

Financial Institutions Risk Protector[®]

FIDUCIARY LIABILITY INSURANCE COVERAGE SECTION THREE ("FLI COVERAGE SECTION")

Notice: Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of, and are expressly applicable to this Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this Coverage Section.

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by application, including its attachments and the material incorporated therein, which form a part of this policy, the **Insurer** agrees as follows:

1. INSURING AGREEMENTS

- (a) Solely with respect to **Claims** first made against an **Insured** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, and subject to the other terms, conditions and limitations of this policy, this policy shall pay the **Loss** of each and every **Insured** arising from a **Claim** first made against an **Insured** for any **Wrongful Act** by any such **Insured** or by any employee for whom such **Insured** is legally responsible.
- (b) Solely with respect to **CAP Penalties** and **Delinquent Filer Penalties** assessed against an **Insured**, and **Voluntary Fiduciary Correction Loss** incurred by an **Insured**, during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, and subject to the other terms, conditions and limitations of this policy, this policy shall:
 - (i) pay the **CAP Penalties** and **Delinquent Filer Penalties**; and
 - (ii) reimburse the **Voluntary Fiduciary Correction Loss**,

of each and every **Insured**, collectively not to exceed the amount of the **Voluntary Compliance Loss Sublimit of Liability**, as defined in Clause 5 of this **Coverage Section**; provided that the **Insured** shall select a **Panel Counsel Firm** as provided in Clause 6 of this **Coverage Section**.

The payment of any **Voluntary Compliance Loss** under this policy shall not waive any of the **Insurer's** rights under this policy or at law, including in the event that a **Voluntary Compliance Loss** results in a **Claim**.

- (c) Solely with respect to **HIPAA Penalties** incurred by an **Insured** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, and subject to the other terms, conditions and limitations of this policy, this policy shall pay the **HIPAA Penalties** of each and every **Insured**, collectively not to exceed the amount of the **HIPAA Penalties Sublimit of Liability**, as defined in Clause 5 of this **Coverage Section**.

2. DEFENSE AGREEMENT

(a) INSURER'S DUTY TO DEFEND

Except as hereinafter stated, the **Insurer** shall have both the right and duty to defend any **Claim** against an **Insured** alleging a **Wrongful Act**, even if such **Claim** is groundless, false or fraudulent.

The **Insured** shall have the right to effectively associate with the **Insurer** in the defense of any **Claim**, including, but not limited to, negotiating a settlement, subject to the provisions of this clause. However, the **Insurer** shall not be obligated to defend any **Claim** after the **Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** has been exhausted, or pursuant to subparagraph (b) below, after the rejection of a settlement offer.

(b) GENERAL PROVISIONS (applicable to (a) above)

The **Insurer** shall advance **Defense Costs** prior to the final disposition of a **Claim**, subject to the other provisions of this policy. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests, in the event and to the extent that the **Insureds** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**. Only those settlements, stipulated judgments and **Defense Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this policy.

The **Insureds** shall give the **Insurer** full cooperation and such information as the **Insurer** may reasonably require. The **Insurer** may make any settlement of any **Claim** it deems expedient with respect to any **Insured** subject to such **Insured's** written consent. If any **Insured** withholds consent to such settlement, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** (herein, the "**Settlement Opportunity Amount**"), plus (2) 60% of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining 40% of such **Loss** excess of the **Settlement Opportunity Amount** shall be carried by the **Insureds** at their own risk and be uninsured.

3. DEFINITIONS

- (a) "**Administrator**" means an **Insured** with respect to any **Wrongful Act** described in subparagraph (2) of the definition of "**Wrongful Act**" in this **Coverage Section**.
- (b) "**Benefits**" means any obligation under a **Plan** to a participant or beneficiary under a **Plan** which is a payment of money or property, or the grant of a privilege, right, option or perquisite.
- (c) "**Breach of Fiduciary Duty**" means a violation of the responsibilities, obligations or duties imposed upon **Insureds** by ERISA.
- (d) "**CAP Penalties**" means fines, penalties, sanctions, voluntary correction fees, compliance fees or user fees assessed against or collected from an **Insured** by the Internal Revenue Service ("**IRS**")

- (e) **"Claim"** means:
- (1) a written demand for monetary, non-monetary or injunctive relief; or
 - (2) a civil, criminal or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading; or
 - (ii) return of an indictment (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges; or
 - (3) a formal agency adjudicative proceeding anywhere in the world to which an **Insured** is subject.
- (f) **"Consulting Fees"** means fees charged by a third party actuary, benefits consultant or accountant resulting solely from the correction of an actual or potential **Breach of Fiduciary Duty**, but excluding any fees, costs or expenses associated with: (i) a **Plan** audit; or (ii) identifying, finding or assessing such **Breach of Fiduciary Duty**.
- (g) **"Defense Expenses"** means reasonable and necessary attorney's fees, costs or expenses consented to in writing by the **Insurer** resulting solely from the correction of an actual or potential **Breach of Fiduciary Duty**, but excluding any fees, costs and expenses associated with finding or assessing such **Breach of Fiduciary Duty** and any compensation of **Individual Insureds** or employees of an **Insured**.
- (h) **"Delinquent Filer Penalties"** means penalties assessed by the U.S. Department of Labor or the **IRS** under a Delinquent Filer Voluntary Compliance Program for inadvertent failure to file Form 5500, provided that the failure to file such Form 5500 occurred during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this policy is a continuous renewal).
- (i) **"Employee Benefit Law"** means **ERISA** or any similar common or statutory law of the United States, Canada or any state or other jurisdiction anywhere in the world to which a **Plan** is subject.
- (1) Solely with respect to paragraph (2) of the definition of **Wrongful Act, Employee Benefit Law** shall also include Part 164 of the regulations under the Health Insurance Portability and Accountability Act of 1996, unemployment insurance, Social Security, government-mandated disability benefits or similar law.
 - (2) In no event shall **Employee Benefit Law**, other than as set forth in paragraph (1) of this definition of **Employee Benefit Law**, include any law concerning worker's compensation, unemployment insurance, Social Security, government-mandated disability benefits or similar law.
- (j) **"ERISA"** means the Employee Retirement Income Security Act of 1974 (including, but not limited to, amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, Health Insurance Portability and Accountability Act of 1996 as it relates to Sections 102(b) and 104(b)(1) of **ERISA**, the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and the Women's Health and Cancer Rights Act of 1998), and including any amendment or revision thereto.

- (k) **"ESOP"** means any employee stock ownership plan as defined in **ERISA**, or any other **Plan** under which investments are made primarily in securities of or issued by (i) the **Company**, (ii) the parent of the **Company**, (iii) any acquired **Subsidiary**, or (iv) any parent of any acquired **Subsidiary**, or whose assets at any time within twelve months prior to the inception date of this policy were comprised of 10% or more of securities of the **Company**, the parent of the **Company**, any acquired **Subsidiary**, or any parent of any acquired **Subsidiary**.
- (l) **"Fiduciary"** means a fiduciary as defined in any applicable **Employee Benefit Law** with respect to a **Plan**, or a person or entity who exercises discretionary control respecting the management of a **Plan** or the disposition of its assets.
- (m) **"HIPAA Penalties"** means civil money penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996.
- (n) **"Individual Insured"** means any past, present or future natural person director, officer or employee of the **Company** or, if applicable, of a **Plan**, and as to all of the above, in his or her capacity as a **Fiduciary, Administrator** or trustee of a **Plan**.
- (o) **"Insured(s)"** means:
- (1) any **Individual Insured**;
 - (2) any **Plan(s)**;
 - (3) the **Company**; and
 - (4) any other person or entity in his, her or its capacity as a **Fiduciary, Administrator** or trustee of a **Plan** who is included in the definition of **"Insured"** by specific written endorsement attached to this policy.
- (p) **"Loss"** means damages, judgments (including pre and post-judgment interest on that part of any judgment paid under this **Coverage Section**), settlements and **Defense Costs**; however, **Loss** (other than **Defense Costs**) shall not include: (1) civil or criminal fines or penalties imposed by law, except (i) to the extent set forth in Item 5(d) of the Declarations for **Voluntary Compliance Loss**, (ii) **UK Fines and Penalties**, (iii) the five percent (5%) or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**, (iv) the twenty percent (20%) or less penalty imposed upon an **Insured** under Section 502(l) of **ERISA**, with respect to covered settlements or judgments under this **Coverage Section**, and (v) to the extent set forth in Item 5(e) of the Declarations for **HIPAA Penalties**; (2) the multiplied portion of multiplied damages; (3) taxes or tax penalties; (4) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**; (5) **Benefits**, or that portion of any settlement or award in an amount equal to such **Benefits**, unless and to the extent that recovery of such **Benefits** is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Individual Insured**; or (6) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Where permitted by law, **Loss** shall include punitive or exemplary damages imposed upon any **Insured**, subject to the policy's other terms, conditions and exclusions, including but not limited to Exclusion (a) of this Coverage Section and Exclusion (a) of the General Terms and Conditions.

Loss shall include **Voluntary Compliance Loss** and **HIPAA Penalties**.

(q) **"Non-Qualified Plan"** means any of the following plans for a select group of management or highly compensated directors, officers and/or employees: deferred compensation plan, supplemental executive retirement plan, top-hat plan or excess benefit plan.

(r) **"Plan"** means:

(i) any **Non-Qualified Plan**; or

(ii) any payroll deduction IRA (Individual Retirement Account), SEP (Simplified Employee Pension Plan), SARSEP (Salary Reduction Simplified Employee Pension Plan) or SIMPLE IRA (Savings Incentive Match Plan for Employees), established or administered by the **Company**, solely for the benefit of the employees and/or the **Directors or Officers**; or

(iii) any plan as defined under **Employee Benefit Law**, other than a **Non-Qualified Plan**, which is:

(1) a welfare plan, as defined under **Employee Benefit Law** which was, is now, or hereinafter becomes sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees and/or the **Director(s) or Officer(s)** of the **Company**;

(2) a pension plan as defined under **Employee Benefit Law** (other than an **ESOP** or stock option plan) which was, on or prior to the inception date of the policy, sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees and/or the **Director(s) or Officer(s)** of the **Company**, provided that at any time prior to the inception date of this policy such plan has been reported in writing to the **Insurer** by the **Named Entity** pursuant to the terms of the application for this policy, or any prior policy or its application issued by the **Insurer** (or any other member company of Chartis Inc.) and the **Named Entity** shall have paid any required premium relating to such plan;

(3) subject to the requirements of sub-paragraphs (1) and (2) above, any pension or welfare plan that was sold, spun-off or terminated during or prior to the inception date of this policy, but solely with respect to **Wrongful Acts** that occurred prior to the date of such sale or spin-off, or in the case of a terminated plan, prior to the final date of asset distribution of such plan, provided that notice of such sale, spin-off or termination is provided to the **Insurer** before the end of the **Policy Period**;

(4) a pension plan as defined in **Employee Benefit Law** (other than an **ESOP** or stock option plan) which:

(a) is acquired during the **Policy Period** as a result of the **Company's** acquisition of a **Subsidiary** whose assets total more than 25% of the total consolidated assets of the **Company** as of the inception date of this policy; or

(b) is acquired during the **Policy Period** and such plan's assets total more than 25% of the total consolidated assets of all covered pension plans as of the inception date of this policy, or

(c) is created during the **Policy Period**,

but only upon the condition that within ninety (90) days of its acquisition or creation, the **Named Entity** shall have provided the **Insurer** with a completed application for such new plan and agreed to any additional premium or amendment of the provisions of the policy required by the **Insurer** relating to such new plan;

(5) a pension plan which, during or prior to the **Policy Period** of this policy, has been merged into or consolidated with a pension plan for which coverage is afforded under this policy; and

- (6)(i) a plan which is both a welfare plan and a pension plan as defined in **Employee Benefit Law** (other than an **ESOP** or stock option plan) subject to the requirements of this Definition (r);
- (ii) the following government-mandated programs: unemployment insurance, Social Security or disability benefits, solely with respect to a **Wrongful Act** defined in subparagraph (2) of the definition of "**Wrongful Act**" in this **Coverage Section**;
- (iii) any other plan, fund or program, including an **ESOP**, which is included in the definition of "**Plan**" by specific written endorsement attached to this policy.

Notwithstanding the foregoing, the term "**Plan**" shall not include any multiemployer plan as defined under any **Employee Benefit Law**.

- (s) "**UK Fines and Penalties**" means civil fines and penalties assessed against an **Insured** by either the Pensions Ombudsman appointed by the Secretary of State for Social Services in the United Kingdom or by the Pensions Regulator in the United Kingdom or any successor body thereto, subject to the other terms, conditions and exclusions of the policy.
- (t) "**Voluntary Compliance Loss**" means **CAP Penalties, Delinquent Filer Penalties** and **Voluntary Fiduciary Correction Loss**.
- (u) "**Voluntary Fiduciary Correction Loss**" means damages, **Defense Expenses** and **Consulting Fees** incurred in connection with the U.S. Department of Labor's ("**DOL**") Voluntary Fiduciary Correction Program as set forth in the Federal Register, resulting from an inadvertent **Breach of Fiduciary Duty** occurring during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this policy is a continuous renewal), provided that such compliance with the **DOL's** Voluntary Fiduciary Correction Program results in the **Insured** obtaining a "No Action" letter from the **DOL**; however, **Voluntary Fiduciary Correction Loss** shall not include: (1) civil or criminal fines or penalties imposed by law; (2) punitive or exemplary damages; (3) the multiplied portion of multiplied damages; (4) taxes or tax penalties; (5) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**; (6) **Benefits**, or that portion of damages equal to such **Benefits**; (7) matters of which the **Insured** had knowledge prior to the inception date of this policy or the first policy issued by the **Insurer** to the **Named Entity** of which this policy is a continuous renewal; or (8) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- (v) "**Wrongful Act**" means:
 - (1) as respects an **Insured**: a violation of any of the responsibilities, obligations or duties imposed upon **Fiduciaries** by **Employee Benefit Law** with respect to a **Plan**; or any matter claimed against an **Insured** solely by reason of his, her or its status as a **Fiduciary**, but only with respect to a **Plan**; and
 - (2) as respects an **Administrator**, any act, error or omission solely in the performance of one or more of the following administrative duties or activities, but only with respect to a **Plan**:
 - (i) counseling employees, participants and beneficiaries; or
 - (ii) providing interpretations; or
 - (iii) handling of records; or
 - (iv) activities effecting enrollment, termination or cancellation of employees, participants and beneficiaries under the **Plan**,
 or any matter claimed against an **Insured** solely by reason of his, her or its status as an **Administrator**, but only with respect to a **Plan**;

(3) as respects an **Individual Insured**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or **Administrator** of any multiemployer plan as defined by **ERISA**, but only if such service is at the specific written request or direction of the **Company** and such multiemployer plan is added by specific written endorsement attached to this policy, identified as a multiemployer plan and any required premium is paid. In no event shall coverage under this policy extend to a **Claim** against a multiemployer plan itself, its contributing employer(s) or any other fiduciaries or administrators of such plan, other than an **Individual Insured**.

4. EXCLUSIONS

In addition to the exclusions set forth in Clause 4 of the General Terms and Conditions, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- (a) arising out of, based upon or attributable to the committing of any criminal or deliberate fraudulent act, or knowing or willful violation of any statute, rule or law, including, but not limited to **Employee Benefit Law** if a judgment or final adjudication or an alternative dispute resolution proceeding adverse to the **Insured(s)** establishes such criminal or deliberate fraudulent act, or knowing or willful violation of any statute, rule or law, including but not limited to **Employee Benefit Law**;
- (b) for discrimination in violation of any law, except that this exclusion shall not apply to discrimination in violation of **Employee Benefit Law**;
- (c) for failure to fund a **Plan** in accordance with **Employee Benefit Law** or the **Plan** instrument or the failure to collect contributions owed to the **Plan**; except that this exclusion shall not apply to **Defense Costs**;
- (d) alleging, arising out of, based upon or attributable to any act or omission in his, her or its capacity as a **Fiduciary** or **Administrator** of any plan, fund or program, other than a **Plan** as defined in this policy, or by reason of his, her or its status as a **Fiduciary** or **Administrator** of such other plan, fund or program;
- (e) for emotional distress of any person; except that this exclusion shall not apply to **Defense Costs** incurred in the defense of a **Claim** for **Breach of Fiduciary Duty**; or
- (f) alleging, arising out of, based upon or attributable to any **Wrongful Act** as respects the **Plan** taking place at any time when the **Company** did not sponsor such **Plan** or when the **Individual Insured** was not a **Fiduciary, Administrator, trustee, Director(s) or Officer(s)**, or employee of the **Company** or if applicable, a **Plan**.

For the purpose of determining the applicability of the foregoing Exclusion 4(a), the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Individual Insured**.

5. LIMIT OF LIABILITY

Clause 5 of the General Terms and Conditions is modified to the extent necessary to provide the following:

The maximum limit of the **Insurer's** liability for all **Voluntary Compliance Loss** occurring during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be the amount set forth in Item 5(f) of the Declarations ("**Voluntary Compliance Loss Sublimit of Liability**"). The **Voluntary Compliance Loss Sublimit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations of this policy or any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this **Coverage Section** as stated in Item 3 of the Declarations, and will in no way serve to increase the **Insurer's Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** as stated therein.

The maximum limit of the **Insurer's** liability for all **HIPAA Penalties** occurring during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be the amount set forth in Item 5(g) of the Declarations ("**HIPAA Penalties Sublimit of Liability**"). The **HIPAA Penalties Sublimit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations of this policy and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this **Coverage Section** as stated in Item 3 of the Declarations, and will in no way serve to increase the **Insurer's Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** as stated therein.

6. PRE-AUTHORIZED DEFENSE ATTORNEYS

This Clause 6 applies only to: (1) a **Claim** brought by any government entity; (2) a request for coverage for a **Voluntary Compliance Loss**; or (3) a **Claim** brought in the form of a class or representative action. Affixed as Appendix FL-1 hereto and made a part of this policy is a list of panel counsel law firms ("**Panel Counsel Firms**") from which a selection of legal counsel shall be made to conduct the defense of any **Claim** against any **Insured** to which this Clause 6 applies and pursuant to the terms set forth below.

The **Insurer** shall select a **Panel Counsel Firm** to defend the **Insureds**. Upon the written request of the **Named Entity**, the **Insurer** may consent to a different **Panel Counsel Firm** selected by the **Named Entity** to defend the **Insureds**, which consent shall not be unreasonably withheld.

The selection of a **Panel Counsel Firm** from the attached list to defend the **Claim** against the **Insureds** shall not be restricted to the jurisdiction in which the **Claim** is brought.

The list of **Panel Counsel Firms** may be amended from time to time by the **Insurer**. However, no change shall be made to the specific list attached to this policy during the **Policy Period** without the consent of the **Named Entity**. At the request of the **Named Entity**, the **Insurer** may in its discretion add one or more law firms to the attached list of **Panel Counsel Firms** for the purposes of defending the **Claim** made against the **Insureds**. The list of **Panel Counsel Firms** may also be amended to add, at the sole discretion of the **Insurer**, a non-**Panel Counsel Firm** for the purpose of acting as "local counsel" to assist an existing **Panel Counsel Firm**, which **Panel Counsel Firm** will act as "lead counsel" in conducting the defense of the **Claim**, for **Claims** brought in a jurisdiction in which the chosen **Panel Counsel Firm** does not maintain an office.

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