

THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.  
PLEASE READ THE ENTIRE POLICY CAREFULLY.

**PENSION AND WELFARE BENEFIT PLAN FIDUCIARY LIABILITY INSURANCE POLICY**

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Company including the Application, and subject to the Limit of Liability and to all of the terms, conditions and limitations of this Policy and any endorsements to this Policy, the Insurer identified on the Declarations Page (hereinafter, the “Insurer”) and the Insureds agree as follows:

**I. INSURING AGREEMENTS**

- (A) The Insurer will pay, on behalf of the **Insureds**, **Damages** and **Defense Expenses** incurred by the **Insureds** in connection with any **Claim** first made against them during the **Policy Period** or, if applicable, the Extended Reporting Period, for a **Wrongful Act**.
- (B) The Insurer will pay, on behalf of the **Insureds**, **Professional Fees** and **Settlement Fees** incurred by the **Insureds** as the result of their participation in any **Voluntary Compliance Program** if such participation commences during the **Policy Period** or, if applicable, the Extended Reporting Period.

**II. DEFINITIONS**

- (A) “**Administration**” means:
  - (1) giving counsel to employees with respect to **Employee Benefits**;
  - (2) interpreting **Employee Benefits**;
  - (3) handling records in connection with **Employee Benefits**; or
  - (4) effecting enrollment, termination or cancellation of employees under an **Employee Benefits** program.
- (B) “**Application**” means the **Application** attached to and forming part of this Policy, including any materials submitted in connection therewith, all of which are on file with the Insurer and are a part of the Policy, as if physically attached.
- (C) “**Claim**” means:
  - (1) (a) any written demand by any person or entity,
  - (b) any civil proceeding in a court of law or equity,
  - (c) any arbitration,
  - (d) any administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document, or
  - (e) any criminal proceeding in a court of law;

that seeks to hold an **Insured** responsible for monetary damages or other non-monetary relief as a result of a **Wrongful Act** actually or allegedly committed by an **Insured** or by any person for whose **Wrongful Acts**, as defined in DEFINITION (T)(1)(a), an **Insured** is legally responsible; or

- (2) a written notice of commencement of a fact-finding investigation against any **Insured** for a **Wrongful Act** by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation or any similar governmental authority located outside the United States, including but not limited to the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services or the United Kingdom Occupational Pensions Regulatory Authority.
- (D) "**Damages**" means monetary damages (including punitive or exemplary damages and the multiple portion of any multiple damage award if and to the extent that such damages are insurable under the law of that jurisdiction which is applicable to the **Claim** giving rise to such damages and is most favorable to the insurability thereof), judgments (including pre- and post-judgment interest, if any) or settlements which an **Insured** is legally obligated to pay as a result of a **Claim**; provided, that the term **Damages** will not include:
- (1) fines, taxes or penalties, except that the term **Damages** may include (a) civil penalties of up to five percent (5%) imposed pursuant to Section 502(i) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and civil penalties of up to twenty percent (20%) of any settlement or judgment imposed pursuant to Section 502(l) of ERISA for breach of fiduciary duty, and (b) as long as the funds or assets of the subject **Plan** are or have not been used to fund, pay or reimburse the premium for this coverage, any civil penalties imposed by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995 or any rules or regulations thereunder; or
- (2) fees or other charges of the **Insureds**, including but not limited to overhead, salaries, wages, fees or benefits of any **Insured**.
- (E) "**Defense Expenses**" means reasonable expenses and legal fees incurred by or on behalf of the **Insureds** in the investigation, adjustment, defense or appeal of a **Claim**; provided, that the term **Defense Expenses** will not include any **Insured's** overhead expenses or any salaries, wages, fees or benefits of any **Insured**.
- (F) "**Employee Benefits**" means any **Plan**, workers' compensation insurance, unemployment insurance, Social Security or disability benefits.
- (G) "**Insured**" means any **Plan**, **Sponsor Organization** or **Natural Person Insured**.
- (H) "**Loss**" means **Damages**, **Defense Expenses**, **Professional Fees** and **Settlement Fees**.
- (I) "**Natural Person Insured**" means:
- (1) with respect to any **Plan** or **Sponsor Organization**, any natural person who at any time holds or shall have held the position of director, officer, trustee, governor, management committee member, in-house general counsel or employee thereof;
- (2) with respect to any **Sponsor Organization** that is a limited liability company, any natural person who at any time holds or shall have held the position of manager, member of the Board of Managers or equivalent executive thereof;
- (3) with respect to any **Sponsor Organization** that is a partnership, any natural person who at any time holds or shall have held the position of general partner thereof; and
- (4) with respect to any **Sponsor Organization** organized or chartered in any jurisdiction other than the United States, any natural person who at any time holds or shall have held any position equivalent to any position described in DEFINITION (I)(1), (2) or (3) above.

- (J) **"Pension Benefit Plan"** means any employee pension benefit plan, as defined in Section 3 of ERISA.
- (K) **"Plan"** means:
- (1) any **Pension Benefit Plan** or **Welfare Benefit Plan** which is operated solely by a **Sponsor Organization** or jointly by a **Sponsor Organization** and a labor organization solely for the benefit of such **Sponsor Organization's** directors, officers, trustees, governors, management committee members, managers, members of the Board of Managers, general partners, in-house general counsel or employees located anywhere in the world;
  - (2) any other employee benefit plan or program anywhere in the world which is not subject to ERISA and which is sponsored by a **Sponsor Organization** solely for the benefit of its directors, officers, trustees, governors, management committee members, managers, members of the Board of Managers, general partners, in-house general counsel or employees, including but not limited to any cafeteria plan, dependent care assistance program, fringe benefit plan, deferred compensation plan, supplemental executive retirement plan, top-hat plan, excess benefit plan or voluntary employees' beneficiary association;
  - (3) any other plan or program otherwise described in DEFINITION (K)(1) or (2) above while such plan or program is being actively developed, formed or proposed by a **Sponsor Organization** prior to the formal creation of such plan or program; provided, that no coverage will be afforded under this Policy in respect of any **Claim** against a **Sponsor Organization** or **Natural Person Insured** in a settlor or similar uninsured capacity with respect to any such plan or program; and
  - (4) any other plan, fund or program specifically identified as a **Plan** by written endorsement attached to and made a part of this Policy.
- (L) **"Policy Period"** means the period from the Inception Date to the Expiration Date in ITEM 2 of the Declarations or to any earlier cancellation date.
- (M) **"Professional Fees"** means reasonable costs, charges and expenses of attorneys, accountants and/or other professionals incurred solely in investigating and evaluating a **Plan's** actual or alleged noncompliance with any statute, rule or regulation and effecting a resolution thereof pursuant to a **Voluntary Compliance Program**.
- (N) **"Related Claims"** means, collectively, all **Claims** for **Wrongful Acts** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related or series of related facts, circumstances, situations, transactions or events.
- (O) **"Settlement Fees"** means any fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Voluntary Compliance Program** as a result of a **Plan's** actual or alleged inadvertent noncompliance with any statute, rule or regulation; provided, that the term **Settlement Fees** will not include:
- (1) any costs to correct a **Plan's** actual or alleged inadvertent noncompliance with any statute, rule or regulation or any other charges, expenses, taxes or damages, or
  - (2) any fees, fines, penalties or sanctions relating to a **Plan** if, as of the earlier of the Inception Date in ITEM 2(a) of the Declarations of this Policy or the inception date of any policy of insurance issued by the Insurer of which this Policy is a renewal or replacement, any **Natural Person Insured** knew of such **Plan's** actual or alleged noncompliance with any statute, rule or regulation.
- (P) **"Sponsor Organization"** means any corporation or entity identified as such in ITEM 1 of the Declarations, any **Subsidiary** thereof on or before the Inception Date in ITEM 2(a) of the Declarations

and, subject to CONDITION (F)(1), any **Subsidiary** created or acquired, or corporation or entity acquired, by a **Sponsor Organization** during the **Policy Period**.

- (Q) "**Subsidiary**" means any entity during any time in which a **Sponsor Organization**, directly or indirectly through one or more other **Subsidiaries**, owns or controls more than fifty percent (50%) of the outstanding securities or voting rights or interests representing the present right to vote for the election or appointment of:
- (1) if the entity is a corporation, the directors thereof;
  - (2) if the entity is a limited liability company, the managers, members of the Board of Managers or equivalent executives thereof;
  - (3) if the entity is a partnership, the general partners thereof; or
  - (4) if the entity is organized or chartered in any jurisdiction other than the United States, any position equivalent to any position described in DEFINITION (Q)(1), (2) or (3) above.
- (R) "**Voluntary Compliance Program**" means:
- (1) any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service or the U.S. Department of Labor, including but not limited to the Employee Plans Compliance Resolution System, the Audit Closing Agreement program, the Voluntary Compliance Resolution Program, the Walk-In Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Tax Sheltered Annuity Voluntary Correction Program, the Delinquent Filer Voluntary Compliance Program and the Voluntary Fiduciary Correction Program; and
  - (2) any similar program administered by any governmental authority located outside the United States.
- (S) "**Welfare Benefit Plan**" means any employee welfare benefit plan, as such term is defined in Section 3 of ERISA.
- (T) "**Wrongful Act**" means:
- (1) any actual or alleged:
    - (a) breach of the responsibilities, obligations or duties imposed upon fiduciaries of any **Plan** by ERISA, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the English Pension Scheme Act 1993, the English Pensions Act 1995, the Pension Benefit Standards Act 1985 of Canada, the Employment Pension Plans Act (Alberta), the Pension Benefits Act (Ontario) and comparable statutes enacted in other provinces of Canada, any amendments to any of the foregoing, the common law or statutory law of any other jurisdiction, domestic or foreign, governing such **Plan**, or any rules or regulations promulgated under any of the foregoing,
    - (b) negligent act, error or omission by an **Insured** in the **Administration of Employee Benefits**, or
    - (c) violation of HIPAA claimed against an **Insured** due solely to such **Insured's** service as fiduciary of any **Plan**;
  - (2) any other matter claimed against a **Natural Person Insured** due solely to such **Natural Person Insured's** service as fiduciary of any **Plan**; and

- (3) any matter claimed against a **Natural Person Insured** arising out of his or her service as a fiduciary, or arising out of his or her **Administration**, of any multiemployer plan as defined by ERISA, but only if such service is at the specific written request or direction of a **Sponsor Organization** and coverage for **Natural Person Insureds** in respect of such multiemployer plan is added by specific written endorsement attached to this Policy and any required additional premium in connection therewith shall have been paid; provided, that in no event will coverage under this Policy extend to any claim against, or loss incurred by, such multiemployer plan, its contributing employer or employers or any fiduciaries or administrators of such multiemployer plan other than **Natural Person Insureds** as defined in this Policy.

### III. EXCLUSIONS

(A) This Policy does not apply to any **Claim**:

- (1) brought about or contributed to in fact by any dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law by any **Insured**, or by the gaining in fact by any **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled, if such dishonest, fraudulent or criminal act or omission, willful violation of statute, rule or law or the gaining in fact of such profit, remuneration or advantage shall have been established by a judgment or other final adjudication adverse to such **Insured**;
- (2) for any actual or alleged libel, slander, defamation of character or oral or written publication of defamatory or disparaging material;
- (3) for any actual or alleged bodily injury to, or sickness, disease or death of, any person, or damage to or destruction, loss or loss of use of any tangible property, including currency, coins, bank notes, bullion, travelers' checks, register checks, money orders, or any other negotiable or non-negotiable instrument or contract representing money;
- (4) based on or directly or indirectly arising out of or resulting from any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants (each a "pollutant"), or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any pollutant, or any action taken in contemplation or anticipation of any such regulation, order, direction or request; provided, that this EXCLUSION (A)(4) will not apply to **Loss** (other than expenses incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effect of any pollutant) incurred by **Natural Person Insureds** as the result of a **Claim** alleging damage to a **Plan** for which no **Sponsor Organization** is required or permitted to provide indemnification or for which a **Sponsor Organization** is required or permitted to provide indemnification but is unable to do so solely by reason of its financial insolvency;
- (5) for any actual or alleged failure by any **Insured** to comply with any law concerning workers' compensation, unemployment insurance, Social Security or disability benefits, any amendments thereto, any similar provisions of any federal, state or local statutory or common law anywhere in the world or any rules or regulations promulgated under any of the foregoing, whether or not such failure to comply is willful; provided, that this EXCLUSION (A)(5) will not apply to any actual or alleged failure by any **Insured** to comply with the Consolidated Omnibus Budget Reconciliation Act of 1985, HIPAA, any amendments thereto or any rules or regulations promulgated thereunder;
- (6) based on or directly or indirectly arising out of or resulting from any liability of others assumed by any **Insured** under any contract or agreement, whether oral or written, other than an Agreement and Declaration of Trust or similar agreement creating or establishing a **Plan**;

provided, that this EXCLUSION (A)(6) will not apply to the extent that an **Insured** would have been liable in the absence of such contract or agreement; or

- (7) based on or directly or indirectly arising out of or resulting from:
- (a) any act, error, omission, fact, circumstance, situation, transaction, event, decision or **Wrongful Act**:
    - (i) underlying or alleged in any litigation, claim, demand, proceeding, decree, order or judgment occurring or entered before, or pending as of, the date set forth in ITEM 7 of the Declarations, or
    - (ii) which was the subject of any notice or claim under any prior policy of insurance; or
  - (b) any other act, error, omission, fact, circumstance, situation, transaction, event, decision or **Wrongful Act** based on or directly or indirectly arising out of or resulting from any act, error, omission, fact, circumstance, situation, transaction, event, decision or **Wrongful Act** described in EXCLUSION (A)(7)(a).

- (B) This Policy does not apply to **Loss** other than **Defense Expenses** in connection with any **Claim**:
- (1) for the failure to collect contributions owed to any **Plan** from any employer unless such failure is due to the negligence of an **Insured**;
  - (2) for the return to any employer of any contributions if such amounts are or could be chargeable to a **Plan**; or
  - (3) for benefits due or to become due under the terms of any **Plan** or which would be due under any **Plan** if such **Plan** were in compliance with all applicable law, except and then only if and to the extent that recovery for such benefits is based on a **Wrongful Act** by a **Natural Person Insured** and is payable solely as the personal obligation of such **Natural Person Insured**.

No **Wrongful Act** of any **Insured** will be imputed to any other **Insured** who is a **Natural Person Insured** to determine the application of any of the above EXCLUSIONS.

#### IV. CONDITIONS

- (A) **Notice:**
- (1) As a condition precedent to any right to coverage under INSURING AGREEMENT (A) of this Policy, the **Insureds** must give the Insurer written notice of any **Claim** as soon as practicable after such **Claim** is first made and, as a condition precedent to any right to coverage under INSURING AGREEMENT (B) of this Policy, the **Insureds** must give the Insurer written notice of the **Insureds'** participation or intent to participate in a **Voluntary Compliance Program** as soon as practicable; provided, that the Insurer will not be liable under INSURING AGREEMENT (B) for any **Professional Fees** or **Settlement Fees** incurred in connection with any **Voluntary Compliance Program** before notice of the **Insureds'** participation or intent to participate in such **Voluntary Compliance Program** has been given to the Insurer. In no event, however, may such written notice be given later than the earliest of:
    - (a) sixty (60) days after the chief executive officer, president, chief financial officer, in-house general counsel or risk manager of any **Plan** or **Sponsor Organization** first becomes aware of such **Claim** or of any **Insured's** participation, or intent to participate, in such **Voluntary Compliance Program**;

- (b) if this Policy expires or is cancelled or terminated without being renewed and no Extended Reported Period is purchased, sixty (60) days after the effective date of such expiration, cancellation or termination; or
  - (c) if this Policy expires or is cancelled or terminated without being renewed and an Extended Reported Period is purchased, the end of the Extended Reporting Period.
- (2) If, during the **Policy Period**, the **Insureds** first become aware of any **Wrongful Act** which may subsequently give rise to a **Claim** against any **Insured** and, as soon as practicable thereafter but before the end of the **Policy Period**, give the Insurer written notice of:
- (a) the nature and date of the specific **Wrongful Act**,
  - (b) the identities of any potential claimants,
  - (c) the injury or consequences which have resulted or may result therefrom, and
  - (d) the manner in which the **Insureds** first became aware of the potential of a **Claim** therefrom;

then, for purposes of INSURING AGREEMENT (A) only, any **Claim** subsequently made against an **Insured** arising out of such **Wrongful Act** will be deemed to have been made during the **Policy Period**. This CONDITION (A)(2) will not, however, apply to any **Insured's** participation in any **Voluntary Compliance Program** under INSURING AGREEMENT (B) and, subject to all of the terms, conditions and limitations of and endorsements to this Policy, coverage will be available under INSURING AGREEMENT (B) for **Professional Fees** and **Settlement Fees** incurred by the **Insureds** only as a result of their participation in a **Voluntary Compliance Program** commencing during the **Policy Period** or, if appropriate, the Extended Reporting Period.

- (3) Written notice under CONDITIONS (A)(1) and (A)(2) above must be mailed to the address set forth in ITEM 6 of the Declarations.

(B) **Related Claims:**

All **Related Claims** will be deemed to be a single **Claim** which will be deemed to have been first made at the earlier of the following times:

- (1) when the earliest of such **Related Claims** was first made, or
- (2) at the earliest time at which notice was given under any policy of insurance of any act, error, omission, fact, circumstance, situation, transaction, event, decision or **Wrongful Act** underlying any such **Related Claim**.

(C) **Defense, Settlement and Allocation:**

- (1) It will be the duty of the **Insureds** and not the duty of the Insurer to defend **Claims** under this Policy. No **Insured** may incur any **Defense Expenses** or admit liability for or settle any **Claim** without the Insurer's written consent. The Insurer will have the right to make investigations and conduct negotiations and, with the written consent of the **Insureds**, to enter into such settlement of any **Claim** as the Insurer deems appropriate.
- (2) Upon the written request of an **Insured**, the Insurer will advance on a current basis **Defense Expenses** incurred by such **Insured** in excess of any applicable retention before the disposition of a **Claim** for which this Policy provides coverage. As a condition of any advancement of **Defense Expenses**, the Insurer may require a written undertaking, in a form

satisfactory to the Insurer, which will guarantee the repayment of any **Loss**, including **Defense Expenses**, paid to or on behalf of an **Insured** if it is finally determined that the **Loss** incurred is not covered under this Policy.

- (3) If, in connection with a **Claim**, both **Loss** covered by this Policy and loss not covered by this Policy are incurred, either because the **Claim** contains both covered and uncovered matters or because the **Claim** is made in part against persons or entities not insured hereunder, the **Insureds** and the Insurer will use their best efforts to determine a fair and appropriate allocation of amounts incurred in connection with such **Claim** as between **Loss** covered under this Policy and loss not covered under this Policy. The **Insureds** and the Insurer agree that, in determining such a fair and appropriate allocation, the parties will take into account the relative legal and financial exposures associated with any such covered and uncovered matters, as well as the relative legal and financial exposures of, and the relative benefits obtained in connection with the defense and/or settlement of any **Claim** by, the **Insureds** and other persons or entities not insured hereunder. If an agreement between the **Insureds** and the Insurer as to a fair and appropriate allocation cannot be reached, then the Insurer will pay or advance that portion of those amounts incurred in connection with such **Claim** which the **Insureds** and the Insurer agree constitutes **Loss** covered under this Policy until a final allocation is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

(D) **Limit of Liability and Retention:**

- (1) Regardless of the number of **Claims**, the number of persons or entities included within the definition of **Insured**, the number of **Insureds** included in a particular **Claim** or the number of claimants who may make **Claims** against the **Insureds**:
- (a) the amount stated in ITEM 3(a) of the Declarations will be the maximum aggregate Limit of Liability of the Insurer under this Policy for all **Loss** for which this Policy provides coverage, and
- (b) subject to CONDITION (D)(2) below, the retention stated in ITEM 4(a) of the Declarations will apply separately to each **Claim**.
- (2) No retention will apply to **Damages** or **Defense Expenses** incurred by **Natural Person Insureds** for which no **Sponsor Organization** is required or permitted to provide indemnification or for which a **Sponsor Organization** is required or permitted to provide indemnification but is unable to do so solely by reason of its financial insolvency.
- (3) **Defense Expenses** are part of and not in addition to the Limit of Liability set forth in ITEM 3(a) of the Declarations, and payment of **Defense Expenses** by the Insurer will reduce, and may exhaust, that Limit of Liability.
- (4) The Insurer will have no obligation to pay **Loss**, including **Defense Expenses**, after the Limit of Liability set forth in ITEM 3(a) of the Declarations has been exhausted by the payment of **Loss**.
- (5) The Insurer's maximum limit of liability under INSURING AGREEMENT (B) for all **Professional Fees** and **Settlement Fees** incurred in connection with the **Insureds'** participation in **Voluntary Compliance Programs** will be the amount set forth in ITEM 3(b) of the Declarations, which amount will be part of and not in addition to the Insurer's maximum aggregate Limit of Liability for all **Loss** under this Policy as stated in ITEM 3(a) of the Declarations. The retention stated in ITEM 4(b) of the Declarations will apply separately to each participation by the **Insureds** in a **Voluntary Compliance Program**.

- (6) Subject to CONDITION (D)(2) above, the obligations of the Insurer to pay **Loss**, including **Defense Expenses**, will only be in excess of any applicable retention as stated in ITEM 4 of the Declarations, which amount will be borne by the **Insureds** at their own expense. The Insurer will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of any applicable retention amount on behalf of any **Insured**, although the Insurer will, at its sole discretion, have the right and option to do so, in which event the **Insureds** agree to repay the Insurer any amounts so paid.

(E) **Extended Reporting Period:**

- (1) If this Policy is not renewed for any reason or is canceled by the Insurer, the **Insureds** will have the right, upon payment of the additional premium set forth in Item 5(d) of the Declarations, to an extension of the coverage provided by this Policy with respect only to any Claim first made during the one (1) year (the "Extended Reporting Period") after the effective date of such cancellation or non-renewal. Such Extended Reporting Period, if purchased, will apply only to:
- (a) **Claims** first made during the Extended Reporting Period, and only if such **Claims** are for otherwise covered **Wrongful Acts** committed, attempted or allegedly committed or attempted before the effective date of such cancellation or non-renewal;
- (b) **Professional Fees** and **Settlement Fees** incurred by **Insureds** as a result of the **Insureds'** participation during the Extended Reporting Period in a **Voluntary Compliance Program**, but only if such participation commences during the Extended Reporting Period and involves a **Plan's** actual or alleged inadvertent noncompliance with any statute, rule or regulation before the effective date of such cancellation or non-renewal.
- (2) As a condition precedent to the right to purchase the Extended Reporting Period the total premium for this Policy must have been paid in full. The right of the Insureds to purchase the Extended Reporting Period will be immediately terminated if the Insurer does not receive written notice by the Insureds advising they wish to purchase the Extended Reporting Period together with full payment of the premium for the Extended Reporting Period within thirty (30) days after the effective date of cancellation or non-renewal.
- (3) If the Insureds elect to purchase the Extended Reporting Period as set forth in Conditions (E)(1) and (2) above, the entire premium for the Extended Reporting Period will be deemed to have been fully earned immediately as of the inception of the Extended Reporting Period.
- (4) The Insurer's Limit of Liability for **Loss** under the Extended Reporting Period will be part of, and not in addition to, the Limit of Liability stated in ITEM 3(a) of the Declarations, which is applicable to all **Loss** for which this Policy provides coverage. The Insurer's limit of liability for **Professional Fees** and **Settlement Fees** under the Extended Reporting Period will be part of, and not in addition to, the amount stated in ITEM 3(b) of the Declarations, which amount is part of, and not in addition to, the Insurer's maximum aggregate Limit of Liability for all **Loss** under this Policy as stated in ITEM 3(a) of the Declarations.

(F) **Changes in Exposure:**

- (1) If, during the **Policy Period**, any **Sponsor Organization** creates or acquires any **Subsidiary** or acquires another corporation or entity by merger or acquisition such that the **Sponsor Organization** is the surviving entity, such **Subsidiary**, corporation or entity will be included within the term "**Sponsor Organization**" and coverage under this Policy will be extended to such **Subsidiary**, corporation or entity, to any **Plans** operated solely by such **Subsidiary**, corporation or entity or jointly by such **Subsidiary**, corporation or entity and a labor organization solely for the benefit of the directors, officers, trustees, governors, management

committee members, managers, members of the Board of Managers, general partners, in-house general counsel or employees of such **Subsidiary**, corporation or entity, and to the **Natural Person Insureds** of such **Subsidiary**, corporation or entity or any such **Plans**, but only with respect to:

- (a) **Claims** first made after the effective date of the creation or acquisition of such **Subsidiary**, corporation or entity for **Wrongful Acts** committed, attempted or allegedly committed or attempted after the effective date of such creation or acquisition, or
- (b) settlements under **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation after the effective date of such creation or acquisition.

If, however, the total assets of any such **Subsidiary**, corporation or entity acquired during the **Policy Period** exceed thirty-five percent (35%) of the total assets of the acquiring **Sponsor Organization** (as reflected in the most recent audited consolidated financial statements of such **Subsidiary**, corporation or entity and the acquiring **Sponsor Organization**, respectively, as of the date of acquisition), coverage under this Policy in respect of such **Subsidiary**, corporation or entity, its **Plans** and the **Natural Person Insureds** thereof will cease as of the earlier of the Expiration Date set forth in ITEM 2(b) of the Declarations or the date which is sixty (60) days after the effective date of such acquisition, unless, prior thereto, the **Sponsor Organization** shall have given the Insurer written notice of such acquisition, together with such other information as the Insurer may acquire, the Insurer shall have agreed by written endorsement to this Policy to provide coverage to such **Subsidiary**, corporation or entity, its **Plans** and the **Natural Person Insureds** thereof, and the **Insureds** shall have accepted any additional or revised terms, conditions and limitations of coverage and paid any additional premium the Insurer shall have required in connection therewith.

- (2) If, during the **Policy Period**:
  - (a) the **Sponsor Organization** of any **Plan** is acquired, or all or substantially all of the assets of a **Sponsor Organization** are acquired, by another entity, or a **Sponsor Organization** is merged into or consolidated with another entity such that such **Sponsor Organization** is not the surviving entity, or
  - (b) any person, entity or affiliated group of persons or entities obtains the right to elect, appoint or designate at least fifty percent (50%) of the directors of the **Sponsor Organization** of any **Plan**;

coverage under this Policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed, attempted or allegedly committed or attempted before such event by such **Sponsor Organization**, by any **Plan** of such **Sponsor Organization**, by any **Natural Person Insureds** with respect to any **Plan** of such **Sponsor Organization** or by any person for whose **Wrongful Acts**, as defined in DEFINITION (T)(1)(a), any such **Insured** is legally responsible, and for the **Insureds'** participation in **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance before such event with any statute, rule or regulation. After any such event, however, coverage under this Policy will cease with respect to **Claims** for **Wrongful Acts** committed, attempted or allegedly committed or attempted after such event by any such **Insured** or by any person for whose **Wrongful Acts**, as defined in DEFINITION (T)(1)(a), any such **Insured** is legally responsible and for the **Insureds'** participation in **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance after such event with any statute, rule or regulation. After any such event, this Policy may not be canceled, regardless of CONDITION (I)(2), and the entire premium for the Policy will be deemed fully earned.

- (3) If any **Sponsor Organization** sells, spins off or terminates any **Plan**, coverage under this Policy will apply to **Claims for Wrongful Acts** committed, attempted or allegedly committed or attempted before such event by such **Sponsor Organization**, by such **Plan**, by any **Natural Person Insureds** with respect to such **Plan** or by any person for whose **Wrongful Acts**, as defined in DEFINITION (T)(1)(a), any such **Insured** is legally responsible, and to the **Insureds'** participation in **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance before such event with any statute, rule or regulation. No coverage will be available under this Policy, however, with respect to **Claims for Wrongful Acts** committed, attempted or allegedly committed or attempted after such event by any such **Insured** or by any person for whose **Wrongful Acts**, as defined in DEFINITION (T)(1)(a), any such **Insured** is legally responsible, or for settlements under **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance after such event with any statute, rule or regulation.

(G) **Other Insurance:**

All **Loss** payable under this Policy will be specifically excess of and will not contribute with any other valid and collectible insurance, whether such other insurance is stated to be primary, contributing, excess (except insurance specifically in excess of this Policy), contingent or otherwise.

(H) **Cooperation and Subrogation; Recourse:**

- (1) In the event of a **Claim**, or after giving the Insurer notice of circumstances which may subsequently give rise to a **Claim** against an **Insured**, the **Insureds** will provide the Insurer with all information, assistance and cooperation that the Insurer reasonably requests, and will do nothing that may prejudice the Insurer's position or potential or actual rights of recovery. At the Insurer's request, the **Insureds** will assist in the conduct of actions, suits or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence and obtaining the attendance of witnesses, and will also assist in making settlements.
- (2) In the event of payment under this Policy, the Insurer will be subrogated to, and will be entitled to an assignment of, all of the rights of recovery therefor of the **Insureds**. The **Insureds** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Insurer effectively to pursue and enforce such rights and to bring suit in the name of the **Insureds**.
- (3) The obligations of the **Insureds** under CONDITIONS (H)(1) and (2) will survive the expiration or termination of the Policy.
- (4) In the event that there is no additional premium set forth in ITEM 5(b) of the Declarations and the total premium for this policy set forth in ITEM 5(c) of the Declarations is paid by one or more **Plans**, the Insurer will have a right of recourse, in accordance with Section 410(b)(1) of ERISA, against any **Insured** in the event that such **Insured** breaches a fiduciary obligation imposed by ERISA.

(I) **Cancellation; No Obligation to Renew:**

- (1) The Insurer may not cancel this Policy except for failure to pay a premium when due, in which case the Insurer will deliver or mail to the **Insureds** written notice thereof at least fifteen (15) days before the effective date of cancellation.
- (2) Except as provided in CONDITION (F)(2), the **Insureds** may cancel this Policy by delivering or mailing to the Insurer written notice stating when thereafter such cancellation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the

time cancellation by the **Insureds** is effective or as soon as practicable thereafter, but payment or tender by the Insurer of unearned premium is not a condition of cancellation by the **Insureds**.

- (3) The Insurer will not be required to renew this Policy upon its expiration. If the Insurer elects not to renew this Policy, the Insurer will deliver or mail to the **Insureds** written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations.

(J) **Representations:**

- (1) The **Insureds** represent that the particulars and statements contained in the **Application** are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy and are material to the Insurer's acceptance of this risk.
- (2) In the event that any of the particulars or statements contained in the **Application** is not true, accurate and complete, this Policy will be void with respect to any **Insured** who knew as of the effective date of the **Application** material facts that were not truthfully, accurately and completely disclosed therein (whether or not such **Insured** knew of such untruthful, inaccurate or incomplete disclosure in the **Application**) and to any **Sponsor Organization** to the extent it indemnifies a **Natural Person Insured** who had such knowledge.

(K) **No Action Against the Insurer; Bankruptcy of Insureds:**

- (1) No action may be taken against the Insurer unless, as conditions precedent thereto, there shall have been full compliance with all of the terms of this Policy and the amount of the **Insureds'** obligation to pay has been finally determined either by judgment against the **Insureds** after adjudicatory proceedings, or by written agreement of the **Insureds**, the claimant and the Insurer.
- (2) No person or entity will have any right under this Policy to join the Insurer as a party to any **Claim** to determine the liability of any **Insured**; nor may the Insurer be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**.
- (3) The Insurer will not be relieved of any of its obligations under the Policy by the bankruptcy or insolvency of any of the **Insureds** or their estates.

(L) **Authorization and Notices:**

The **Sponsor Organization** set forth in ITEM 1 of the Declarations agrees to act on behalf of all **Insureds** with respect to all matters under this Policy, including but not limited to the payment of premiums and the receipt of any return premiums, the giving and receiving of notices and other communications, the effecting or accepting of any endorsements to or cancellation or non-renewal of this Policy, and the purchase of any Extended Reporting Period. However, nothing herein will relieve the **Insureds** from the obligation to give written notice to the Insurer as required under CONDITION (A)(1) above.

(M) **Changes:**

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer will not effect a waiver or change in any part of this Policy or estop the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

(N) **No Transfer or Assignment:**

No transfer or assignment of interest under this Policy or of any cause of action against the Insurer arising out of its performance of or alleged failure to perform in accordance with the terms and conditions of this Policy will be effective without the Insurer's written consent.

(O) **Spouses, Estates and Legal Representatives**

Subject to all of the terms, conditions and limitations of this Policy, the coverage afforded by this Policy will extend to claims for **Wrongful Acts** of a **Natural Person Insured** made against:

- (1) the estate, heirs, legal representatives or assigns of such **Natural Person Insured** if such **Natural Person Insured** is deceased or the legal representatives or assigns of such **Natural Person Insured** if such **Natural Person Insured** is incompetent, insolvent or bankrupt; or
- (2) the lawful spouse or domestic partner of such **Natural Person Insured** solely by reason of such spouse or domestic partner's status as such or such spouse or domestic partner's ownership interest in property which the claimant seeks as recovery for a **Wrongful Act** of such **Natural Person Insured**.

All terms, conditions and limitations of this Policy, including but not limited to any applicable retention, applicable to **Claims** against and **Loss** incurred by the **Natural Person Insureds** will also apply to claims against and loss incurred by the estates, heirs, legal representatives, assigns, spouses and domestic partners of such **Natural Person Insureds**. The coverage provided by this CONDITION (O) will not, however, apply to any loss, including but not limited to costs, charges and expenses of defense, arising from any act, error or omission committed or attempted, or allegedly committed or attempted, by an **Natural Person Insured's** estate, heirs, legal representatives, assigns, spouse or domestic partner.

(P) **Entire Agreement:**

The **Insureds** agree that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the Insurer or any of its agents relating to this insurance.

(Q) **No Fiduciary Status for Insurer:**

Nothing in this Policy is intended, nor should it be construed:

- (1) to give or allow the Insurer to exercise any authority or control respecting the management of any **Plan**, any authority or control respecting the management or disposition of any **Plan's** assets, or any authority or responsibility in the **Administration** of any **Plan**,
- (2) to create any legal relationship between the Insurer and any beneficiary of or participant in any **Plan** or any obligation on the part of the Insurer to make any payment or reimbursement directly to any beneficiary of or participant in any **Plan**, or
- (3) to cause the Insurer to be treated as a fiduciary, as defined in Section (3)(21) of ERISA, with respect to any **Plan**.

(R) **Headings:**

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

**In witness whereof the Insurer has caused this Policy to be executed on the Declarations Page.**