**; or
 - (ii) represents a **Certificated Security** that has been surrendered and which has been combined into a master depository note and immobilised.
- (UU) **Ultimate Net Loss** means the actual net **Loss** of the **Insured** after proper deduction for all recoveries made by the **Insured** including but not limited to payments against principal, interest and commissions and salvages, but excluding all expenses for or of salaried **Employees** incurred in the investigation or adjustment of claims, actions or proceedings, unless specifically agreed by the **Insurer**.

Nothing in this Policy shall be construed to mean that a **Loss** is not recoverable hereunder until the **Ultimate Net Loss** has been ascertained.

3. EXCLUSIONS

The **Insurer** shall not be liable to make any payment in connection with the following:

(A) **INDIRECT LOSS**

- (i) indirect or consequential loss to the **Insured**, except to the extent covered under INSURING AGREEMENT (D)(ii), EXTENSION (A) or EXTENSION (B); or



- (ii) loss or deprivation of income, loss of profits, interest, dividends, fees, commissions and the like which should have accrued to the **Insured**, except to the extent covered under EXTENSION (C); or
- (iii) that part of any loss resulting from or arising directly or indirectly out of or from market fluctuation or depreciation, financial distress, loan or counterparty default, insolvency, economic or market conditions.

(B) FINES, PENALTIES AND NON-COMPENSATORY DAMAGES

any fines or penalties or any punitive, exemplary or multiplied damages.

(C) PRIOR OR SUBSEQUENT LOSS

Loss:

- (i) sustained before the Retroactive Date, if applicable; or
- (ii) first **Discovered** prior to the Inception Date specified in ITEM 2(a) of the SCHEDULE; or
- (iii) first **Discovered** after the Expiration Date specified in ITEM 2(b) of the SCHEDULE or after the effective date of termination of this Policy, whichever is earlier; or
- (iv) arising out of, or in connection with, any fact, circumstance, or event, notified to any insurer of any other policy of insurance.

(D) EMPLOYEE ACTS

Loss resulting directly or indirectly from any dishonest, fraudulent or malicious act or omission of any **Employee**, whether acting alone or in collusion with any other natural person(s), unless such **Loss** is covered under INSURING AGREEMENT (A).

(E) DIRECTORS/PARTNERS INFIDELITY

Loss resulting directly or indirectly from any dishonest, fraudulent or malicious act or omission of any director, officer, partner or trustee of the **Insured**, whether acting alone or in collusion with any other natural person(s), unless such **Loss** is covered under INSURING AGREEMENT (A).

(F) PROPERTY DAMAGE

loss of or damage to:

- (i) any office, premises or real estate, however caused, except to the extent covered under INSURING AGREEMENT (B);
- (ii) any property (other than **Property**) as a result of:
 - (a) fire, explosion, implosion or collapse; or
 - (b) any act of God or natural event, including but not limited to hurricane, typhoon, tornado, earthquake or subterranean fire, or ensuing loss or damage by fire, flood or looting; or
- (iii) any property arising out of, based upon or attributable to:



- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
- (b) wear, tear, gradual deterioration, inherent vice, latent defect, fault in design, moth or vermin.

(G) SAFE DEPOSIT CONTENTS

loss of or damage to:

- (i) any **Property** contained any safe deposit box of a customer; or
- (ii) any property, other than identifiable **Certificated Securities** or Statements of **Uncertificated Security**, held by the **Insured** in safe custody on behalf of a customer of the **Insured**,

except to the extent covered under INSURING AGREEMENT (A).

(H) TRAVELLERS CHEQUES, BILLS OF LADING AND SIMILAR DOCUMENTS

Loss resulting directly or indirectly from any items which are or purport to be travellers' cheques, bills of lading, shipping documents, warehouse receipts, trust receipts, accounts receivable, or any other bills, documents or receipts similar in nature or effect or serving a similar purpose, unless such **Loss** is covered under INSURING AGREEMENT (A).

(I) WAR AND TERRORISM

loss or damage of or to physical property arising out of or relating to any:

- (i) war, invasion, act of foreign enemy, hostile operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, riot or civil commotion, military or usurped power or martial law; or
- (ii) act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to such loss, damage or destruction, except to the extent such loss or damage:
 - (a) constitutes a **Loss** covered under INSURING AGREEMENT (B); and
 - (b) results directly from actual or attempted theft, larceny, hold-up, robbery or burglary, or any similar act, by any natural person actually or allegedly connected to **Terrorism**.
- (iii) action taken in controlling, preventing or suppressing any act of **Terrorism**.

(J) PROPERTY IN THE POST

loss of **Property** while in the custody of any postal service other than **Property** sent via registered mail, recorded delivery or courier, except to the extent covered under INSURING AGREEMENT (A).

(K) LOANS

Loss resulting directly or indirectly, wholly or partially from the complete or partial non-payment of or default upon any **Loan**, unless such **Loss** is covered under INSURING AGREEMENT (A), INSURING AGREEMENT (C) or INSURING AGREEMENT (D).



(L) UNCOLLECTED FUNDS

Loss resulting from payments or withdrawals against items of deposit received by the **Insured** which are not finally paid for any reason including but not limited to forgery, trick, artifice, false pretences, cheque kiting or cross-firing or any other fraud, unless such **Loss** is covered under INSURING AGREEMENT (A), INSURING AGREEMENT (B), INSURING AGREEMENT (C), INSURING AGREEMENT (D) or EXTENSION (E).

(M) ERRONEOUS PAYMENTS

Loss resulting from payments or withdrawals involving funds which have been transferred, paid, delivered or otherwise credited to or by the **Insured** due to error, unless such **Loss** is covered under INSURING AGREEMENT (A), INSURING AGREEMENT (B), INSURING AGREEMENT (D), or EXTENSION (E).

(N) DEBIT OR CREDIT CARDS

Loss resulting from the use or purported use of any personal or corporate credit, debit, charge, access, convenience, smart, identification or other cards similar in nature or effect, whether issued by, or purporting to have been issued by, the **Insured** or by any other person or organisation, unless such **Loss** is covered under INSURING AGREEMENT (A) or INSURING AGREEMENT (D).

(O) AUTHORISED ACCESS

Loss resulting directly or indirectly from the input of **Data** at an authorised electronic terminal by a customer, or by another person who had authorised access to the authentication mechanism of the customer, except to the extent such customer or other person obtained and used access beyond their authorised access level as a direct result of an act or peril covered by INSURING AGREEMENT (A) or INSURING AGREEMENT (D).

(P) FRAUDULENT FEATURES IN COMPUTER PROGRAMS

Loss resulting directly or indirectly from fraudulent features contained in any **Computer Program** developed for sale to, or sold to, more than one customer at the time of its acquisition from a vendor or consultant unless:

- (i) no other purchaser of the **Computer Program** has sustained a loss of the type covered under this Policy resulting from such fraudulent features within a period of sixty (60) days of **Discovery**; or
- (ii) such fraudulent features were inserted subsequent to the date of acquisition as part of tailor-made modifications to the **Insured's Computer Systems**; or
- (iii) at the time such **Loss** is sustained, such fraudulent features are contained only in the **Computer Program** purchased by the **Insured** and not in that purchased by any other customer.

(Q) PROPRIETARY INFORMATION, TRADE SECRETS AND INTELLECTUAL PROPERTY

Loss resulting directly or indirectly from the loss, the actual or alleged plagiarism, or the accessing of any confidential information, including but not limited to:

- (i) **Computer Programs**; or
- (ii) customer information; or



- (iii) any trade secret, including but not limited to any information (including a formula, compilation, pattern, programme, device, method, process, technique or know-how) that derives independent economic value, actual or potential, from not being generally known and not readily ascertainable through proper means by another person who can obtain economic advantage from its disclosure or use; or
- (iv) patents, trademarks, trade names or copyrights,

unless to the extent such confidential information is used to support or facilitate the commission of an act covered by any one of INSURING AGREEMENTS (A) to (D).

(R) EXTORTION AND KIDNAP

Loss resulting directly or indirectly from any actual, threatened or attempted extortion or kidnap and ransom, except to the extent covered under INSURING AGREEMENT (A) or EXTENSION (D).

(S) FRAUDULENT DIGITAL DATA

Loss resulting directly from the **Insured** (or a **Financial Organisation** acting on behalf of the **Insured**) having acted or relied upon any physical documents, physical instruments or physical instructions presented in dematerialised form in respect of which **Loss** the **Insured** would not have been entitled to cover under INSURING AGREEMENT (C) had the documents, instruments or instructions in question been presented in physical form and acted or relied upon.

(T) FRAUDULENT FINANCIAL DOCUMENTS

Loss resulting directly or indirectly from any physical or dematerialised documents that represent fictitious, dishonest or fraudulent:

- (i) financial accounts or records;
- (ii) statements of account;
- (iii) valuations of investments or real property; or
- (iv) financial statements of condition

produced or presented in the course of applying for or obtaining:

- (a) a **Loan** or guarantee; or
- (b) actual or committed investment funds; or
- (c) the proceeds of insurance (including life insurance) policies, held by, or from, the **Insured**.

4. EXTENSIONS

Subject always to the other terms, conditions and exclusions of this Policy (unless specified otherwise), the following extensions are added to the Policy:



(A) FEES AND EXPENSES

The **Insurer** shall indemnify the **Insured** for the reasonable costs, fees and expenses paid by the **Insured** with the prior written consent of the **Insurer**:

- (i) for independent external accountants, investigators or other experts to determine the amount of **Loss** covered under this Policy; and
- (ii) for the verification or removal of **Computer Programs** that are the subject of a **Loss** covered under INSURING AGREEMENT (D), subject to the Sub-limit stated in ITEM 4(b) of the SCHEDULE; and
- (iii) for telephone expenses, wages paid to extra **Employees** or overtime wages to regular **Employees**, incurred by the **Insured** in identifying the depositors of cheques or drafts contained in a cash letter and/or in assisting depositors in obtaining duplicates thereof in connection with a **Loss** covered under INSURING AGREEMENT (B)(i)(b); and
- (iv) in the defence of any demand, claim, suit or legal proceeding against the **Insured**, which, upon conclusion, results in a **Loss**, provided always that such legal fees, costs and expenses are not recoverable from any other party.

The **Insurer** shall only be liable to indemnify the **Insured** under this EXTENSION (A) once the **Insurer** has determined and notified the **Insured** that it is liable to indemnify the **Insured** for the **Loss** considered but solely to the extent such fees, costs and expenses relate directly to such **Loss**.

(B) LEGAL LIABILITY

The **Insurer** shall indemnify the **Insured** for the compensatory amounts paid to a third party for the loss of or damage to funds or property of said third party resulting solely and directly from a peril covered under the INSURING AGREEMENTS 1(A) to 1(D) and for which loss or damage the **Insured** is legally liable to that third party.

The liability of the **Insurer** under this EXTENSION (B) shall not exceed the compensation amount strictly necessary to restore the injured third party to the financial situation of the said third party in respect of the lost or damaged funds or property immediately prior to loss thereof or damage thereto and shall not include any other compensation, damages or sanctions.

For the purposes of this EXTENSION (B):

- (i) the definition of **Discovery** is deemed to include the moment when the **Insured**'s Risk Manager, Head of Audit, Head of Legal or any member of the Board of Directors, or the equivalent becomes aware of any claim or circumstance which would cause a reasonable person to believe that a **Loss** of the kind covered by this EXTENSION (B) might be or might have been sustained, regardless of whether such knowledge is sufficient at that time to prove that such **Loss** meets the terms and conditions of this Policy or to establish the amount or details of the **Loss**.
- (ii) in respect of any legal liability arising from a peril covered under INSURING AGREEMENT 1(D) any **Loss** resulting from or connected to **Phishing** shall be covered only to the extent that:
 - (a) such **Loss** arises from a single act or series of related acts committed by a single identified third party whether acting alone or in collusion with others;



or, where such third party cannot be identified by name,

- (b) the **Insured** can demonstrate, on the balance of probabilities, that such **Loss** arises from the acts of a single person or persons acting alone or in collusion with others,

in which case all **Loss** arising from the related acts of a single person or group of persons shall be considered one single **Loss** for the purpose of this EXTENSION (B).

(C) LOST OR PAID INTEREST

The **Insurer** shall indemnify the **Insured** for the amount of any interest which:

- (i) is not receivable by the **Insured**; or
- (ii) becomes payable by the **Insured**;

as a direct result of a **Loss** covered under any INSURING AGREEMENT of this Policy.

Cover under this EXTENSION (C) shall be limited to interest that is not paid or received between the date of sustaining such **Loss** and **Discovery**, and such interest shall be calculated based on the average base rate of the European Central Bank between these two dates.

Cover under this EXTENSION (C) is subject to the maximum aggregate Sub-Limit stated in ITEM 4(c) of the SCHEDULE.

(D) EXTORTION

The **Insurer** shall indemnify the **Insured** for **Loss** resulting directly from loss of funds or **Property** surrendered away from **Premises**, or the transfer by the **Insured** of funds or **Uncertificated Securities** through an electronic payment system, as the result of a threat communicated to the **Insured** to:

- (i) do bodily harm to a director, trustee, **Employee** or partner of the **Insured** (or to any relative, partner or invitee of such director, trustee, **Employee** or partner) who is actually or allegedly being held captive; or
- (ii) do damage to **Premises**; or
- (iii) cause the **Insured** to transfer, pay or deliver any funds, **Uncertificated Securities** or **Property** (either directly, or by selling or disclosing to others confidential security code that enable its recipient to do so) by means of the **Insured's Computer Systems**; or
- (iv) damage or destroy the **Electronic Instructions** or **Data** of the **Insured** while stored within the **Insured's Computer System** by way of introduction or activation of a software designed to infiltrate the **Insured's Computer System** and/or to cause such damage or destruction; or
- (v) to deny access to the **Insured's Computer System**; or

provided that prior to the surrender of such funds, **Uncertificated Securities** or **Property**:

- (a) the person receiving the threat has made a reasonable effort to report the demand by the extortionist to an associate; and



- (b) a reasonable effort has been made to report the demand by the extortionist to the local law enforcement authorities having jurisdiction over such matters and reasonably complies with their recommendations, instructions or suggestions under the circumstances; and
- (c) every reasonable effort and investigation has been made and conducted to establish whether any threat of the type described in (iii), (iv) or (v) above is technologically credible in the particular instance and such effort and investigation has concluded positively.

(E) **ERRONEOUS FUNDS TRANSFER**

The **Insurer** shall indemnify the **Insured** for **Loss** resulting solely and directly from the wrongful and unlawful retention of funds, **Uncertificated Securities** or **Property** by a third party recipient as a direct result of the transfer, payment or delivery by the **Insured** in good faith and in the ordinary course of business, or by a **Financial Organisation** acting on behalf of the **Insured**, of such funds, **Uncertificated Securities** or **Property** to an account other than the account intended to receive it, or of a greater amount of funds, **Uncertificated Securities** or **Property** than was intended, and where, following the **Insured** having exhausted every reasonable course of action to secure recovery, it is not possible for the **Insured** to recover the funds, **Uncertificated Securities** or **Property** because:

- (i) the funds, **Uncertificated Securities** or **Property** cannot be located;
- (ii) the recipient is unknown; or
- (iii) the funds, **Uncertificated Securities** or **Property** cannot be lawfully recovered from the recipient.

Cover under this EXTENSION (E) is subject to the maximum aggregate Sub-Limit stated in ITEM 4(d) of the SCHEDULE.

(F) **TELEPHONE TOLL FRAUD**

The **Insurer** shall indemnify the **Insured** for **Loss** resulting directly from any telephone toll charges incurred due to the unauthorised or fraudulent access or manipulation of a **Telephone System** protected by a **Telephone Account Code**.

(G) **LOSS OF SECURITY RIGHTS**

The **Insurer** shall indemnify the **Insured** for **Loss** resulting directly from the loss of subscription, redemption, conversion or other similar privileges through the misplacement, loss of, or damage to any **Certificated Security** or **Data** representing an **Uncertificated Security**, or **Data Processing Media** upon which such **Data** is stored or recorded.

5. **LOSS NOTIFICATION AND BASIS OF VALUATION**

(A) **LOSS NOTIFICATION AND PROOF OF LOSS**

- (i) Upon **Discovery** of a **Loss** or potential **Loss**, the **Insured** shall:
 - (a) as soon as practicable within the **Policy Period**, give written notice, including full details, to the **Insurer** and, where it has not been reasonably practicable for the **Insured** to give notice during the **Policy Period**, then notice shall be given within thirty (30) days of the date of expiration of the **Policy Period**.

The **Insurer** shall only be liable in respect of **Loss** where notification has been given in compliance with this clause 5(A)(i)(a).

(b) within six (6) months after **Discovery**, or within such further period as agreed to in writing by the **Insurer**, furnish written proof of **Loss** to the **Insurer** with full particulars of the **Loss** by specifying or establishing the following elements, subject to any other proof of loss format agreed to in writing by the **Insurer**:

1. **Loss** attributed to acts covered by INSURING AGREEMENT (A):

- i. the identity of the person responsible for the **Loss** or, if such person is not identifiable, the demonstration, on the balance of probabilities, that such **Loss** was caused by an **Employee**; and
- ii. the specific dishonest, fraudulent or malicious acts involved in each transaction or item constituting such **Loss**; and
- iii. where applicable, the improper personal financial gain obtained by any (identifiable or unidentifiable) **Employee** for each **Loan** or **Trading**; and
- iv. the demonstration of a causal link between such dishonest, fraudulent or malicious acts and the resultant **Loss**;

2. **Loss** attributed to acts covered by INSURING AGREEMENT (C):

the demonstration that, had the Negotiable Instruments, **Certificated Securities** or Money in question been genuine and not been **Forged** or **Counterfeit** or had not borne **Alteration**, the **Insured** would not have sustained the **Loss** claimed;

3. **Loss** attributed to acts covered by any other INSURING AGREEMENT or EXTENSION:

the demonstration that such **Loss** directly resulted from the peril covered by such INSURING AGREEMENT or EXTENSION and not from economic conditions or other contributing causes.

There shall be no liability on the part of the **Insurer** and the **Insured** shall not be entitled to indemnity under this Policy save where all provisions of this clause 5(A)(i)(b) have been satisfied.

(c) provide all requested information and documents and cooperate fully with the **Insurer** and its representatives in all matters pertaining to any **Loss** notified hereunder.

(ii) All notices under this clause 5(A) shall be in writing, referring to the Policy Number, and be made to the address set out in ITEM 8 of the SCHEDULE.



(B) BASIS OF VALUATION

The valuation of **Loss** under this Policy shall be determined as follows:

(i) **Ultimate Net Loss**

The maximum liability of the **Insurer** in respect of any **Loss** shall not exceed the **Ultimate Net Loss** of the **Insured**, subject to any applicable **Retention**.

(ii) Securities

The maximum liability of the **Insurer** in respect of **Certificated Securities** and **Uncertificated Securities** shall be the lesser of:

- (a) the closing market value of the relevant securities on the last business day prior to **Discovery**. The basis of valuation shall include any accrued interest (including coupons), dividends and privileges attached to said securities up to **Discovery**. The value of such privileges shall be the closing market value of such privileges immediately preceding the expiration thereof; and
- (b) the value agreed between the **Insured** and the **Insurer** if there is no market price or value for the relevant securities on the relevant day; and
- (c) if the relevant securities are replaceable and the **Insurer** has given its prior written consent to this end, the actual cost of replacement of said securities; and
- (d) if the **Insurer** has given its prior written consent to this end, the actual cost of filing of a lost instruments bond for the purpose of obtaining the issuance of duplicate securities,

subject always to the Limit of Indemnity and the applicable **Retention**.

For the avoidance of doubt, this clause sets out the maximum **Loss** claimable under this Policy in respect of securities. Nothing in this clause shall be read as giving the **Insured** any entitlement to claim in excess of the **Loss** it has actually sustained.

(iii) Precious Metals

To the extent that **Loss** covered under this Policy results from damage to or the loss or destruction of precious metals, the value of precious metals shall be determined by their average market value on the day of **Discovery** (or if **Discovery** occurs during a weekend or national holiday, on the next business day thereafter at the place **Loss** was sustained).

(iv) **Data and Computer Programs**

To the extent that **Loss** covered under this Policy results from the loss, erasure, or theft of **Data** or a **Computer Program** used by the **Insured** for the conduct of its business, the value of such **Loss** shall be the lesser of:

- (a) the cost of labour furnished by the **Insured** for the actual reproduction by way of transcription or copying in order to reproduce such **Data** or **Computer Program**, including the cost of purchasing a software license necessary to reproduce such **Data** or **Computer Program**; and



(b) the cost of repurchasing the **Data** or **Computer Programs** from a third party where **Data** or **Computer Programs** were initially purchased from a third party.

(v) Electronic and Written **Data** Storage Media

(a) The value of **Data Processing Media** shall be the replacement cost of such items of the equivalent kind or quality plus the value of any **Data** or **Computer Program** stored thereon, as described in sub-clause (iv), **Data**, and **Computer Programs** above.

(b) The value of books of accounts or other records used by the **Insured** in the conduct of their business shall be the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data which shall have been furnished by the **Insured** in order to reproduce such books and other records.

(vi) Money and Other **Property**

(a) The value of any money shall be determined by its closing market value on the last business day prior to **Discovery** (or if **Discovered** during a weekend or national holiday, on the next business day thereafter at the place **Loss** was sustained).

(b) In the case of any property (including **Property**) other than money, and other than as described in sub-clauses (i) to (iv) and (vi) hereof, the value of such property shall be the actual cash value on the day of **Discovery**.

(vii) Lending

In determining the amount of the indemnity payable under this Policy for any **Loss** involving a **Loan**, all amounts of principal, interest or collateral received or recovered up to the date on which **Discovery** occurs in connection with such **Loan** or borrowers which are the subject of the **Loss** shall be deducted from the amount of the **Loss**.

(viii) Foreign Currency

In the event that a **Loss** is suffered in a currency other than Euro (EUR), the rate of exchange applicable thereto for the purposes of determining the valuation of **Loss** shall be the closing mid-spot rate on the day of **Discovery** (or if **Discovered** during a weekend or national holiday, on the next business day thereafter).

(ix) Cancelled Items

The liability of the **Insurer** in respect of any lost or damaged cancelled cheques, drafts and credit card receipts shall not exceed the cost of labour furnished by the **Insured** solely, including additional wages paid by the **Insured** to **Employees**, in identifying the depositors of such lost or damaged items, or in assisting depositors in obtaining duplicates.

(C) SUBROGATION AND RECOVERIES

(i) The **Insurer** shall be subrogated to all rights of recovery of the **Insured** to the extent of all payments of **Loss**.



The **Insured** shall execute all papers required and shall do everything necessary to secure any rights, including the execution of any documents necessary to enable the **Insurer** effectively to bring suit in the name of the **Insured** whether such acts become necessary before or after payment by the **Insurer**.

- (ii) Any recoveries, whether effected by the **Insurer** or the **Insured**, following the payment of a **Loss** under this Policy and after deducting the actual cost of obtaining such recovery but excluding the own labour or establishment costs of **Insured**, will be allocated in the following order of reimbursement:
 - (a) Initially, to reimburse the **Insured** for any **Loss** which exceeds the amount of **Loss** paid under this Policy (disregarding the amount of any **Retention** applicable),
 - (b) Subsequently, to reimburse the **Insurer** for any payment made for such **Loss**, costs, fees and expenses incurred under this Policy, and
 - (c) Finally, to reimburse the **Insured** for such **Loss** sustained by the **Insured** by reason of the **Retention** applicable pursuant to ITEM 5 of the SCHEDULE.

(D) FRAUDULENT NOTIFICATIONS

If the **Insured** gives notice of any **Loss** knowing the same to be false or fraudulent, as regards amount or otherwise, such **Loss** shall be excluded from coverage under the Policy and the **Insurer** reserves the right, in its sole and absolute discretion, to avoid this Policy in its entirety, in which case any cover or payment for **Loss** hereunder shall be forfeited, all premium shall be deemed fully earned and non-refundable and the **Insured** shall reimburse the **Insurer** for any payments already made under this Policy.

6. GENERAL CONDITIONS

(A) CHANGE IN CONTROL

- (i) In the event of a **Change in Control** during the **Policy Period**, then coverage under this Policy will continue in full force and effect until the end of the **Policy Period** with respect to **Loss** sustained by the **Policyholder** resulting from acts, omissions or events which occurred or took place before the effective date of such **Change in Control**, but coverage will cease with respect to **Loss** resulting from acts, omissions or events which occurred or took place, thereafter and the premium will be considered fully earned in consideration of the coverage provided.
- (ii) The **Policyholder** shall give the **Insurer** written notice of the **Change in Control** as soon as practicable after first becoming aware thereof and in any event prior to the effective date thereof. However, no delay in notification or awareness shall prejudice the effectiveness of (i) above.

(B) NEW FACILITIES, ASSETS AND PLANS

If during the **Policy Period**:

- (i) any **Insured** creates or acquires new **Premises**, automated teller machines or **Plans**; or
- (ii) the **Policyholder** forms, establishes or relocates other assets within **Premises** or **Plans**, either directly or indirectly through one or more Subsidiaries or **Plans**,



other than as a result of a merger or consolidation with, the acquisition of, or the purchase of assets of, another entity, and other than as a result of the creation of a new **Subsidiary**, such **Premises**, automated teller machines, **Plans** or formed, established or relocated assets shall automatically be covered under this Policy subject to the terms and conditions thereof.

(C) LIMIT OF LIABILITY AND RETENTION

(i) **Limit of Liability** and Sub-Limits:

- (a) The maximum aggregate liability of the **Insured** under this Policy for all **Losses Discovered** during the **Policy Period** shall not exceed the **Limit of Liability**, regardless of the number of **Insureds** who claim under this Policy.
- (b) All Sub-Limits stated in ITEM 4 of the SCHEDULE are aggregate for the whole **Policy Period** regardless of the number of **Losses** and are part of and not in addition to the **Limit of Liability**.
- (c) The **Limit of Liability** and the applicable Sub-Limits shall be reduced by the amount of any payment made under the terms of this Policy and the **Insurer** shall have no further liability hereunder upon exhaustion of the **Limit of Liability** and/or upon exhaustion of any applicable Sub-Limit.

(ii) **Retention:**

- (a) Subject to the **Limit of Liability**, the **Insurer** will be liable only for the amount of **Ultimate Net Loss** which exceeds the **Retention**. Such **Retention** is to be borne by the **Insured** and remains uninsured hereunder. A single **Retention** amount shall apply to any single **Loss**.
- (b) The **Retention** shall not apply in respect of any **Plan** to the extent that such **Plan** is required by law to comply with the **Employee Retirement Income Security Act 1974 (ERISA)** in the United States of America.

(iii) In the event that one or more **Insureds** is entitled to indemnity under more than one INSURING AGREEMENT or EXTENSION then no more than one **Retention, Limit of Liability** or Sub-Limit shall apply (as the case may be). Subject to the **Limit of Liability**, the applicable **Retention** or Sub-Limit or shall, in each case, be:

- (a) The highest one of any applicable **Retentions**;
- (b) The highest one of any applicable Sub-Limits set out in ITEM 5 of the SCHEDULE.

(D) CANCELLATION PROVISIONS

This Policy shall be cancelled:

- (i) in its entirety:
 - (a) for non-payment of premium as stated in GENERAL CONDITION (F); or
 - (b) immediately upon receipt by the **Insurer** of a written notice from the **Policyholder** of its decision to terminate this Policy, in which case the **Insurer** shall refund any unearned premium computed at customary



short-rate of the Premium set forth in ITEM 6 of the SCHEDULE. Such refund shall not apply, however, if any **Loss** has been **Discovered** before effective cancellation; or

(c) thirty (30) days after the **Policyholder** receives and acknowledges a written notice from the **Insurer** of its decision to terminate this Policy, in which case the **Insurer** shall refund any unearned premium pro-rata of the Premium set forth in ITEM 6 of the SCHEDULE; or

(d) in respect of any **Employee**, immediately upon any director, partner, trustee of the **Insured** (not in collusion with such **Employee**) first becoming aware of any fact or circumstance which would cause a reasonable person in such a position to suspect that such **Employee** has committed a dishonest, fraudulent or malicious act involving amount excess of EUR 1,000, whether during or prior to employment by the **Insured**. The **Insurer** shall have no liability to indemnify the **Insured** for any **Loss** resulting from any acts of such **Employee** which are committed subsequent to the director, partner, or trustee first becoming aware of the relevant fact or circumstance. However, coverage shall continue hereunder solely with respect to any **Loss** of **Property** then in **Transit** in the custody of the relevant **Employee** at the time when the director, partner, trustee or other employee first becomes aware of the relevant fact or circumstance; or

(ii) in respect of any **Service Bureau**:

(a) as soon as any director, partner, trustee or **Employee** of the **Insured** (not in collusion with the **Service Bureau**) first becomes aware of any fact or circumstance which would cause a reasonable person in such a position to suspect that a director, officer, partner, departmental director or employee of such **Service Bureau** has committed a dishonest, fraudulent or malicious act, whether or not in connection with services rendered to the **Insured**; or

(b) fifteen (15) days after receipt by the **Policyholder** of a written notice from the **Insurer** cancelling this Policy as regards such **Service Bureau**.

(E) NON-DISCLOSURE

The **Insurer** shall not be entitled to:

(i) avoid this Policy on any grounds whatsoever, including, but not limited to non-disclosure or misrepresentation other than where such non-disclosure or misrepresentation is fraudulent or made with the intent to deceive; or

(ii) discharge this Policy for breach of warranty save where such non breach of warranty is fraudulent or made with the intent to deceive,

provided always that the **Insured** shall establish to the reasonable satisfaction of the **Insurer** that any such alleged non-disclosure, misrepresentation or breach referred to in (i) and (ii) above was free of fraud and made without any intent to deceive.

(F) PAYMENT OF PREMIUM

The **Insurer** may cancel this Policy from inception for non-payment of premium within sixty (60) days from the Inception Date stated in ITEM 2(a) of the schedule, by sending not less than thirty (30) days' notice to the **Policyholder** at the address stated in ITEM 1(b) of the SCHEDULE or via the insurance broker.



The **Insurer** may also cancel any coverage under this Policy subject to any additional premium for non-payment of such additional premium within thirty (30) days from the date it is due, by sending not less than thirty (30) days' notice to the **Policyholder** at the address stated in ITEM 1(b) of the SCHEDULE or via the insurance broker.

(G) NOTICES AND AUTHORITY

The **Policyholder** shall act on behalf of all **Insureds** with respect to the giving and receiving of any notice required under this Policy, the payment of all premiums, the allocation of **Loss**, the declaration of risk and execution of this Policy and any amendments thereto.

(H) INTERPRETATION

- (i) This Policy shall be governed by the substantive law of the country stated in ITEM 9(a) of the SCHEDULE.
- (ii) Any reference in this Policy to:
 - (a) the singular shall include the plural and vice versa; and
 - (b) the masculine shall include the feminine and vice versa; and
 - (c) a position or title or legal status of an individual shall include the equivalent position in any other relevant jurisdiction.
- (iii) Policy headings and titles are for reference only and shall have no interpretational value.

(I) APPLICABLE LAW AND JURISDICTION

This Policy is to be governed by, and its terms are to be construed in accordance with the applicable law stated in ITEM 9(a) of the SCHEDULE. Any dispute or difference arising under or in respect of this Policy is to be subject to and determined within the exclusive jurisdiction stated in ITEM 9(b) of the SCHEDULE.

(J) ENTIRE AGREEMENT

This Policy is a single contract of insurance for the benefit of all **Insureds** as joint **Insureds** and accordingly, without limitation:

- (i) payment of any **Loss** under this Policy to the **Policyholder** shall fully release the **Insurer** with respect to such **Loss**.
- (ii) if coverage under this Policy ceases in relation to one **Employee** or to one of the **Insureds** other than the **Policyholder**, then the remaining **Employees** or **Insureds** shall continue to be covered under this Policy; and
- (iii) knowledge possessed or **Discovery** made by the **Policyholder** or by any **Insured** shall constitute knowledge possessed or **Discovery** made by the **Policyholder** and every **Insured**; and
- (iv) in calculating **Loss** covered under this Policy, where another **Insured** receives a benefit corresponding or relating to such **Loss**, that benefit shall be set off against the value of such **Loss**.



(K) ASSIGNMENT

This Policy shall not be assigned without the prior written consent of the **Insurer**, and any other purported assignment shall be null and void.

(L) OTHER INSURANCE AND OTHER INDEMNIFICATION

Unless otherwise required by law, the cover provided under this Policy shall apply only in excess of any other valid and collectable insurance policy or indemnity available to:

- (i) the **Insured**; or
- (ii) another entity which employed the person causing the **Loss** or on whose premises the **Loss** occurred; or
- (iii) a security or an armoured motor vehicle company engaged by the **Insured**.

(M) RIGHTS OF THIRD PARTIES

Nothing in this Policy is intended to confer any directly enforceable benefit on any third party other than an **Insured**, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 (UK) (or any equivalent enactment in any other relevant jurisdiction) or otherwise.

(N) TRADE SANCTIONS

This Policy does not apply to the extent any applicable trade or economic sanctions, or other laws or regulations prohibit the **Insurer** from providing insurance, including, but not limited, to the payment of **Loss**.

(O) DATA PROTECTION AND PRIVACY POLICY

The **Insurer** respects the **Insureds'** right to privacy. In our Privacy Policy (available at <https://www.tmhcc.com/en/legal/privacy-policy>) we explain who we are, how we collect, share and use personal information about the **Insureds**, and how the **Insureds** can exercise their privacy rights. If the **Insureds** have any questions or concerns about our use of their personal information, they can contact dpo-tmelux@tmhcc.com.

We may collect personal information such as name, email address, postal address, telephone number, gender and date of birth. We need the personal information to enter into and perform the current contract of insurance. We retain personal information we collect from the **Insureds** where we have an ongoing legitimate business need to do so.

We may disclose the **Insureds'** personal information to:

- our group companies;
- third party services providers and partners who provide data processing services to us or who otherwise process personal information for purposes that are described in our Privacy Policy or notified to the **Insureds** when we collect their personal information;
- any competent law enforcement body, regulatory, government agency, court or other third party where we believe disclosure is necessary (i) as a matter of applicable law or regulation, (ii) to exercise, establish or defend our legal rights, or (iii) to protect the interests of our **Insureds** or those of any other person;
- a potential buyer (and its agents and advisers) in connection with any proposed purchase, merger or acquisition of any part of our business, provided that we inform the buyer it must use the **Insureds'** personal information only for the purposes disclosed in our Privacy Policy; or
- any other person with the **Insureds'** consent to the disclosure.



The personal information may be transferred to, and processed in, countries other than the country in which the **Insureds** are resident. These countries may have data protection laws that are different to the laws of the country of the **Insureds**. We transfer data within the Tokio Marine group of companies by virtue of our Intra Group Data Transfer Agreement, which includes the EU Standard Contractual Clauses.

We use appropriate technical and organisational measures to protect the personal information that we collect and process. The measures we use are designed to provide a level of security appropriate to the risk of processing the personal information.

The **Insureds** are entitled to know what data is held on them and to make what is referred to as a Data Subject Access Request ('DSAR'). They are also entitled to request that their data be corrected in order that we hold accurate records. In certain circumstances, they have other data protection rights such as that of requesting deletion, objecting to processing, restricting processing and in some cases requesting portability. Further information on the **Insureds'** rights is included in our Privacy Policy.

The **Insureds** can opt-out of marketing communications we send them at any time. They can exercise this right by clicking on the "unsubscribe" or "opt-out" link in the marketing e-mails we send them. Similarly, if we have collected and processed their personal information with their consent, then they can withdraw their consent at any time. Withdrawing their consent will not affect the lawfulness of any processing we conducted prior to their withdrawal, nor will it affect processing of their personal information conducted in reliance on lawful processing grounds other than consent. The **Insureds** have the right to complain to a data protection authority about our collection and use of their personal information.

(P) COMPLAINTS PROCEDURE

We are dedicated to providing you with a high-quality service and we want to ensure that we maintain it at all times to the **Insurer's** clients. Should the **Named Company** or the **Insureds** not be satisfied, please write and tell us and we will do our best to resolve the problem.

For any questions or concerns about the Policy or any Claim's handling please contact:

The Compliance Officer
TOKIO MARINE EUROPE S.A. SUCURSAL EN ESPAÑA
Torre Diagonal Mar
Josep Pla 2, Planta 10
08019 Barcelona, Spain

To request information about the **Insurer** or file a concern or complaint please do so in writing, before our independent Customer Service Department:

Customer Service Department
TOKIO MARINE EUROPE S.A. SUCURSAL EN ESPAÑA
Torre Diagonal Mar
Josep Pla 2, Planta 10
08019 Barcelona, Spain
sac@tmhcc.com

If your concerns or complaints are not addressed to your satisfaction, you may be entitled to refer the dispute to the Complaints Service of the Spanish General Directorate for Insurance and Pension Funds in the terms established in the applicable regulations, who will review your case and who may be contacted at:



TOKIO MARINE
HCC

General Directorate for Insurance and Pension Funds
Complaints Service
Calle Miguel Ángel, 21
28010 Madrid, Spain

Or through the webpage: www.dgsfp.mineco.es

In addition, in case of cross-border litigation, complaints may be submitted to the competent foreign system, by applying to the activation of the FIN-NET procedure.

IN WITNESS WHEREOF, the **Insurer** has caused this Policy to be executed by its authorised officers, but this Policy will not be valid unless countersigned on the SCHEDULE of this Policy by a duly authorised representative of the **Policyholder**.

SAMPLE