

EVEREST NATIONAL INSURANCE COMPANY

RECORD PROTECTION INSURING AGREEMENT
WITH LIABILITY MITIGATION EXPENSE COVERAGE

Policy Number: [policynbr]

In consideration of the premium paid and in reliance upon all statements made and the information contained in the Declarations and **Application**, the **Insurer** and the **Insured** agree that coverage will be provided subject to all of the terms, conditions and limitations of this Insuring Agreement, as follows:

1. The attached **Policy** is amended by adding the following Insuring Agreement(s) to the extent such coverage is set forth on the Declarations:

RECORD PROTECTION LIABILITY INSURING AGREEMENT

The **Insurer** will pay on behalf of the **Insured**, **Loss** resulting from **Claims** first made during the **Policy Period** or Discovery Period against the **Insured** for which the **Insured** is legally obligated to pay as a result of a **Wrongful Record Security Act**.

RECORD PROTECTION LIABILITY MITIGATION INSURING AGREEMENT

The **Insurer** will indemnify the **Company** for **Liability Mitigation Expense** incurred as a direct result of unauthorized access to **Non-Electronic Confidential Customer Information**: (1) in the custody or control of the **Insured**; or (2) arising from the negligent management, oversight or preservation of such **Non-Electronic Confidential Customer Information** by the **Insured**.

It shall be a condition precedent to coverage under this Insuring Agreement that the **Insured** shall notify the **Insurer** of any unauthorized access to **Non-Electronic Confidential Customer Information** as soon as practicable but no later than sixty (60) days after discovery of such unauthorized access.

2. For the purpose of the coverage afforded by this Insuring Agreement, all of the terms and conditions set forth in the **Policy** shall apply except:

A. Section IV, entitled "Definitions", is amended to add the following:

Non-Electronic Confidential Customer Information means any customer name, address, telephone number, social security number, driver's license number, account number, credit or debit card number, PIN, password, account history or any other nonpublic customer information that is not stored in electronic form.

Liability Mitigation Expense means actual, reasonable and necessary expenses in excess of the **Company's** normal operating costs, incurred to:

- (1) notify those persons who may be directly affected by the unauthorized access of the **Non-Electronic Confidential Customer Information**;
- (2) change account numbers and related information, including the reissuance of debit/credit/ATM cards for those persons who may be directly affected;
- (3) with prior consent of the **Insurer**, provide basic credit monitoring or other services to prevent fraudulent use of the **Non-Electronic Confidential Customer Information**; and

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

Negative Publicity means information concerning unauthorized access to **Non-Electronic Confidential Customer Information** which is publicized by persons other than the **Company** through newspapers, radio, television or other similar print, broadcast or electronic media that has caused or is reasonably likely to cause decline or deterioration in the reputation of the **Company**.

- B. All of the Exclusions set forth in Section V, entitled "Exclusions Applicable to all Insuring Agreements", shall apply to this Insuring Agreement except the following which is deleted and replaced:

Bodily/Personal Injury and Property Damage Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** for actual or alleged bodily injury, sickness, disease, or death of any person, damage to or destruction or theft of any tangible or intangible property in the custody or control of the **Insured** including loss of use thereof, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, abuse of process, assault, battery, mental anguish, emotional distress, loss of consortium, invasion of privacy, defamation, false light, libel, or slander; provided, however, that this Exclusion shall not apply to any actual or alleged mental anguish, emotional distress, libel, slander, defamation, false light, invasion of privacy or loss of property other than property in the custody or control of the **Insured** resulting from a **Wrongful Record Security Act**.

- C. Section V, "Exclusions Applicable to all Insuring Agreements", is further amended to add the following:

Bonding/Insurance Company Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** that is brought directly or indirectly by or for the benefit of any insurance carrier or bond carrier of the **Company**, or any affiliate of the **Company**, regardless in whose name such **Claim** is actually made.

Receivership Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the **Company's** function or activity as receiver, trustee in bankruptcy, or assignee for the benefit of creditors.

- D. Section V, "Exclusions Applicable to all Insuring Agreements", is further amended to delete and replace the Cyber Cover Exclusion as follows:

Cyber Cover Exclusion - The Insurer shall not be liable to make any payment for Loss in connection with any **Claim** arising out of or in any way involving:

- (1) **Cyber Banking Services;**
- (2) **Electronic Funds Transfer Acts;**
- (3) **Privacy and Security Acts;**
- (4) **Cyber Publishing and Social Networking Activities; or**

- (5) an **Insured's** development of websites or software, an **Insured's** provision of hosting or network security services, or an **Insured** acting as an internet service provider, internet access provider, application service provider, or provider of like services to third parties.

The **Cyber Cover Exclusion** shall not apply to a **Claim** for a **Wrongful Record Security Act** or a **Claim** brought and maintained by a security holder of the **Company** as a derivative action on behalf of the **Company** or such affiliate; provided such **Claims** are brought independently of, and totally without the solicitation, assistance, participation, or intervention of any Insured or any affiliate of the **Company**;

3. In addition to the provisions set forth in Number 2 of this Insuring Agreement, for the purpose of the coverage afforded by the Privacy Liability Insuring Agreement:

- A. Section II (B), entitled "Not for Profit Directorships", is deleted.
- B. The definitions of **Interrelated Wrongful Acts** and **Wrongful Acts** and all references thereto used throughout the **Policy** are deleted and replaced with the terms **Interrelated Wrongful Record Security Acts** and **Wrongful Record Security Acts**, respectively, as follows:

Interrelated Wrongful Record Security Acts means **Wrongful Record Security Acts** which have as a common nexus any fact, circumstance, situation, event, transaction or series of related facts, circumstances, situations, events or transactions.

Wrongful Record Security Act means the management, oversight or preservation of **Non-Electronic Confidential Customer Information** by the **Insured**, which results in the intentional misuse of such **Non-Electronic Confidential Customer Information**.

4. In addition to the provisions set forth in Number 2 of this Insuring Agreement, for the purpose of the coverage afforded by the Privacy Liability Mitigation Insuring Agreement, all of the terms and conditions set forth in the **Policy** and any amendments thereto shall apply except:

- A. Section II, entitled "Additional Coverages", is deleted in its entirety.
- B. Section IV, entitled "Definitions", is amended to delete and replace the definition of **Loss** as follows:

Loss means **Liability Mitigation Expense**.

- C. Section V, "Exclusions Applicable to all Insuring Agreements", is further amended to add the following:

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

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

Electronic Data Exclusion – The **Insurer** shall not be liable to make any payment for **Loss** arising from the loss, disclosure, or unauthorized access to confidential information where the confidential information was accessed, lost, or disclosed in any electronic format.

D. Section VI, entitled "Limit of Liability, Retention and Indemnification", is deleted and replaced below:

SECTION VI – LIMIT OF LIABILITY AND RETENTION

- (1) The **Insurer's** maximum Limit of Liability under this **Policy** for all Insuring Agreements combined shall not exceed the Total Policy Limit set forth in Item 3 of the Declarations regardless of whether such Insuring Agreement is provided as a sublimit or a separate limit, and regardless of the time of payment by the **Insurer**.
- (2) The Limit of Liability under this Insuring Agreement constitutes a sublimit which does not increase the **Insurer's** maximum liability under the **Policy**.
- (3) **Loss** resulting from the same act or series of related acts shall be considered a single **Loss**, and only one Retention and Limit of Liability shall be applicable. However, each such single **Loss** shall be deemed to be first discovered on the date the earliest of such **Loss** was first discovered, regardless of whether such date is before or during the **Policy Period**.
- (4) The **Insurer** shall only be liable under this Insuring Agreement for the amount by which any single **Loss** exceeds the Retention amount for the Insuring Agreement applicable to such **Loss**. One Retention amount shall apply to the covered portion of each and every single **Loss**.

E. Section XIV (F), is deleted and replaced below:

F. **ACTION AGAINST THE INSURER** – Legal proceedings for the recovery of any **Loss** under this Insuring Agreement shall not be brought prior to the expiration of sixty (60) days after the Proof of Loss, with full particulars, is filed with the **Insurer** or after the expiration of twenty-four (24) months from the discovery of such **Loss**.

This Insuring Agreement affords coverage only in favor of the **Company**. No suit, action or legal proceedings shall be brought hereunder by anyone other than the **Company**.

5. This Insuring Agreement shall be effective as of 12:01 a.m. on [ENDORSEMENTEFFDT].

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the **Policy** other than as above stated.