



CHARTIS SPECIALTY INSURANCE COMPANY

BANK CARD PROTECTOR

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by application forming a part hereof and its attachments and the material incorporated therein, and subject to the **Limits of Liability** set forth in the Declarations and the terms and conditions contained herein, Chartis Specialty Insurance Company, herein called the **Insurer**, agrees as follows:

1. INSURING AGREEMENTS

A: FRAUD AT AN ELECTRONIC TERMINAL

This Policy shall pay for the **Insured's Loss** arising from the **Fraudulent Use of a Bank Card(s)** at an **Electronic Terminal**.

B: FRAUD INVOLVING TELEPHONE, MAIL ORDER AND INTERNET SALES

This policy shall pay for the **Insured's Loss** from the **Fraudulent Use of a Bank Card(s)** where property, labor or services are sold and delivered by a merchant to an individual purporting to be the cardholder using a telephone, FAX machine, postal service or a computer, computer system, or computer network. As a condition of coverage under **Insuring Agreement B**, the merchant must have received advance approval for the use of the **Bank Card(s)** through a system that requires the cardholder or individual purporting to be the cardholder to provide a security code including, but not limited to a system such as **Verified by Visa** or **MasterCard SecureCode®**.

C: COMPROMISED CARDS EXTRA EXPENSE

This policy shall pay for the **Insured's Extra Expense** to replace **Compromised Cards** that have been obtained by **Unauthorized Access** to or theft from an electronic data base, computer, computer system or computer network which is not owned, operated or contracted by the **Insured** or the **Insured's Bank Card processor**. As a condition of this **Insuring Agreement**, the **Insured** must cancel the **Compromised Cards** as soon as practicable, but in any event not more than thirty days, after receipt of notification of the unauthorized access or theft.

2. DEFINITIONS

- A. **Activation System** shall mean an electronic or manual fraud prevention system that verifies the authorized cardholder's identity prior to activating **Bank Cards**.
- B. **Bank Cards** shall mean a plastic card issued for the purpose of obtaining money, property, labor, or services on credit or for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account.

- C. **Compromised Cards** shall mean **Bank Cards** or **Bank Card** numbers that have been, or are reasonably believed to have been, obtained by an unauthorized party and reported to the **Insured**.
- D. **Computer Virus** shall mean an unauthorized corrupting or harmful piece of code, including but not limited to, Trojan horses, worms, and time or logic bombs.
- E. **Electronic Fund Transfer** shall mean any transfer of funds that is initiated through an **Electronic Terminal** for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account, including but not limited to payments, cash withdrawals and cash advances.
- F. **Electronic Terminal** shall mean an electronic device, other than a telephone, computer or facsimile machine, operated by a consumer, through which a consumer may initiate an **Electronic Fund Transfer**. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, an **Imprinter**, and cash dispensing machines.
- G. **Extra Expense** shall mean the direct costs incurred by the **Insured** to replace **Compromised Cards**, limited to the cost of manufacturing and mailing replacement plastic **Bank Cards**, and notifying authorized cardholders. **Extra Expense** does not include any of the **Insured's** employees' salary and other compensation, or attorney's fees.
- H. **Forgery** shall mean the signing by one person of the name of another person or organization without authority.
- I. **Fraudulent Use** shall mean the use of a lost, stolen or counterfeit **Bank Card** by a person or group of persons other than the authorized cardholder without the permission of the authorized cardholder. For purposes of this Policy, "stolen" includes using the **Bank Card** identification number without the authority of the cardholder.
- J. **Imprinter** shall mean a piece of equipment used by merchants to manually imprint a **Bank Card's** information into a sales draft for transaction purposes when the merchant is unable to electronically capture card data via the terminal card reader.
- K. **Insured** shall mean the entity named in Item 1 of the Declarations.
- L. **Loan** shall mean all extensions of credit by the **Insured** and all transactions creating a creditor relationship in favor of the **Insured** and all transactions by which the **Insured** assumes a creditor relationship.
- M. **Loss** shall mean the principal amount, exclusive of interest and fees, incurred by the **Insured** and caused by the **Fraudulent Use** of a **Bank Card(s)**, issued by or purported to be issued by the **Insured**, by a person or group of persons other than the authorized cardholder.
- N. **Single Loss** shall mean all covered **Loss** and **Extra Expense**, resulting from:
- (1) all **Loss** or series of **Losses** and/or **Extra Expense** involving the acts of one individual, or involving acts in which one individual is implicated, whether or not that individual is specifically identified.
 - (2) a series of **Losses** and/or **Extra Expense** which are the same, related or continuous, or **Losses** and/or **Extra Expense** which arise from a common nucleus of

facts, regardless of whether such **Losses** and/or **Extra Expense** involve the acts of the same or different individuals. All **Single Loss** shall be subject to the **Single Loss Limit of Liability**.

- O. **Unauthorized Access** shall mean the gaining of access to a database, computer, computer system, or computer network by an unauthorized person or persons or an authorized person or persons in an unauthorized manner.
- P. **Unauthorized Use** shall mean the use of a database, computer, computer system, or computer network by an unauthorized person or persons or an authorized person or persons in an unauthorized manner.

3. EXCLUSIONS

This Policy does not cover **Loss** and **Extra Expense**:

- A. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, **Forgery** or alteration; however this exclusion shall not apply to **Forgery** of a cardholder's signature on a sales draft authorizing a **Bank Card** transaction;
- B. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, riot, civil commotion, war (whether or not declared), warlike action or acts of terrorism inside or outside the United States and Canada; or **Loss** and/or **Extra Expense** due to military, naval or usurped power, war or insurrection;
- C. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, nuclear reaction, radioactive contamination, or any related act or incident;
- D. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, any employees, duly elected or appointed directors, officers, management committee members or members of the Board of Managers of the **Insured**, whether acting alone or in collusion with other persons or by a person acting in collusion with any duly elected or appointed directors, officers, management committee members or members of the Board of Managers of the **Insured**. Collusion shall include, but is not limited to, the withholding of knowledge from the **Insured** by any employees, duly elected or appointed directors, officers, management committee members or members of the Board of Managers of the **Insured**, that an act by a person who is not an employee, duly elected or appointed directors, officers, management committee members or members of the Board of Managers, has been or will be perpetrated against the **Insured**.
- E. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly from:
 - (1) mechanical failure, faulty construction, error in design, latent defect, fire, wear and tear, gradual deterioration, electrical disturbance or electrical surge, which affects an **Electronic Terminal**;
 - (2) failure or breakdown of electronic data processing media; or
 - (3) error or omission in programming or accounting; or

- (4) a **Computer Virus, Unauthorized Access or Unauthorized Use** of a computer, computer system or computer network of a third party data processor contracted with the **Insured** to perform certain data processing, whether the processor is liable or not;
- F. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof. This exclusion includes, but is not limited to, the threat to do bodily harm to any person, or to do damage to the premises or property of the **Insured** or a merchant;
- G. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, in whole or in part, from the complete or partial nonpayment of, or default upon, any **Loan** or transaction involving the **Insured** as a lender or borrower, or any extension of credit, including but not limited to the purchase, discounting or other acquisition of false or genuine accounts, invoices, notes, agreements or evidences of debt, whether such **Loan**, transaction, or extension was procured in good faith or through trick, artifice, fraud or false pretenses, this exclusion shall not apply to **Loss and Extra Expense** resulting from credit card transactions, including purchases and cash advances, or to **Loss and Extra Expense** resulting from an overdraft line of credit associated with a debit or **ATM Bank Card**;
- H. arising out of, based upon or resulting directly or indirectly from payment made or withdrawals from a depositor's account involving items of deposit which are not finally paid for any reason;
- I. arising out of, based upon or resulting from any act, error or omission of a manufacturer or embosser of a **Bank Card** or of the **Insured's Bank Card** processor; and
- J. arising out of, based upon or resulting directly or indirectly from the use of a **Bank Card** that was issued and mailed to a cardholder but not activated through an **Activation System**, except when a **Bank Card** was issued by an unauthorized person or persons.
- K. The following are also excluded from the definitions of **Loss and Extra Expense** and therefore not covered under the Policy:
1. any and all loss of potential income, including but not limited to fees, interest and dividends, not realized by the **Insured**;
 2. any and all legal liability arising out of a third party claim, including but not limited to, compensatory, exemplary and punitive damages;
 3. all fees, costs and expenses incurred by the **Insured**:
 - (a) in establishing the existence of or the amount of **Loss and Extra Expense** covered under this Policy; or
 - (b) related to any legal action; and
 4. any indirect or consequential damages.

4. DISCOVERY OF LOSS AND EXTRA EXPENSE

This Policy applies only to **Loss and Extra Expense** as defined in the Policy, discovered by the **Insured** during the **Policy Period** or the **Discovery Period** (if applicable). Discovery occurs when the **Insured** first becomes aware of facts which would cause a reasonable person to assume that a **Loss and/or Extra Expense** of a type covered by this Policy has been or will be incurred, regardless of when the act or acts causing or contributing to such **Loss and/or Extra Expense** occurred, even though the exact amount or details of loss may not then be known.

Upon discovery of **Loss or Extra Expense**, the **Insured** must take all reasonable action to stop further **Loss and Extra Expense**.

5. LIMIT OF LIABILITY

A. AGGREGATE LIMIT OF LIABILITY:

The **Insurer's** total liability for all **Loss and Extra Expense** discovered during the **Policy Period** shown in Item 2 of the Declarations and the **Discovery Period** (if applicable) shall not exceed the **Aggregate Limit of Liability** indicated in Item 3 of the Declarations. The **Aggregate Limit of Liability** shall be reduced by the amount of any payment made under the terms of this Policy. Upon exhaustion of the **Aggregate Limit of Liability** by such payments:

(1) The **Insurer** shall have no further liability for any **Loss and Extra Expense** regardless of when such **Loss and Extra Expense** are discovered and whether or not such **Loss and Extra Expense** were previously reported to the **Insurer**, and

(2) Any recovery made and applied in accordance with subsections (a) and (b) of Section 9 of this Policy shall in no way serve to increase or reinstate the **Aggregate Limit of Liability** indicated in Item 3 of the Declarations.

B. PER CARD LIMIT OF LIABILITY:

Subject to the **Aggregate Limit of Liability** indicated in Item 3 of the Declarations, the **Insurer's** liability for all **Loss and Extra Expense** involving a single **Bank Card** or single **Bank Card** number shall not exceed the applicable **Per Card Limit of Liability** indicated in Item 3 of the Declarations. If a **Loss** is covered under more than one **Insuring Agreement**, the maximum payable under this Policy shall not exceed the largest applicable **Per Card Limit of Liability**.

C. SINGLE LOSS LIMIT OF LIABILITY:

(1) Subject to the **Aggregate Limit of Liability** indicated in Item 3 of the Declarations, the **Insurer's** liability for **Loss and Extra Expense** for each **Single Loss** shall not exceed the applicable **Single Loss Limit of Liability** indicated in Item 3 of the Declarations. If a **Single Loss** is covered under more than one **Insuring Agreement**, the maximum payable under this Policy shall not exceed the largest applicable **Single Loss Limit of Liability**.

(2) Subject to the **Aggregate Limit of Liability** indicated in Item 3 of the Declarations, the **Insurer's** liability for **Extra Expense** for each **Single Loss** shall not

exceed the **Extra Expense Single Loss Sublimit of Liability** indicated in Item 3 of the Declarations.

6. EXERCISE OF CHARGEBACK RIGHTS

The exercise of chargeback rights is a condition precedent to coverage under the Policy. Any **Loss** and/or **Extra Expense** for which the **Insured** had chargeback rights against a merchant and for which the **Insured** did not exercise those chargeback rights will be excluded from coverage under the Policy. Moreover, any payment under the Policy will be net of any amounts received by the **Insured** pursuant to the exercise of the **Insured's** chargeback rights.

7. DUTIES IN THE EVENT OF LOSS

After the **Insured** discovers a loss or a situation that may result in loss, the **Insured** must:

- A. Notify the **Insurer** at the earliest practicable moment;
- B. Furnish to the **Insurer** proof of loss, duly sworn to, with full particulars as the **Insurer** shall require, within six (6) months after discovery of the loss;
- C. Submit to examination under oath at the **Insurer's** request and give the **Insurer** a signed statement of your answers;
- D. Produce for the **Insurer's** examination all pertinent records; and
- E. Fully cooperate with the **Insurer** in the investigation and resolution of the loss.

8. COVERAGE TERRITORY

The Policy shall apply to **Bank Cards** that are both:

- A. issued in the United States, its territories and possessions and Canada; and
- B. issued to residents of the United States, its territories and possessions and Canada.

9. SUBROGATION - RECOVERY - COOPERATION

A. The **Insurer** shall be subrogated to all of the **Insured's** rights of recovery thereof against any person or entity to the extent of such payment, and the **Insured** shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of any and all documents necessary to enable the **Insurer** to effectively bring suit in the name of such **Insured**. The **Insured** shall execute all papers and render assistance to secure to the **Insurer** the rights and causes of action provided for herein. The **Insured** shall do nothing after discovery of **Loss** and/or **Extra Expense** to prejudice such rights or causes of action.

B. Recoveries, whether affected by the **Insurer** or by the **Insured**, shall be applied net of the expense of such recovery first to the satisfaction of the **Insured's Loss** and/or **Extra Expense** which would otherwise have been paid, but for the fact that it is in excess of either the **Single Loss Limit of Liability** indicated in Items 3 and 5 of the Declarations or the **Aggregate Limit of Liability** indicated in Items 3 and 5 of the

Declarations; secondly, to the **Insurer** as a reimbursement of amounts paid in settlement of the **Insured's Loss** and/or **Extra Expense**; and thirdly, to the **Insured** in satisfaction of any **Deductible** amount. Recoveries do not include any recovery from insurance, suretyship, reinsurance, security or indemnity taken for the **Insurer's** benefit.

10. OTHER INSURANCE OR INDEMNITY

Coverage afforded hereunder shall apply only as excess over any valid and collectible insurance, bond or indemnity obtained by the **Insured**, or by another entity which employed the person causing the **Loss** and/or **Extra Expense**. If the limit of the other insurance, bond or indemnity is insufficient to cover the entire amount of the **Loss** and/or **Extra Expense**, this Policy will apply only to that part of the **Loss** and/or **Extra Expense**, other than that falling within any applicable **Deductible** amount, not recoverable or recovered under the other insurance, bond or indemnity, subject to this Policy's applicable **Limit of Liability**.

11. POLICY SOLE USE AND BENEFIT - NO ASSIGNMENT

This Policy shall be for the sole use and benefit of the **Insured** named in the Declarations. The **Insured's** rights and duties under this Policy may not be transferred or assigned without the **Insurer's** written consent.

12. DEDUCTIBLE AMOUNT

A. The **Insurer** shall be liable hereunder only for the amount by which all **Loss** involving a single **Bank Card** or single **Bank Card** number, as defined in Section 2, exceeds the **Per Card Deductible** amount indicated in Item 4 of the Declarations for the **Insuring Agreement** applicable to such **Loss**, subject to the applicable **Aggregate Limit of Liability** indicated in Item 3 of the Declarations and the applicable **Single Loss Limit of Liability** indicated in Items 3 of the Declarations.

In the event the sum total of all **Per Card Deductible** amounts for any **Single Loss** exceeds the **Maximum Loss Deductible**, the **Per Card Deductible** will not apply to further **Losses** resulting from such **Single Loss**.

B. The **Insurer** shall be liable hereunder only for the amount by which all **Extra Expense** resulting from a **Single Loss** exceeds the **Extra Expense Single Loss Deductible** amount indicated in Item 4 of the Declarations, subject to the **Aggregate Limit of Liability** and the **Extra Expense Single Loss Sublimit of Liability** indicated in Item 3 of the Declarations.

13. TERMINATION OR CANCELLATION

This policy shall terminate in its entirety upon the occurrence of any of the following:

A. Sixty (60) days after the receipt by the **Insured** of a written notice of cancellation from the **Insurer** for any reason other than non-payment of premium;

B. Ten (10) days after receipt by the **Insured** of a written notice of cancellation from the **Insurer** for non-payment of premium, or such lesser or greater amount as required by law;

- C. Immediately upon the receipt by the **Insurer** of a written notice from the **Insured** of its desire to cancel this Policy;
- D. Immediately upon the acquisition of the **Insured** by a receiver or other liquidator or by State or Federal officials, it being understood that in such circumstances, the availability of any renewal and/or **Discovery Period** is at the sole discretion of the **Insurer**;
- E. Immediately upon the acquisition of the **Insured** by another entity or institution; or
- F. Immediately upon expiration of the **Policy Period** as set forth in Item 2 of the Declarations.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

14. EXTENDED PERIOD TO DISCOVER LOSS AND EXTRA EXPENSE

Except as indicated below, if the **Insured** shall cancel this policy, the **Insured**, upon payment of the respective **Additional Premium Amount** described below, shall have the right to a period of three, six, nine or twelve months after the effective date of such cancellation (herein referred to as the **Discovery Period**) in which to give to the **Insurer** written notice of facts which would cause a reasonable person to assume that a **Loss** and/or **Extra Expense** of a type covered by this Policy has been or will be incurred. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Insurer** within 30 days of the effective date of cancellation. The **Discovery Period** is not cancelable. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

The Additional Premium Amount for:

- i. three months shall be 25% of "full annual premium";
- ii. six months shall be 50% of "full annual premium";
- iii. nine months shall be 75% of "full annual premium"; and
- iv. twelve months shall be 100% of "full annual premium"

As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the **Policy Period**.

The **Aggregate Limit of Liability** stated in Item 3 of the Declarations is the limit of the **Insurer's** liability for all **Loss** and/or **Extra Expense** reported during the **Policy Period** and **Discovery Period** (if applicable). In no event shall the purchase of a **Discovery Period** entitle the **Insured** to additional **Limits of Liability**.

15. RECORDS

The **Insured** shall keep all records of all **Bank Card** transactions in such a manner that the **Insurer** can accurately determine from them the amount of **Loss** and **Extra Expense**.

16. GENERAL COVERAGE AGREEMENTS

A. ADDITIONAL OFFICES - NOTICE

If the **Insured** shall, while this Policy is in force, establish any additional offices, other than by consolidation or merger with, or purchase or acquisition of assets or liabilities of, another entity or institution, such offices shall be automatically covered hereunder from the date of such establishment without the requirement of notice to the **Insurer**.

B. CHANGE IN CONTROL OF NAMED ENTITY

If during the **Policy Period**:

1. the **Insured** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or

2. any person or entity or group of persons or entities acting in concert shall acquire an amount of the outstanding securities representing more than 50% of the voting power for the election of directors of the **Insured**, or acquires the voting rights of such an amount of such securities;

(either of the above events herein referred to as the **Transaction**)

then this Policy shall continue in full force and effect as to **Loss** and/or **Extra Expense** occurring prior to the effective date of the **Transaction**, but there shall be no coverage afforded by any provision of this Policy for any **Loss** and/or **Extra Expense** occurring after the effective date of the **Transaction**. The Policy may not be canceled after the effective date of the **Transaction** and the entire premium for this Policy shall be deemed earned as of such time. The **Insured** shall also have the right to an offer by the **Insurer** of a **Discovery Period** described in Clause 14 of the Policy.

The **Insured** shall give the **Insurer** written notice of the **Transaction** as soon as practicable, but not later than thirty (30) days after the effective date of the **Transaction**.

C. LOSS COVERED UNDER THIS POLICY AND PRIOR INSURANCE ISSUED BY US OR ANY AFFILIATE

If any **Loss** and/or **Extra Expense** is covered:

1. Partly by this Policy; and
2. Partly by any prior cancelled or terminated insurance that the **Insurer** or any affiliate had issued to the **Insured** or any predecessor in interest;

The **Insurer's** maximum aggregate Limit of Liability for all **Loss** and/or **Extra Expense** combined shall not exceed the greater of the Limit of Liability of this Policy or the limit of liability of such other policy.

D. POLICY CONSTRUCTION

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

This Policy affords coverage only in favor of the **Insured**. No suit, action or legal proceeding may be brought hereunder by any party other than the **Insured**.

17. ACTION AGAINST INSURER

The **Insured** may not bring any legal action against the **Insurer** involving any **Loss** and/or **Extra Expense**:

- A. Unless the **Insured** has complied with all terms of this Policy;
- B. Until 90 days after the **Insured** has filed proof of loss with the **Insurer**; and
- C. Unless brought within two (2) years from the date the **Insured** discovered the **Loss** and/or **Extra Expense**.

18. REPRESENTATIONS OF INSURED

In granting coverage under this Policy, it is agreed that the **Insurer** has relied upon the statements and representations contained in the application for this Policy (including materials submitted therewith and, if this is a renewal application, all such previous policy applications for which this Policy is a renewal) as being accurate and complete. All such statements and representations shall be deemed to be material to the risk assumed by the **Insurer**, are the basis of this Policy, and are to be considered as incorporated into this Policy.

It is clearly understood that all internal controls noted in the application and attachments shall remain in full force during the **Policy Period** as a condition precedent to the coverage provided under this Policy.

19. SERVICE OF SUIT

Subject to Clause 17, it is agreed that in the event of failure of the **Insurer** to pay any amount claimed to be due hereunder, the **Insurer**, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the **Insurer's** rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, Chartis Specialty Insurance Company, 175 Water Street New York, NY 10038, or his or her representative.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the **Insurer** hereby designates the Superintendent, Commissioner, or Director of Insurance, other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.