

Financial Institutions Risk Protector[®]

INSURANCE COMPANY LIABILITY COVERAGE SECTION FIVE ("ICL 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 AGREEMENT

This policy shall pay the **Loss** of each and every **Insured** arising from a **Claim** first made against such **Insured** during the **Policy Period** or **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any **Wrongful Act** of the **Insured** in the rendering of or failure to render **Professional Services**. The **Insurer** shall, in accordance with Clause 4 of this **Coverage Section**, advance **Defense Costs** of such **Claim** prior to its final disposition.

2. DEFINITIONS

(a) "**Claim**" means:

- (1) a written demand for monetary relief; or
- (2) a civil, administrative or arbitration proceeding for monetary relief which is commenced by:
 - (i) service of a complaint or similar pleading; or
 - (ii) receipt or filing of a notice of charges.

(b) "**Individual Insured**" means any **Director or Officer** or **Employee** of the **Company**.

(c) "**Insured**" means:

- (i) any **Individual Insured**; and
- (ii) the **Company**.

(d) "**Loss**" means damages, judgments (including pre-judgment and post-judgment interest on that part of any judgment paid under this **Coverage Section**), settlements and any **Defense Costs**; provided, however, that **Loss** (other than **Defense Costs**) shall not include: (1) civil fines or penalties; (2) taxes; (3) punitive or exemplary damages; (4) the multiplied portion of multiplied damages; (5) any liability or cost incurred by any **Insured** in complying with any judgment, award or settlement for non-monetary relief; (6) any amounts for which the **Insured** is or is alleged to be liable under any insurance or reinsurance policy, contract, treaty, binder, slip, certificate, cover note, agreement, suretyship, endorsement, endowment or annuity; (7) any

amounts for which the **Insured** is entitled to indemnity and/or payment under any other insurance or reinsurance contract; (8) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**; or (9) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Notwithstanding the foregoing paragraph, **Loss** shall specifically include (subject to this policy's other terms, conditions and limitations, including but not limited to Exclusions (a) and (b) of this **Coverage Section** and Exclusion (a) of the General Terms and Conditions) punitive or exemplary damages and the multiplied portion of multiplied damages. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive and exemplary damages. For purposes of such coverage, "applicable law" includes, but is not limited to, the following jurisdictions: (a) where the **Wrongful Act** actually or allegedly took place; (b) where the damages are awarded; (c) where the **Named Entity** resides, is incorporated or has its principal place of business; and (d) where the **Insurer** is incorporated or has its principal place of business.

- (e) "**Professional Services**" means services rendered or required to be rendered solely in the conduct of the **Insured's** claims handling and adjusting, risk management, safety engineering, safety inspections and loss control operations, salvage operations, recovery subrogation services, premium financing operations, or actuarial consulting services.
- (f) "**Wrongful Act**" means:
 - (1) with respect to **Directors or Officers** and **Employees**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Insureds** in their respective capacities as such, or any matter claimed against such **Insured** solely by reason of their status as **Directors or Officers** or **Employees**; or
 - (2) with respect to the **Company**, any actual or alleged breach of duty, neglect, error, misstatement, omission or act by the **Company**.

3. 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) alleging, arising out of, based upon or attributable to any criminal act;
- (b) alleging, arising out of, based upon or attributable to any dishonest or fraudulent act or omission; provided, however, that this exclusion shall not apply to any **Claim** seeking both compensatory and punitive damages based upon or arising out of allegations of both fraud and bad faith in the rendering of or failure to render **Professional Services**;
- (c) alleging, arising out of, based upon or attributable to, directly or indirectly, (1) false arrest, detention or imprisonment; (2) libel, slander, disparagement, defamation or violation of the right of privacy; (3) wrongful entry or eviction, or invasion of any right of private occupancy; (4) discrimination; or (5) emotional distress or mental anguish of any person;
- (d) brought by, on the behalf of or in the right of any **Insured**; provided, however, that this exclusion shall not apply to a **Claim** by any **Insured** in its capacity as a policyholder or customer or client of the **Company**;
- (e) alleging, arising out of, based upon or attributable to, directly or indirectly, premiums, return premiums, commissions or tax monies, or arising out of any commingling of funds;
- (f) alleging, arising out of, based upon or attributable to, directly or indirectly, any allegations that any **Insured** intentionally or negligently permitted, or aided or abetted others in using, was

aware of others using, or was a participant or connected in any way in the use of an agreement or other arrangement between an insurance broker or insurance agent and an insurance carrier involving the payment of increased fees, commissions or other compensation based on the volume, profitability or type of business referred to the insurance carrier, whether referred to as a Market Placement Agreement, Market Service Agreement, Placement Services Agreement or Contingent Commission Agreement or similar agreement or arrangement, however named.

This policy shall exclude such **Loss** regardless of the form, style, or denomination of any such **Claim**, regardless of whether the **Claim** is criminal, administrative or civil, and shall specifically apply but not be limited to **Claims** alleging bid rigging, bribes or kickbacks, schemes to provide fictitious quotes, conflict of interest, breach of contract, failure to supervise, negligent supervision or negligence of any contract, controlling person liability, breach of fiduciary duty, personal profiting, improper, undisclosed or unlawful fees, commissions or charges of any kind, criminal activity, market manipulation, violation of any law related to the insurance industry, misrepresentation, estoppel or repudiation of any commitment and any other theory of liability;

- (g) alleging, arising out of, based upon or attributable to, directly or indirectly, claim reserves;
- (h) alleging, arising out of, based upon or attributable to, directly or indirectly, any warranties or guaranties, estimates of probable construction costs, or costs exceeding estimates made in connection with **Professional Services**;
- (i) brought by any pool, association or syndicate (including any officer, director or employee thereof) in which any of the **Insureds** are participants, or by any participant (including any officer, director or employee thereof) in any such pool, association or syndicate involving the business or operations of such pool, association or syndicate;
- (j) alleging, arising out of, based upon or attributable to, directly or indirectly, the bankruptcy, insolvency, receivership, liquidation or inability of any **Insured** to pay claims or perform **Professional Services**;
- (k) alleging, arising out of, based upon or attributable to, directly or indirectly, the performance of or failure to perform services for any person or entity:
 - (1) which is owned by or controlled by any **Insured**; or
 - (2) which owns or controls any **Insured**; or,
 - (3) which is affiliated with any **Insured** through any common ownership or control;
- (l) alleging, arising out of, based upon or attributable to, directly or indirectly, the actual or alleged harmful properties of asbestos;
- (m) brought by any reinsurer of any **Insured**;
- (n) alleging, arising out of, based upon or attributable to, directly or indirectly, the underwriting, marketing or selling of any insurance policy or annuity, or any other insurance or investment product;
- (o) alleging, arising out of, based upon or attributable to, directly or indirectly, infringement of any patent, copyright or trademark, or servicemark;
- (p) alleging, arising out of, based upon or attributable to, directly or indirectly, any allegations that any **Insured** intentionally or negligently permitted, or aided or abetted others in using, was aware of others using, or was a participant or connected in any way in the use of a finite risk reinsurance agreement, transaction or arrangement, or financial reinsurance agreement, transaction, or arrangement, including but not limited to, any agreement, transaction or

arrangement involving aggregate stop loss covers, finite quota shares, funded catastrophe contracts, loss portfolio transfers and adverse loss development covers, or any other similar agreement, transaction or arrangement, however named.

This policy shall exclude such **Loss** regardless of the form, style, or denomination of any such **Claim**, regardless of whether the **Claim** is criminal, administrative or civil, and shall specifically apply but not be limited to any **Claim** alleging failure to supervise, negligent supervision or negligence of any contract, improper revenue or expense recognition or improper accounting of any kind, securities violations, fraud, breach of fiduciary duty, personal profiting, improper, undisclosed or unlawful fees, commissions or charges of any kind, criminal activity, market manipulation, violation of any law related to the insurance industry, misrepresentation, or any other theory of liability; or

- (q) for any actual or alleged violation of any law, whether statutory, regulatory or common law, with respect to any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships; provided, however, this exclusion shall not apply to any **Non-Indemnifiable Loss**.

For the purpose of determining the applicability of the foregoing Exclusions 3(a) and 3(b): (1) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Individual Insured**; and (2) facts pertaining to and knowledge possessed by any **Individual Insured** shall be imputed only to the **Company**.

4. DEFENSE COSTS, SETTLEMENTS AND JUDGMENTS (INCLUDING ADVANCEMENT OF DEFENSE COSTS)

- (1) The **Insurer** does not assume any duty to defend. The **Insureds** shall defend and contest any **Claim** made against them.

Notwithstanding the foregoing, the **Insurer** may, in its absolute discretion, assume the defense and/or investigation of any **Claim** for which reasonable grounds exist for possible involvement of the **Insurer**. In such an event, the **Insured** shall promptly reimburse the **Insurer** for those **Defense Costs** incurred by the **Insurer** to the extent of the Retention amount, or which the **Insureds** are not otherwise entitled under the terms and conditions of this policy to payment of such **Loss**. In no event will the **Insurer** have the obligation to continue to defend any **Claim** (if it has assumed the defense pursuant to this paragraph) once the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations or any **Separate Limit of Liability** or **Shared Limit of Liability** stated in Item 3 of the Declarations has been exhausted.

When the **Insurer** has not assumed the defense of a **Claim** pursuant to this Clause 4, the **Insurer** shall advance nevertheless, at the written request of the **Insured**, **Defense Costs** prior to the final disposition of a **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds** or the **Company**, severally according to their respective interests, in the event and to the extent that the **Insureds** or the **Company** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.

- (2) In the event that the **Insurer** does not assume the defense and/or investigation of a **Claim** pursuant to paragraph (1) above, it shall nevertheless have the right to fully and effectively associate with the **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including but not limited to negotiating a settlement. The **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require.

(3) Neither the **Insurer** nor the **Insured** shall admit or assume any liability, enter into any settlement, stipulate to any judgment or incur any **Defense Costs** without the prior written consent of the other; however, if the **Insurer** recommends settlement of a **Claim** which is agreeable to the claimant and the **Insured** refuses, then the **Insurer's** liability for **Loss** shall be fixed at the amount so recommended together with such **Defense Costs** incurred as of the date the recommendation was made, and shall withdraw from the defense of the **Claim** (if it has assumed the **Insured's** defense). Only those settlements, stipulated judgments and **Defense Costs**, which have been consented to by the **Insurer**, in writing, shall be recoverable as **Loss** under the terms of this policy. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer**, when it has not assumed the defense of a Claim pursuant to this Clause 4, shall be entitled to fully and effectively associate in the defense and negotiation of any settlement of any **Claim**, and provided further that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such loss is not covered under the terms of this policy.

[The balance of this page is left intentionally blank]

SPECIMEN