

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 27th day of April, 2013, by, between, and among the following undersigned parties:

Federal Deposit Insurance Corporation as receiver for AmTrust Bank of Cleveland Ohio ("FDIC-R"); and

Federal Insurance Company ("Federal"), as issuer of Financial Institution Electronic and Computer Crime Policy No. 82028903 (the "Policy") to AmTrust Bank (the "Bank") (individually, the FDIC-R and Federal may be referred to herein as "Party" and collectively as the "Parties")

RECITALS

WHEREAS:

Prior to December 4, 2009, the Bank was a depository institution organized and existing under the laws of the United States.

On or about July 7, 2009, the Bank provided notice under the Policy of a loss involving the theft of customer information from Heartland Payment Systems, Inc., a debit and credit card processor used by VISA International, the company the Bank contracted with to perform credit and debit card services for the Bank (the "Heartland Data Breach").

On July 31, 2009, the Bank submitted a Proof of Loss to Federal in support of a claim under the Policy alleging that the Heartland Data Breach caused AmTrust losses totaling \$1,492,280 (the "Heartland Claim").

On October 8, 2009, Federal denied coverage under the Policy for the Heartland Claim.

On December 4, 2009, the Bank was closed by the Office of Thrift Supervision and pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed receiver. In accordance with 12 U.S.C.

§ 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets, including the Heartland Claim.

On October 19, 2012, the FDIC-R filed a Complaint seeking money damages against Federal in connection with its denial of coverage for the Heartland Claim. This action was pending in the United States District Court for the Northern District of Ohio and is styled *Federal Deposit Insurance Corporation as Receiver for AmTrust Bank of Cleveland Ohio v. Federal Insurance Company*, Cause No. 1:12-cv-2621 (the "Heartland Action"). The FDIC-R filed a First Amended Complaint on January 11, 2013.

On December 21, 2012, Federal answered the Complaint, denying all material allegations, denying that the Heartland Claim was covered under the Policy, and asserting several affirmative defenses. On January 30, 2013, Federal answered the First Amended Complaint denying all material allegations, denying the Heartland Claim was covered under the Policy, and asserting several affirmative defenses.

The Parties would now like to resolve the Heartland Claim and the Heartland Action.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R

- A. The Recitals above are incorporated herein by reference.
- B. As an essential covenant and condition to this Agreement, Federal agrees to pay to the FDIC-R the sum of \$760,000.00 (the "Settlement Funds").
- C. Not later than ten business days following the execution of a signed original, or signed originals in counterpart, of this Agreement by the undersigned Parties to this Agreement

(the "Payment Due Date"), the Settlement Funds shall be delivered to the FDIC-R by check payable to FDIC as Receiver for AmTrust Bank, account number 10155-066042, and, if mailed, to FDIC-R at P.O. Box 971774, Dallas, Texas 75397-1774; or, for overnight delivery to: JPMorgan Chase (TX1-0006), Attn: FDIC Receivership Lock Box #971774, 14800 Frye Road, 2nd Floor, Fort Worth, Texas 76155, or by direct wire transfer into the following designated account:

BANK: Federal Home Loan Bank of New York
ROUTING #: 0260-0973-9
FOR CREDIT TO: FDIC National Liquidation Account
ACCOUNT #: 1076010

OBI: FIN 10155; AmTrust Bank, Cleveland, OH, Contact: Thomas M. Ruane (972) 761-2119;
Heartland Bond Claim Settlement.

D. In the event that the Settlement Funds are not delivered in full to the FDIC-R by the Payment Due Date, interest shall accrue on all unpaid amounts at the compound rate of 5% per annum from such date until the date of payment in full.

E. In addition, in the event that all Settlement Funds are not received by the FDIC-R on or before 30 days following the Payment Due Date, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against Federal, which agrees to pay all the FDIC-R's reasonable attorneys' fees expended in enforcing Federal's obligation to pay the Settlement Funds or any part of them. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice the FDIC-R's rights to declare this Agreement null and void if it does not receive Settlement Funds on or before 30

days following the Payment Due Date or to enforce the terms of this Settlement Agreement; provided however, that in the event the FDIC-R declares this Agreement null and void, the FDIC-R will return all amounts paid to it under this Agreement by Federal.

SECTION II: Releases

A. Release of Federal by FDIC-R.

Effective upon payment by Federal of the Settlement Funds, together with any accrued interest (as specified in Section I.D above), the FDIC-R, for itself and the Bank, and each of their respective successors and assigns, shareholders, subsidiaries, officers, directors, and employees, and their successors and assigns, hereby releases and discharges Federal, its parents, shareholders, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, statutory or non-contractual, contractual or extra-contractual, known or unknown, suspected or unsuspected, fixed or contingent, which are based upon or arising from acts or omissions described in the Heartland Claim and/or the Heartland Action, including without limitation any claim with respect to the Heartland Claim and/or the Heartland Action that is based upon, arising from or in any way connected with, relating to or concerning claims for, or assertions of, extra-contractual liability, "bad faith" or unfair claims handling practices, or any violations of similar statutory or common law provisions in any jurisdiction.

B. Release of FDIC-R by Federal.

Effective simultaneously with the release granted in Paragraph II.A. above, Federal, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors

and assigns, hereby releases and discharges the FDIC-R and the Bank, and each of their respective shareholders, subsidiaries, officers, directors, employees, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, statutory or non-contractual, contractual or extra-contractual, known or unknown, suspected or unsuspected, fixed or contingent, which are based upon or arising from acts or omissions described in the Heartland Claim and/or the Heartland Action.

C. Express Reservations From Releases.

1. Notwithstanding any other provision, by this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:

a. against any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by the FDIC-R as successor in interest to the Bank or any person or entity other than the Bank;

b. against any person or entity not expressly released in this Agreement;

c. against Federal for any other losses, claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, aside from those arising from the Heartland Claim and/or the Heartland Action, for which coverage may be provided under any other Federal insurance policy issued to the Bank; and

d. which are not expressly released in Section II.A above.

2. Notwithstanding any other provision, this Agreement does not waive any

claims or actions that could be brought by the FDIC in its regulatory capacity, or by any other agency or instrumentality of the United States government..

SECTION III: Additional Covenants

A. Assignment. The FDIC-R hereby assigns and transfers to Federal, its successors and assigns, to their use and benefit, all rights, claims and actions which the FDIC-R may have against any party based upon or arising from acts or omissions described in the Heartland Claim and/or the Heartland Action, limited to the extent of the amount of the Settlement Funds. Excluded from the scope of this assignment are any rights, claims and actions which the FDIC-R may have that would compensate the FDIC-R for any loss arising from the Heartland Claim not covered by the Policy.

B. Confidential Materials. Federal may retain possession of any and all documents produced to it by the Bank and/or the FDIC-R in connection with the Heartland Claim; however, Federal shall not publish such documents or disclose them to any other person except as may be necessary in connection with any claim Federal may pursue pursuant to the assignment in Section III.A. Upon the conclusion of any claim that Federal may pursue pursuant to the assignment in Section III.A., or if Federal decides not to pursue such a claim, Federal shall continue to treat this information as confidential and shall not disclose this information except as may be necessary in the ordinary course of business to Federal's re-insurers, auditors and accountants or regulators (and counsel for such entities).

SECTION IV: Representations and Acknowledgments

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of a disputed claim, and that this Agreement is not an admission or evidence of liability by either of

them regarding any claim nor is it intended to be, nor shall it be construed as, an interpretation of the Policy or any other insurance policy. This Agreement and its negotiation shall not be used as evidence, or in any other manner, before any court or any proceeding to create, prove, or interpret the obligations or alleged obligations of Federal under the Policy to any Party or non-party to this Agreement; provided, however, the Parties may use the Agreement in any manner as may be necessary to enforce the terms of the Agreement and/or to establish the fact of payment by Federal to the FDIC-R.

B. Cooperative Drafting. The Parties to this Agreement have participated jointly in the negotiation and preparation of this Agreement. Accordingly, each Party agrees not to assert that the other Party is the sole or principal drafter of the Agreement. The Parties also agree not to assert that any canon of construction applicable to sole or principal drafters should be applied against any Party.

C. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the party or parties subscribed thereto upon the execution by all parties to this Agreement.

D. Binding Effect. Each of the undersigned persons represents and warrants that he or she is duly authorized to sign this Agreement on behalf of the respective Party, and has the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, administrators, representatives, directors, officers, employees, agents,

attorneys, successors and assigns.

E. No Confidentiality. The Parties acknowledge and agree that this Agreement is a public document that will need to be disclosed pursuant to 12 U.S.C. § 1821(s) and other applicable laws and regulations.

F. Construction. The descriptive headings of this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

G. Notices. If any Party gives notice to another Party under this Agreement, such notice shall be (i) delivered personally, (ii) sent by Federal Express (or another recognized overnight or two-day courier) requesting next or second business day delivery, or (iii) sent by United States certified or registered mail, postage prepaid, return receipt requested. Any such notice shall be deemed given when (i) so delivered personally, (ii) if sent by express courier, one or two business days (as the case may be) following delivery to the courier, or (iii) if sent by certified or registered mail, three business days after the date of deposit in the United States mail to the respective address of the Party as set forth below:

If to the FDIC-R:

Patrick M. McGuirk
Counsel
Federal Deposit Insurance Corporation
3501 North Fairfax Drive
Arlington, VA 22226
Telephone: (703) 516-5161

With a copy to:
John G. Turner, III
Mullin Hoard & Brown, LLP
500 S. Taylor, Suite 800, LB #213
Amarillo, TX 79101
Telephone: (806) 337-1121

If to Federal:

Michael Maillet
Assistant Vice-President,
Chubb & Son Division
N.Y. Specialty Claims

55 Water St. 29th Floor
New York, N.Y. 10041-2899
(212) 612-2484 (phone)
(212) 612-2500 (fax)

With a copy to:
Scott Schmookler
Gordon & Rees, LLP
One North Franklin, Suite 800
Chicago, IL 60606
Telephone: (312) 565-1400

or to such other address as the recipient Party has specified by prior written notice to the sending Party (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereafter maintain). If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above shall control.

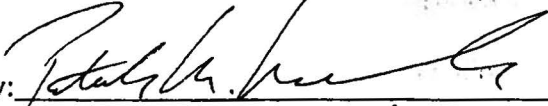
H. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Ohio.

I. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the Party or Parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.


FEDERAL DEPOSIT INSURANCE CORPORATION
as receiver for AmTrust Bank.

Date: April 24, 2013

By: 
Title: Counsel
Print Name: Patricia M. McGuire

FEDERAL INSURANCE COMPANY

Date: April 23, 2013

By: 
Title: Executive Vice President, ClubLife Division
Print Name: Michael Paillet