



STATEMENT OF DISCLOSURE

GREAT AMERICAN E&S INSURANCE COMPANY
Cincinnati, Ohio 45202

This Statement of Disclosure is not an insurance policy or a Certificate of Insurance. This is a condensed summary of the terms and conditions of a Compromised Data Expense Reimbursement Contractual Liability Insurance policy ("Policy") issued to the Named Insured.

Table with 3 columns: Named Insured, Policy Period, Policy Number, and Eligible Merchants. Row 1: FNB Merchants, LLC; 03/01/2010 - 03/01/2011; 1191702. Row 2: \$100,000; \$500,000; Levels 3 - 4 reported.

COVERAGE: (1.) The Company will pay on behalf of the merchant those expenses which the merchant is contractually obligated to pay to the claimant under one or more merchant agreements as a result of an incident; provided always that the incident is discovered during an eligible Reporting Period.

LIMIT OF LIABILITY: Regardless of the number of claims made, the Company's liability for all expense arising from each MID from an incident shall be limited to the lesser of: (a.) actual expenses; or (b.) the "Each Incident Each MID" Limit of Liability; less any Deductible.

EXCLUSIONS: The Company shall not be obligated to pay, and the policy does not apply to, any claim, demand or expenses arising from or in connection with: (1.) an incident known or discovered outside of the policy period or the coverage period of the MID. (2.) a merchant: (a.) that is not an Eligible Merchant as defined in the policy; or (b.) MID that was not reported to the Company on the Report Schedule for coverage during the Reporting Period in which the incident was discovered.

DEFINITIONS: When used in the policy, including endorsements and schedules forming a part hereto: (1.) "acquiring bank" (or acquirer) means a financial institution that accepts or acquires payment transactions for the products or services on behalf of a merchant performed using a card issued by itself or another financial institution. (2.) "ADCR" means the Account Data Compromise Recovery process as established by Visa or similar processes as established by other card associations.

incurring and seeking reimbursement for authorized mandatory audit fees; making demand for expense reimbursement from the merchant of such amounts. Claimant shall also include such party that has assumed the role by payment of contractually obligated expenses assessed against the merchant. (9.) "compliance case" (or PCI-DSS Compliance Case) means a determination by a card association, following a written allegation by an issuing bank, that: (a.) a data compromise of a merchant violated a specific operating rule of the card association; and (b.) the situation giving rise to the allegation is not covered by a chargeback right; and (c.) the issuing bank suffered a financial loss as the result of the data compromise. (10.) "coverage period" means the period of time that a MID is reported and eligible for continuous coverage under this policy; commencing with the date of first reporting on the Reporting Schedule and ceasing on the date of last reporting on the Reporting Schedule. (11.) "data compromise" means the exposure of card information that compromises the security, confidentiality, or integrity of personally identifiable information due to the merchant's failure of security. (12.) "date of discovery", "discovered" or "discovery" means the date appearing on the first formal written notification by the card association (including case number) to either the acquiring bank, ISO or merchant of a valid incident at the merchant level or a request for a mandatory audit. (13.) "demand" means any written request for payment by the merchant, Named Insured or acquiring bank of expenses that are contractually recoverable under the merchant agreement from the merchant. (14.) "expenses" means PCI Assessments, related costs, mandatory audit fees, and/or card replacement cost contractually assessed by the card association against the merchant as a result of an incident. Expense does not include: (a.) any other economic damage, legal expenses, punitive or exemplary damages, legal or regulatory fines or penalties assessed directly against any merchant; (b.) that portion of any award or judgment caused by the trebling or multiplication of actual damages under federal or state law; or (c.) the cost to restore consumer identities or monitor or verify the creditworthiness, credit accuracy or damage to credit of any consumer (including but not limited to paying for any credit bureau report). (d.) the cost of hardware or software upgrades; (e.) interchange fees, chargeback expenses; or (f.) actual or alleged fraudulent card charges not specifically assessed as a fine or recoupable expense by the card association. (14.) "failure of security" means: (a.) the actual failure and inability of the security of the merchant's computer system to mitigate loss from or prevent computer data infiltration; physical theft of hardware or firmware controlled by the merchant (or components thereof) on which electronic data is stored, or through which electronic data passes, from a premises occupied and controlled by the merchant. Failure of security shall also include such actual failure and inability above, resulting from the theft of a password or access code by non-electronic means; or (b.) physical loss of information from the merchant (including loss of receipts, employee theft and stolen databases). (15.) "incident" means one or more actions, inactions, errors, omissions, unauthorized accesses, intrusions, breaches of security and/or breaches of duty by or to the merchant resulting directly or indirectly in actual or alleged failure in security and resulting data compromise as identified in and evidenced by a written demand letter issued by the card association. Regardless of the number of unauthorized accesses, intrusions, security breaches or data compromise events, all activities resulting from common intruders (or conspiracy of intruders) or unauthorized software installations shall be considered a single incident. Continuous or repeated actions or exposure to substantially the same general harmful condition, injury or damage shall also be considered a single incident. A data compromise that involves either (a.) multiple intrusions into the merchant's computer system that are enabled by the insertion of a worm, virus, key logger, trojan, or other device or (b.) the repeated use of a stolen or compromised password or access code shall be considered a single incident. All expenses arising from the same incident or chain of related incidents shall be considered a single incident. (16.) "ISO" means registered Independent Sales Organization or merchant service provider. (17.) "mandatory audit" means a forensic legal and/or information technology examination of the merchant required by the card association or acquiring bank that has been triggered by one or more cardholders indicating potential or actual fraudulent activities that the card association has cause to believe occurred due to the merchant's non-compliance with accepted PCI Data Security Standards. Mandatory audits must be initiated by the card association or acquiring bank in writing and must be conducted by a qualified security assessor selected by either the Named Insured, the acquiring bank or the merchant. The mandatory audit requires the qualified security assessor to examine the physical operations of the merchant in order to either locate the source of the problem or to determine if non-compliance of the PCI Data Security Standards actually occurred. (18.) "merchant" means a sole proprietorship, partnership, corporation (including affiliates and subsidiaries), limited liability company, holding company or other legal entity (regardless of the number of MIDs held) properly authorized by the processor to enter and secure approval for card transactions through: (a.) the processor's payment system; or (b.) the payment system of a third-party acting in the processor's behalf, and for whom processor provides card processing services, including forwarding sales drafts and card vouchers to a card issuer. Unless specifically indicated by endorsement, the merchant is not an Additional Insured under the policy. (19.) "merchant agreement" (or merchant account) means an executed written contract between a merchant and either an acquiring bank or ISO establishing the merchant's contractual liability for PCI Assessments, related costs, mandatory audit fees, and card replacement costs resulting from a data compromise. (20.) "MID" means a merchant identification number. (21.) "Named Insured" means the entity named in the policy Declarations. (22.) "PCI" means Payment Card Industry. (23.) "PCI Assessment" means any written demand against the merchant, Named Insured or acquiring bank by the card association for monetary assessments or fines due to the merchant's non-compliance with accepted PCI Data Security Standards that result in a data compromise incurred by the merchant. (24.) "PCI Compliance Level" means the Payment Card Industry compliance level assigned by the card association based, in part, upon annual transaction volume. (25.) "PCI Data Security Standards" means generally accepted and published Payment Card Industry standards for data security (DSS), including but not limited to the following objectives: (a.) Install and maintain a firewall configuration to protect cardholder data; (b.) Do not use vendor-supplied defaults for system passwords and other security parameters; (c.) Protect stored cardholder data; (d.) Encrypt transmission of cardholder data across open, public networks; (e.) Use and regularly update anti-virus software; (f.) Develop and maintain secure systems and applications; (g.) Restrict access to cardholder data by business need-to-know; (h.) Assign a unique ID to each person with computer access; (i.) Restrict physical access to cardholder data; (j.) Track and monitor all access to network resources and cardholder data; (k.) Regularly test security systems and processes; and (l.) Maintain a policy that addresses information. (26.) "policy period" means the period of time beginning at 12:00 a.m. at the address shown in the policy on the Policy Effective Date and ending at 12:00 a.m. on the earlier of the Policy Expiration Date or its earlier cancellation date, if applicable. (27.) "Processor" means an acquiring bank, ISO or other PCI compliant system vendor approved by the acquiring bank to provide card processing services. (28.) "qualified security assessor" shall mean a security assessor that has been certified as such by the PCI Security Standards Council. (29.) "related costs" means any other costs in the process leading up to the PCI Assessment as demanded in writing by or from the card association and for which the merchant is liable under the merchant agreement. Related costs includes compliance case costs of the card issuer associated with the monitoring of at risk card accounts filed under the rules of the card brands. Related costs shall include fines and ADCR financial liability assessed against the merchant by the card association for the uncollectible amount of any transaction against a card holder's account incurred directly as a result of fraudulent or illegal use of a compromised card number. (30.) "reporting period" means the calendar period of coverage specified in policy. (31.) "reporting schedule" means the form and/or media format that the Company provides to Named Insured for the reporting of premium and establishing coverage for eligible merchants and MID's for a specific reporting period.

CONDITIONS: (1.) **Policy Period and Territory:** The Policy becomes effective on the Policy Effective Date and shall continue for the initial policy period shown in the Policy or until canceled or non-renewed by the Company or the Named Insured. The policy applies only to expenses contractually due from merchants domiciled in the United States of America (including its territories and possessions). (2.) **Premium Reporting and Billings:** The Named Insured is responsible for the payment of premium and will be the payee for any return premiums. Coverage will only be effective for such reporting period in which the Company receives the reporting schedule and the appropriate premium has been paid. Failure to report or remit premium for any reporting period shall be deemed a waiver of coverage for such reporting period. (3.) **Duties of Insured in the Event of Claim:** (a.) As soon as practicable after the date of discovery, the merchant shall provide a written Notice of Claim to either the Company or their authorized representative. Such Notice of Claim shall include the fullest information obtainable, including but not limited to: (i.) the circumstances by which the merchant discovered the incident, including but not limited to, a copy of the first formal written notification by the card association (including case number) to either the Named Insured, acquiring bank, ISO or merchant of either an actual or suspected incident at the

merchant level or a request for a mandatory audit; (ii.) expenses which may result or have resulted from the incident; (iii.) evidence and description of the incident giving rise to the claim; (iv.) a copy of the executed and legally binding merchant agreement or such other documentation (including merchant statements) establishing to the Company's satisfaction that the merchant is contractually liable for expenses; and (v.) any demand, notification letters, mandatory audit reports, fee and expense invoices and other documents pertinent to the claim that are in the possession of the merchant. (b.) Claims and incidents giving rise to a claim shall be reported to the Company as follows: Great American E&S Insurance Company, Attention: FIS Claims Department, 49 East Fourth Street, 9th Floor, Cincinnati, OH 45202, Toll Free: (877) 429-3816, E-mail: FISClaims@gaic.com (c.) The Named Insured and the merchant shall cooperate with the Company in the investigation and settlement of all claims, including but not limited to: (i.) enforcing any contractual right to contest any expense (other than mandatory audit fees); and (ii.) assisting in making statements; in the conduct of suits; and in enforcing any right of contribution or indemnity against any party other than the merchant who may be liable for expenses. If the Company is prejudiced by the failure of the Named Insured or the merchant to comply with any of these duties, the Company's liability or obligation as to that claim shall terminate. Should the Named Insured or the merchant be unable or unwilling to comply with any of the duties required herein, any successive party contractually liable to the claimant for the expenses may assume such duties to comply with the terms and conditions of the policy. (d.) Payment by any party of expenses shall not automatically bind the Company with respect to any claim. No party shall, except at their own risk, assume any obligation, incur any cost, charge, or expense or enter into any settlement. **(4.) Payment of Claims** (a.) Upon receipt of a Notice of Claim, the Company or their authorized representative shall commence investigation and request all items, statements and information that the Company reasonably believes will be required. Additional requests may be made if, during the investigation of the claim, such additional requests are necessary. (b.) Within thirty (30) days of receipt of all items, statements and information required by the Company to verify the claim and determine coverage (including but not limited to any mandatory audit results), the Company shall notify the Named Insured and the merchant of the Company's acceptance or rejection of the claim. If the Company rejects the claim, in whole or in part, the Company shall state the reasons for the rejection. The parties may accept such rejection, exercise their rights under the policy, or submit an amended Notice of Claim. An amended Notice of Claim must be submitted within thirty (30) days of the Company's rejection and contain such additional information as necessary for the Company to reevaluate the reasons for rejection. (c.) Payment of the claim shall be made within thirty (30) days after the Company reaches agreement with the claimant, or the entry of a judgment against the Company. The Company will only make payment to the claimant unless it can be demonstrated by the claimant and the Named Insured that payment has already been made to the claimant by another party in the succession of contractual liability (whether that be the Named Insured, acquiring bank, ISO or merchant). In such event, the Company will make payment in reimbursement of such expenses to the one and only unreimbursed party in the succession of reimbursement. (d.) As a condition precedent to payment, the Company shall have the right to require any party receiving payment other than the claimant (including but not limited to the Named Insured) to execute a written release from liability to the Company acknowledging: (i.) that payment by the Company to such party is in satisfaction of liability to the claimant under the policy; and (ii.) such party has either: (1.) satisfied the merchant's liability to the claimant by payment of such expense; or (2.) contractually warrants to the Company that payments received from the Company will be property disbursed to the claimant or such successor in interest to the claim proceeds. However, the Company is under no obligation to make payment to any party other than the claimant. **(5.) Other Insurance:** Neither the merchant, the claimant, nor any other party shall be unjustly enriched by the policy. The insurance provided hereunder shall be in excess of any other insurance: reimbursing or paying on behalf of the merchant, or collected by the claimant; for expenses covered hereunder. **(6.) Multiple Policies:** If this policy and any other insurance policy issued by the Company applies to the same incident or data compromise, our "Per Incident" Limits of Liability to a each merchant under all policies combined shall not exceed the largest single "Per Incident" Limits of Liability from any one policy. Our Aggregate MID" Limit and/or "Aggregate Merchant" Limit under all policies combined shall not exceed the largest single "Aggregate MID" Limit and/or "Aggregate Merchant" Limit of Liability from any one policy. Loss payment shall be prorated between the policies based upon the unexhausted portion of the "Per Incident" Limit of Liability of each policy. **(7.) Subrogation:** In the event of any payment of expenses under the policy, the Company shall be subrogated to all rights of recovery of such expenses against any party. The Named Insured and the merchant shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Neither the Named Insured nor the merchant shall do anything after a claim to prejudice such rights without first obtaining the written consent of the Company. The Company shall not exercise any right of recovery against: the merchant; or the ISO, processor, acquiring bank, or the Named Insured in respect of any claim paid under the policy unless such claim was the direct result of fraudulent, illegal, dishonest or criminal acts of such party. **(8.) Assignment:** No rights or duties may be assigned or transferred without the prior written consent of the Company. **(9.) Action Against Company:** No action shall lie against the Company unless, as a condition precedent thereto, there has been full compliance with all of the terms of the Policy, and both the merchant's liability and the amount of the merchant's obligation to pay has been finally determined either by judgment against the merchant after actual trial or by agreement of the claimant and the Company, in writing. Any person or organization, or the legal representative thereof, who has secured a judgment or written agreement as referenced in the preceding paragraphs, shall thereafter be entitled to recover under the Policy to the extent the Limit(s) of Liability remains available for payment of expenses, and to the extent allowed by law. No person or organization shall have any right under the Policy to join the Company as a party to any action against the Named Insured or the merchant or any other party to determine the merchant's liability, nor shall the Company be impleaded by the Named Insured or the merchant or any other party. **(10.) Changes in Policy Terms:** No rights, terms or conditions of the policy may be waived, changed, altered, modified or deleted without the written agreement of the Company and the Named Insured. **(11.) Cancellation / Non-Renewal:** The policy may be canceled or non-renewed by the Named Insured at any time. Notice by the Named Insured shall constitute notice by and to any and all Additional Insureds. The Company may cancel or non-renew with fifteen (15) days notice of cancellation for fraud or material misrepresentation or non-payment of premium and sixty (60) days notice for any other legal reason. Notice of cancellation or nonrenewal by the Company to the Named Insured shall constitute notice of cancellation to any and all Additional Insureds. Any duty to notify merchants or Additional Insureds shall belong exclusively to the Named Insured. **(12.) Inspection of Records:** The Named Insured and the merchant shall keep record of all information relative to the policy. The Company may examine such books and records, at any time during the policy period and within one (1) year after the end of the policy period, as far as it relates to the subject matter of the policy. By the Company's right to examine or making an examination, the Company makes no representation that such books and records are adequate or in compliance with any law, rule or regulation. **(13.) Bankruptcy:** Bankruptcy or insolvency of the Named Insured or the merchant shall not relieve the Company of any of its obligations under the Policy. In the event of such bankruptcy or insolvency, the Company shall have the right to assert any appropriate claim or demand in such proceedings for payment or any obligations, if any, due to the Company. **(14.) Sole Representative:** The Named Insured shall act on behalf of any Additional Insureds or interested parties with respect to providing notices to the Company and receiving communications relating to the policy. **(15.) Entire Agreement:** The policy, along with a legally enforceable merchant agreement creating the contractual liability assumed by the policy, embodies all agreements existing between the parties or their representatives.