

DESIGNATED BENEFIT PLAN FIDUCIARY LIABILITY COVERAGE

THIS IS A CLAIMS MADE COVERAGE WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ ALL TERMS CAREFULLY.

I. INSURING AGREEMENTS

- A. The Company will pay on behalf of the **Insured, Loss** for any **Claim** first made during the **Policy Period**, or if exercised, during the Extended Reporting Period or Run-Off Extended Reporting Period, for a **Wrongful Act**.
- B. The Company will pay on behalf of the **Insured, Settlement Fees** and **Defense Expenses** incurred by the **Insured** in connection with any **Settlement Program Notice**; provided that participation by the **Insured** in any **Settlement Program** commences during the **Policy Period** or, if exercised, during the Extended Reporting Period or Run-Off Extended Reporting Period.

II. DEFINITIONS

Wherever appearing in this **Policy**, the following words and phrases appearing in bold type will have the meanings set forth in this section II. DEFINITIONS:

- A. **Additional Defense Limit of Liability** means the amount set forth in ITEM 5 of the Declarations. If “*Not Applicable*” is selected for the **Additional Defense Limit of Liability**, then any reference to the **Additional Defense Limit of Liability** will be deemed to be deleted from this **Policy**.
- B. **Administration** means:
 1. giving counsel, advice, or notice to participants or beneficiaries with respect to a **Benefit Plan**;
 2. interpreting a **Benefit Plan**;
 3. handling records in connection with a **Benefit Plan**; or
 4. effecting enrollment, termination or cancellation of participants or beneficiaries under a **Benefit Plan**.
- C. **Annual Reinstatement of the Limit of Liability** means, if included in ITEM 10 of the Declarations, the reinstatement of each applicable limit of liability for each **Policy Year** during the **Policy Period**.
- D. **Application** means the application deemed to be attached to and forming a part of this **Policy**, including any materials submitted and statements made in connection with that application. If the **Application** uses terms or phrases that differ from the terms defined in this **Policy**, no inconsistency between any term or phrase used in the **Application** and any term defined in this **Policy** will waive or change any of the terms, conditions and limitations of this **Policy**.
- E. **Benefit Plan** means only those plans or trusts set forth in ITEM 1 of the Declarations or those plans or trusts designated within an endorsement to this **Policy**.
- F. **Benefit Plan Committee** means any committee of the **Benefit Plan**, including any **Benefit Plan** investment or administration committee, that is established by the **Benefit Plan** and that is comprised entirely of **Insured Persons**.

G. *Benefit Plan Official* means a natural person officer, including any executive director or functional equivalent thereof; member of the board of trustees; in-house risk manager; or in-house general counsel of the **Benefit Plan**.

H. *Change of Control* means:

1. the full assumption of fiduciary responsibilities or **Administration**, with respect to a **Benefit Plan** by one or more other persons or entities; or
2. the acquisition of a **Benefit Plan**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of a **Benefit Plan** into or with another entity or employee benefit plan such that the **Benefit Plan** is not the surviving entity.

I. *Claim* means:

1. a written demand for monetary damages or non-monetary relief;
2. a civil proceeding commenced by service of a complaint or similar pleading;
3. a criminal proceeding commenced by filing of charges;
4. a formal administrative or regulatory proceeding commenced by filing of a notice of charges, formal investigative order, service of summons or similar document, including a fact-finding investigation by the Department of Labor or the Pension Benefit Guaranty Corporation;
5. an arbitration, mediation or similar alternative dispute resolution proceeding if the **Insured** is obligated to participate in such proceeding or if the **Insured** agrees to participate in such proceeding, with the Company's written consent, such consent not to be unreasonably withheld; or
6. a written request to toll or waive a statute of limitations relating to a potential civil or administrative proceeding,

against an **Insured** for a **Wrongful Act**.

A **Claim** will be deemed to have been made on the earliest date written notice thereof is received by an **Insured**.

J. *Defense Expenses* means reasonable and necessary legal fees and expenses incurred by the Company or the **Insured**, with the Company's consent, in the investigation, defense, settlement and appeal of a **Claim**, including cost of expert consultants and witnesses, premiums for appeal, injunction, attachment or supersedeas bonds (without the obligation to furnish such bonds) regarding such **Claim**; provided that **Defense Expenses** will not include the salaries, wages, benefits or overhead of, or paid to, any **Insured** or any employee of such **Insured**.

K. *HIPAA* means the Health Insurance Portability and Accountability Act of 1996, as amended.

L. *Insurance Representative* means the entity or person so designated by endorsement to this **Policy**.

M. *Insured* means:

1. the **Insured Persons**;
2. any **Benefit Plan**; and
3. any **Benefit Plan Committee** in its capacity as a fiduciary or trustee of a **Benefit Plan**, or in its **Administration** of a **Benefit Plan**.

- N. *Insured Person*** means any natural person who was, is now or becomes a trustee; committee member; officer; in-house general counsel; or employee of a **Benefit Plan**, but only while acting in his or her capacity as a fiduciary of a **Benefit Plan** or as a person performing **Administration**.
- In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.
- O. *Loss*** means **Defense Expenses** and money which an **Insured** is legally obligated to pay as a result of a **Claim**, including settlements; judgments; compensatory damages; punitive or exemplary damages or the multiple portion of any multiplied damage award if insurable under the applicable law most favorable to the insurability of punitive, exemplary, or multiplied damages; prejudgment and post judgment interest; and legal fees and expenses awarded pursuant to a court order or judgment; and solely with respect to section I. INSURING AGREEMENTS B. of this **Policy**, **Settlement Fees**. **Loss** does not include:
1. civil or criminal fines (except **Settlement Fees** pursuant to Insuring Agreement B.; **Section 502(c) Penalties**; civil penalties under Sections 502(i) and 502(l) of the Employee Retirement Income Security Act of 1974, as amended; or civil penalties under the privacy provisions of **HIPAA**); sanctions; liquidated damages; payroll or other taxes; or damages or types of relief deemed uninsurable under applicable law;
 2. payment of medical benefits, pension benefits, severance, or any other benefit provided under a **Benefit Plan** which are or may become due, except to the extent that such sums are payable as a personal obligation of an **Insured Person**, because of such **Insured Person's Wrongful Act**; provided that this exclusion will not apply to:
 - a. the Company's obligation to defend any **Claim**, if applicable, or to pay, advance or reimburse **Defense Expenses**, regarding a **Claim** seeking such benefits; or
 - b. that portion of any damage, settlement or judgment covered as **Loss** under this **Policy** that represents a loss to any **Benefit Plan**, or loss to any account of a participant in any **Benefit Plan**, by reason of a change in value of any investments held by such **Benefit Plan** or such account, notwithstanding that such portion of any such damage, settlement or judgment has been characterized by plaintiffs, or held by a court of law, to be "benefits"; or
 3. any amount allocated to non-covered loss pursuant to section V. CONDITIONS, R. ALLOCATION, of this **Policy**.
- P. *Policy*** means, collectively, the Declarations, the **Application**, this Designated Benefit Plan Fiduciary Liability Coverage, and any endorsements attached hereto.
- Q. *Policy Period*** means the period from the Inception Date to the Expiration Date set forth in ITEM 3 of the Declarations. In no event will the **Policy Period** continue past the effective date of cancellation or termination of this **Policy**.
- R. *Policy Year*** means:
1. the period of one year following the Inception Date set forth in ITEM 3 of the Declarations or any anniversary thereof; and
 2. the time between the Inception Date set forth in ITEM 3 of the Declarations or any anniversary thereof and the effective date of cancellation or termination of this **Policy** if such time period is less than one year.
- S. *Pollutant*** means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- T. **Potential Claim** means any **Wrongful Act** that may subsequently give rise to a **Claim**.
- U. **Related Wrongful Act** means all **Wrongful Acts** that have as a common nexus, or are causally connected by reason of, any fact, circumstance, situation, event or decision.
- V. **Section 502(c) Penalties** means civil penalties imposed on any **Insured** pursuant to Section 502(c) of the Employee Retirement Income Security Act of 1974, as amended.
- W. **Settlement Fees** mean any fees, penalties or sanctions imposed by law under a **Settlement Program** that any **Insured** becomes legally obligated to pay as a result of a **Wrongful Act**. **Settlement Fees** will not include any costs or expenses other than such fees, penalties or sanctions.
- X. **Settlement Program** means any voluntary compliance resolution program or similar voluntary settlement program, administered by the Internal Revenue Service or Department of Labor of the United States, including the Employee Plans Compliance Resolution System, the Self Correction Program, the Audit Closing Agreement Plan, the Delinquent Filer Voluntary Compliance program, and the Voluntary Fiduciary Correction program, entered into by a **Benefit Plan**.
- Y. **Settlement Program Notice** means a prior written notice to the Company by the **Insured** of the **Insured's** intent to enter into a **Settlement Program**.
- Z. **Wrongful Act** means:
1. any actual or alleged breach of fiduciary duty by or on behalf of the **Insured** with respect to any **Benefit Plan**, including:
 - a. any actual or alleged breach of duties, obligations and responsibilities imposed by the Employee Retirement Income Security Act of 1974, as amended, COBRA, **HIPAA**, or by any similar or related federal, state, local, or foreign law or regulation, in the discharge of the **Insured's** duties with respect to a **Benefit Plan**; or
 - b. any other matter claimed against an **Insured** solely because of the **Insured's** status as a fiduciary of a **Benefit Plan**; or
 2. any actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the **Administration** of a **Benefit Plan**.

All **Related Wrongful Acts** are a single **Wrongful Act** for purposes of this **Policy**, and all **Related Wrongful Acts** will be deemed to have occurred at the time the first of such **Related Wrongful Acts** occurred whether prior to or during the **Policy Period**.

III. EXCLUSIONS

A. EXCLUSIONS APPLICABLE TO ALL LOSS

1. The Company will not be liable for **Loss** for any **Claim** for any damage to, or destruction of, loss of, or loss of use of, any tangible property including damage to, destruction of, loss of, or loss of use of, tangible property that results from inadequate or insufficient protection from soil or ground water movement, soil subsidence, mold, toxic mold, spores, mildew, fungus, or wet or dry rot.
2. The Company will not be liable for **Loss** for any **Claim** for any bodily injury, sickness, disease, death, loss of consortium, emotional distress, mental anguish, or humiliation.
3. The Company will not be liable for **Loss** for any **Claim**:
 - a. based upon or arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any **Pollutant**;

- b. based upon or arising out of any request, demand, order, or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, any **Pollutant**, or
- c. brought by or on behalf of any governmental authority because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, any **Pollutant**;

provided this exclusion will not apply to any **Claim** by or on behalf of a beneficiary of, or participant in, any **Benefit Plan** based upon, arising from or in consequence of the diminution in value of any securities owned by the **Benefit Plan** in any organization if such diminution in value is allegedly as a result of a **Pollutant**.

- 4. The Company will not be liable for **Loss** for any **Claim** for any liability of others assumed by an **Insured** under any contract or agreement, whether oral or written, other than a **Benefit Plan**, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement.
- 5. The Company will not be liable for **Loss** for any **Claim** for any violation of responsibilities, duties or obligations under any law concerning Social Security, unemployment insurance, workers' compensation, disability insurance, or any similar or related federal, state or local law or regulation other than COBRA, **HIPAA** or the Employee Retirement Income Security Act of 1974, including amendments thereto and regulations promulgated thereunder or any similar common or statutory law.
- 6. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any fact, circumstance, situation, event or **Wrongful Act** underlying or alleged in any prior or pending civil, criminal, administrative or regulatory proceeding against any **Insured** as of or prior to the applicable Prior and Pending Proceeding Date set forth in ITEM 5 of the Declarations for this **Policy**.
- 7. The Company will not be liable for **Loss** for any **Claim** for any fact, circumstance, situation or event that is or reasonably would be regarded as the basis for a claim about which any **Benefit Plan Official** had knowledge prior to the applicable Continuity Date set forth in ITEM 5 of the Declarations for this **Policy**.
- 8. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any fact, circumstance, situation, event, or **Wrongful Act** which, before the Inception Date set forth in ITEM 3 of the Declarations, was the subject of any notice of claim or potential claim given by or on behalf of any **Insured** under any policy of insurance of which this **Policy** is a direct renewal or replacement or which it succeeds in time.

B. EXCLUSIONS APPLICABLE TO LOSS, OTHER THAN DEFENSE EXPENSES

- 1. The Company will not be liable for **Loss**, other than **Defense Expenses**, for any **Claim** based upon or arising out of any **Insured**:
 - a. committing any intentionally dishonest or fraudulent act or omission;
 - b. committing any willful violation of any statute, rule, or law; or
 - c. gaining any profit, remuneration or advantage to which such **Insured** was not legally entitled;

provided that this exclusion will not apply unless a final adjudication establishes that such **Insured** committed such intentionally dishonest or fraudulent act or omission, willful violation of any

statute, rule or law, or gained such profit, remuneration or advantage to which such **Insured** was not legally entitled.

2. The Company will not be liable for **Loss**, other than **Defense Expenses**, for any **Claim** seeking costs and expenses incurred or to be incurred to comply with an order, judgment or award of injunctive or other equitable relief of any kind, or that portion of a settlement encompassing injunctive or other equitable relief, including actual or anticipated costs and expenses associated with or arising from an **Insured's** obligation to provide reasonable accommodation under, or otherwise comply with, the Americans With Disabilities Act or the Rehabilitation Act of 1973, including amendments thereto and regulations promulgated thereunder, or any similar or related federal, state or local law or regulation.
3. The Company will not be liable for **Loss**, other than **Defense Expenses**, for any **Claim**:
 - a. based upon or arising out of the failure to collect from employers any contributions owed to a **Benefit Plan**, unless the failure is the result of a negligence by any **Insured**; or
 - b. for the return of any contributions to any employer if such amounts are or could be chargeable to a **Benefit Plan**.

C. EXCLUSIONS APPLICABLE TO INSURING AGREEMENT B

The Company will pay no **Settlement Fees** or **Defense Expenses** with respect to any **Claim** or investigation in connection with a **Settlement Program**, of which any **Insured** first became aware or received notice prior to the applicable Prior and Pending Proceeding Date set forth in ITEM 5 of the Declarations for this **Policy**.

IV. SEVERABILITY OF EXCLUSIONS

No conduct of any **Insured** will be imputed to any other **Insured** to determine the application of any of the exclusions set forth in section III. EXCLUSIONS above.

V. CONDITIONS

A. TERRITORY

This **Policy** applies to **Claims** made or **Wrongful Acts** occurring anywhere in the world, where legally permissible.

B. RETENTION

The **Insured** shall bear uninsured at its own risk the amount of any applicable Retention, which amount must be paid in satisfaction of **Loss**.

If any **Claim** gives rise to coverage under this **Policy**, the Company has no obligation to pay **Loss**, including **Defense Expenses**, until the applicable Retention amount set forth in ITEM 5 of the Declarations has been paid by the **Insured**.

If any **Claim** is subject to different Retentions under this **Policy**, the applicable Retentions will be applied separately to each part of such **Claim**, but the sum of such Retentions will not exceed the largest applicable Retention under this **Policy**.

The Company, at its sole discretion, may pay all or part of the Retention amount on behalf of any **Insured**, and in such event, the **Insureds** agree to repay the Company any amounts so paid.

However, none of the Retention amounts set forth in ITEM 5 of the Declarations will apply to:

1. **Settlement Fees** under section I. INSURING AGREEMENTS, B., of this **Policy**;

2. **502(c) Penalties**; or
3. civil penalties under the privacy provisions of **HIPAA**.

C. LIMIT OF LIABILITY

1. Limit of Liability

Regardless of the number of persons or entities bringing **Claims** or the number of persons or entities who are **Insureds**, and regardless of when payment is made by the Company or when an **Insured's** legal obligation with regard thereto arises or is established, and further subject to any applicable **Annual Reinstatement of the Limit of Liability**, the Company's maximum limit of liability for all **Loss**, including **Defense Expenses**, for all **Claims** under this **Policy** will not exceed the remaining Limit of Liability stated in ITEM 5 of the Declarations.

2. Settlement Program Limit of Liability

The Company's maximum limit of liability for all **Settlement Fees** and **Defense Expenses** in connection with each **Settlement Program Notice** will not exceed the amount set forth in ITEM 5 of the Declarations as the Settlement Program Limit of Liability for each **Settlement Program Notice**, which amount is included within, and not in addition to, any applicable limit of liability. However, if ITEM 5 of the Declarations indicates that Additional Defense Coverage is applicable, **Defense Expenses** incurred in connection with a **Settlement Program Notice** will apply first to and reduce the remaining **Additional Defense Limit of Liability**; provided that the Settlement Program Limit of Liability will be reduced and may be exhausted by payment of such **Defense Expenses** under the **Additional Defense Limit of Liability**.

Furthermore, in the event a **Claim** covered under Insuring Agreement A. and a **Settlement Program Notice** covered under Insuring Agreement B. arise from the same facts, circumstances, situations, or events, the Company's maximum limit of liability under Insuring Agreement B. for the **Settlement Program Notice** will not exceed the amount set forth in ITEM 5 of the Declarations as the Settlement Program Limit of Liability for each **Settlement Program Notice**, but such limit will apply only to all **Settlement Fees** in connection with such **Settlement Program Notice**. In such an event, **Defense Expenses** incurred in connection with the **Claim** and the **Settlement Program Notice** will be subject to the Limit of Liability for each **Claim** stated in ITEM 5 of the Declarations.

3. HIPAA Limit of Liability

The Company's maximum limit of liability for all civil money penalties under the privacy provisions of **HIPAA** will not exceed the amount set forth in ITEM 5 of the Declarations as the HIPAA Limit of Liability, which amount is included within, and not in addition to, any applicable limit of liability.

4. 502(c) Penalties Limit of Liability

The Company's maximum limit of liability for all **Section 502(c) Penalties** will not exceed the amount set forth in ITEM 5 of the Declarations as the Section 502(c) Penalties Limit of Liability, which amount is included within, and not in addition to, any applicable limit of liability.

5. Annual Reinstatement of the Limit of Liability

Regardless of the number of persons or entities bringing **Claims** or the number of persons or entities who are **Insureds**, and regardless of when payment is made by the Company or when an **Insured's** legal obligation with regard thereto arises or is established, if ITEM 10 of the Declarations includes an **Annual Reinstatement of the Limit of Liability**:

- a. the Company's maximum limit of liability for all **Loss**, including **Defense Expenses**, for all **Claims** made during each **Policy Year** will not exceed the remaining limit of liability stated in ITEM 5 of the Declarations; and

- b. with regard to the Extended Reporting Period or the Run-Off Extended Reporting Period, if applicable, the Company's maximum limit of liability for all **Claims** made during the Extended Reporting Period or the Run-Off Extended Reporting Period will not exceed the remaining limit of liability for the last **Policy Year** in effect at the time of the termination or cancellation of this **Policy** or the **Change of Control**.

6. Other Provisions

Payment of **Defense Expenses** will reduce and may exhaust all applicable limits of liability. In the event the amount of **Loss** exceeds the portion of the applicable limit of liability remaining after prior payments of **Loss**, the Company's liability will not exceed the remaining amount of the applicable limit of liability. In no event will the Company be obligated to make any payment for **Loss**, including **Defense Expenses**, with regard to a **Claim** after the applicable limit of liability has been exhausted by payment or tender of payment of **Loss**.

If the limit of liability is exhausted by the payment of amounts covered under this **Policy**, the premium for this **Policy** will be fully earned, all obligations of the Company under this **Policy** will be completely fulfilled and exhausted, including any duty to defend, and the Company will have no further obligations of any kind or nature whatsoever under this **Policy**.

D. ADDITIONAL DEFENSE COVERAGE

Regardless of the number of persons or entities bringing **Claims** or the number of persons or entities who are **Insureds**, and regardless of when payment is made by the Company or when an **Insured's** legal obligation with regard thereto arises or is established, if ITEM 5 of the Declarations indicates that this **Policy** includes Additional Defense Coverage, **Defense Expenses** incurred by the Company or the **Insured**, with the Company's consent, in the defense of any **Claim** made during the **Policy Period** under this **Policy** will apply first to and reduce the **Additional Defense Limit of Liability**. The **Additional Defense Limit of Liability** will be in addition to, and not part of, the Limit of Liability. The **Additional Defense Limit of Liability** is applicable to **Defense Expenses** only. If the **Annual Reinstatement of the Limit of Liability** is applicable, the **Additional Defense Limit of Liability** will be reinstated for each **Policy Year**.

Upon exhaustion of the **Additional Defense Limit of Liability**:

1. **Defense Expenses** incurred by the Company or the **Insured**, with the Company's consent, in the defense of a **Claim** are part of and not in addition to any applicable limit of liability; and
2. payment by the Company or the **Insured**, with the Company's consent, of **Defense Expenses** reduces any applicable limit of liability.

E. CLAIM DEFENSE

1. If Duty-to-Defend coverage is provided with respect to this **Policy** as indicated in ITEM 7 of the Declarations, the Company will have the right and duty to defend any **Claim** covered by this **Policy**, even if the allegations are groundless, false or fraudulent, including the right to select defense counsel with respect to such **Claim**; provided that the Company will not be obligated to defend or to continue to defend any **Claim** after the applicable limit of liability has been exhausted by payment of **Loss**.
2. If Reimbursement coverage is provided with respect to this **Policy** as indicated in ITEM 7 of the Declarations:
 - a. the Company will have no duty to defend any **Claim** covered by this **Policy**. It will be the duty of the **Insured** to defend such **Claims**; and the Company will have the right to participate with the **Insured** in the investigation, defense and settlement, including the negotiation of a settlement of any **Claim** that appears reasonably likely to be covered in whole or in part by this **Policy** and the selection of appropriate defense counsel; and

- b. upon written request, the Company will advance **Defense Expenses** with respect to such **Claim**. Such advanced payments by the Company will be repaid to the Company by the **Insureds** severally according to their respective interests in the event and to the extent that the **Insureds** are not entitled to payment of such **Defense Expenses** under this **Policy**. As a condition of any payment of **Defense Expenses** under this subsection, the Company may require a written undertaking on terms and conditions satisfactory to the Company guaranteeing the repayment of any **Defense Expenses** paid to or on behalf of any **Insured** if it is finally determined that any such **Claim** or portion of any **Claim** is not covered under this **Policy**.
3. The **Insured** agrees to cooperate with the Company and, upon the Company's request, assist in making settlements and in the defense of **Claims** and in enforcing rights of contribution or indemnity against any person or entity which may be liable to the **Insured** because of an act or omission insured under this **Policy**, will attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

F. **INSURED'S DUTIES IN THE EVENT OF A CLAIM OR SETTLEMENT PROGRAM NOTICE**

The **Insured's** duty to report a **Claim** commences on the earliest date a written notice thereof is received by a **Benefit Plan Official**. If a **Benefit Plan Official** becomes aware that a **Claim** has been made against any **Insured**, the **Insured**, as a condition precedent to any rights under this **Policy**, must give to the Company written notice of the particulars of such **Claim**, including all facts related to any alleged **Wrongful Act**, the identity of each person allegedly involved in or affected by such **Wrongful Act**, and the dates of the alleged events, as soon as practicable. The **Insured** agrees to give the Company such information, assistance and cooperation as it may reasonably require.

All notices of **Claims** and **Settlement Program Notices** must be sent to the Company by email, facsimile, or mail as set forth in ITEM 4 of the Declarations and will be effective upon receipt. The **Insured** agrees not to voluntarily settle any **Claim** or enter into a **Settlement Program**, make any settlement offer, assume or admit any liability or, except at the **Insured's** own cost, voluntarily make any payment, pay or incur any **Defense Expenses** or **Settlement Fees**, or assume any obligation or incur any other expense, without the Company's prior written consent, such consent not to be unreasonably withheld. The Company is not liable for any settlement, **Defense Expenses**, **Settlement Fees**, assumed obligation or admission to which it has not consented.

G. **NOTICE OF POTENTIAL CLAIMS**

If an **Insured** first becomes aware of a **Potential Claim** during the **Policy Period**, and gives the Company written notice of the particulars of such **Potential Claim**, including all facts related to the **Wrongful Act**, the identity of each person allegedly involved in or affected by such **Wrongful Act**, the dates of the alleged events, and the reasons for anticipating a **Claim**, as soon as practicable during the **Policy Period**, or if exercised, during the Extended Reporting Period or Run-Off Extended Reporting Period, any **Claim** subsequently made against any **Insured** arising out of such **Wrongful Act** will be deemed to have been made during the **Policy Period**.

All notices under this subsection must be sent to the Company by email, facsimile, or mail as set forth in ITEM 4 of the Declarations and will be effective upon receipt.

H. **RELATED CLAIMS**

All **Claims** or **Potential Claims** for **Related Wrongful Acts** will be considered as a single **Claim** or **Potential Claim**, whichever is applicable, for purposes of this **Policy**. All **Claims** or **Potential Claims** for **Related Wrongful Acts** will be deemed to have been made at the time the first of such **Claims** or **Potential Claims** for **Related Wrongful Acts** was made whether prior to or during the **Policy Period**, or if exercised, during the Extended Reporting Period or Run-Off Extended Reporting Period.

I. **SETTLEMENT**

The Company may, with the written consent of the **Insured**, make such settlement or compromise of any **Claim** as the Company deems expedient. In the event that the Company recommends an offer of

settlement of any **Claim** which is acceptable to the claimant(s) (a "Settlement Offer"), and if the **Insured** refuses to consent to such Settlement Offer, the **Insured** will be solely responsible for 30% of all **Defense Expenses** incurred or paid by the **Insured** after the date the **Insured** refused to consent to the Settlement Offer, and the **Insured** will also be responsible for 30% of all **Loss**, other than **Defense Expenses**, in excess of the Settlement Offer, provided that the Company's liability under this **Policy** for such **Claim** will not exceed the remaining applicable limit of liability.

J. **MERGER OF PLANS**

If, during the **Policy Period**, a **Benefit Plan** is merged with another **Benefit Plan**, this **Policy** will continue to provide coverage for both plans, subject to all other terms and conditions of this **Policy** and only for so long as this **Policy** remains in effect as to the **Insureds**.

If, during the **Policy Period**, a **Benefit Plan** ("Covered Plan") is merged with another benefit plan for which coverage is not provided under this **Policy** ("Uncovered Plan"), this **Policy** will continue to provide coverage for only the Covered Plan, subject to all other terms and conditions of this **Policy** and only for so long as this **Policy** remains in effect as to the **Insureds**, but only for **Claims** for **Wrongful Acts** which occurred prior to the date of such merger.

K. **CHANGE OF CONTROL**

If, during the **Policy Period**, a **Change of Control** occurs, coverage will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed before such event, but coverage will cease with respect to **Claims** for **Wrongful Acts** committed after such event. No coverage will be available hereunder for **Loss**, including **Defense Expenses**, for any **Claim** based upon, alleging, arising out of, or in any way relating to, directly or indirectly any **Wrongful Act** committed or allegedly committed after such event. After any such event, the **Policy** may not be canceled by or on behalf of any **Insured** and the entire premium for the **Policy** will be deemed fully earned.

Upon the occurrence of any **Change of Control**, the **Insurance Representative** will have the right to give the Company notice that the **Insured** desires to purchase a Run-Off Extended Reporting Period for this **Policy** for the period set forth in ITEM 9 of the Declarations following the effective date of such **Change of Control**, regarding **Claims** made during such Run-Off Extended Reporting Period against persons or entities who at the effective date of the **Change of Control** are **Insureds**, but only for **Wrongful Acts** occurring wholly prior to such **Change of Control** and which otherwise would be covered by this **Policy**, subject to the following provisions:

1. such Run-Off Extended Reporting Period will not provide new, additional or renewed limits of liability;
2. the Company's total liability for all **Claims** made during such Run-Off Extended Reporting Period will be only the remaining portion of the applicable limit of liability set forth in the Declarations as of the effective date of the **Change of Control**; and
3. for purposes of coverage under section I. INSURING AGREEMENTS, B., the Run-Off Extended Reporting Period will apply only to **Settlement Fees** and **Defense Expenses** incurred by the **Insured** in connection with any **Settlement Program Notice** as a result of the **Insured's** participation during the Run-Off Extended Reporting Period in a **Settlement Program**, but only if such participation commences during the Run-Off Extended Reporting Period and involves a **Benefit Plan's** actual or alleged inadvertent noncompliance with any statute, rule or regulation before the effective date of the **Change of Control**.

The premium due for the Run-Off Extended Reporting Period will equal the percentage set forth in ITEM 9 of the Declarations of the annualized premium of this **Policy**, including the fully annualized amount of any additional premiums charged by the Company during the **Policy Period** prior to the **Change of Control**. The entire premium for the Run-Off Extended Reporting Period will be deemed fully earned at the commencement of such Run-Off Extended Reporting Period.

The right to elect the Run-Off Extended Reporting Period will terminate unless written notice of such election, together with payment of the additional premium due, is received by the Company within thirty

(30) days of the **Change of Control**. In the event the Run-Off Extended Reporting Period is purchased, the option to purchase the Extended Reporting Period in section V. CONDITIONS M. EXTENDED REPORTING PERIOD of this **Policy** will terminate. In the event the Run-Off Extended Reporting Period is not purchased, the **Insured** will have the right to purchase the Extended Reporting Period under the terms of section V. CONDITIONS M. EXTENDED REPORTING PERIOD of this **Policy**.

L. TERMINATION OF PLAN

If before or during the **Policy Period** any **Benefit Plan** is terminated, this **Policy** will provide coverage for such plan, subject to all other terms, conditions and limitations of this **Policy** for so long as this **Policy** remains in effect as to the **Insureds**.

M. EXTENDED REPORTING PERIOD

At any time prior to or within 60 days after the effective date of termination or cancellation of this **Policy** for any reason other than nonpayment of premium, the **Insurance Representative** may give the Company written notice that the **Insured** desires to purchase an Extended Reporting Period for the period set forth in ITEM 8 of the Declarations following the effective date of such termination or cancellation, regarding **Claims** made during such Extended Reporting Period against persons or entities who at or prior to the effective date of termination or cancellation are **Insureds**, but only for **Wrongful Acts** occurring wholly prior to the effective date of the termination or cancellation and which otherwise would be covered by this **Policy**, subject to the following provisions:

1. such Extended Reporting Period will not provide a new, additional or renewed limit(s) of liability;
2. the Company's maximum limit of liability for all **Claims** made during such Extended Reporting Period will be only the remaining portion of the applicable limit of liability set forth in the Declarations as of the effective date of the termination or cancellation; and
3. for purposes of coverage under section I. INSURING AGREEMENTS, B., the Extended Reporting Period will apply only to **Settlement Fees** and **Defense Expenses** incurred by the **Insured** in connection with any **Settlement Program Notice** as a result of the **Insured's** participation during the Extended Reporting Period in a **Settlement Program**, but only if such participation commences during the Extended Reporting Period and involves a **Benefit Plan's** actual or alleged inadvertent noncompliance with any statute, rule or regulation before the effective date of such termination or nonrenewal.

The premium due for the Extended Reporting Period will equal the percentage set forth in ITEM 8 of the Declarations of the annualized premium of this **Policy**, including the fully annualized amount of any additional premiums charged by the Company during the **Policy Year** prior to such termination or cancellation. The entire premium for the Extended Reporting Period will be deemed to have been fully earned at the commencement of such Extended Reporting Period.

The right to elect the Extended Reporting Period will terminate unless written notice of such election, together with payment of the additional premium due, is received by the Company within 60 days of the effective date of the termination or cancellation.

N. SUBROGATION

In the event of payment under this **Policy**, the Company is subrogated to all of the **Insured's** rights of recovery against any person or organization to the extent of such payment and the **Insured** agrees to execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** will do nothing to prejudice such rights.

O. RECOURSE

Unless such right is waived by an endorsement to this **Policy**, the Company will have the right of recourse pursuant to Section 410(b)(1) of the Employee Retirement Income Security Act of 1974, as amended, against any **Insured** that breaches a fiduciary obligation if this **Policy** is purchased using assets of the **Benefit Plan**.

P. RECOVERIES

All recoveries from third parties for payments made under this **Policy** will be applied, after first deducting the costs and expenses incurred in obtaining such recovery, in the following order of priority:

1. first, to the Company to reimburse the Company for any Retention amount it has paid on behalf of any **Insured**;
2. second, to the **Insured** to reimburse the **Insured** for the amount it has paid which would have been paid hereunder but for the fact that it is in excess of the applicable limits of liability hereunder;
3. third, to the Company to reimburse the Company for the amount paid hereunder; and
4. fourth, to the **Insured** in satisfaction of any applicable Retention;

provided, recoveries do not include any recovery from insurance, suretyship, reinsurance, security or indemnity taken for the Company's benefit.

Q. SPOUSAL AND DOMESTIC PARTNER LIABILITY COVERAGE

This **Policy** will, subject to all of its terms, conditions, and limitations, be extended to apply to **Loss** resulting from a **Claim** made against a person who, at the time the **Claim** is made, is a lawful spouse or a person qualifying as a domestic partner under the provisions of any applicable federal, state or local law (a "Domestic Partner") of an **Insured Person**, but only if and so long as:

1. the **Claim** against such spouse or Domestic Partner results from a **Wrongful Act** actually or allegedly committed by the **Insured Person**, to whom the spouse is married, or who is joined with the Domestic Partner; and
2. such **Insured Person** and his or her spouse or Domestic Partner are represented by the same counsel in connection with such **Claim**.

No spouse or Domestic Partner of an **Insured Person** will, by reason of this subsection have any greater right to coverage under this **Policy** than the **Insured Person** to whom such spouse is married, or to whom such Domestic Partner is joined.

The Company has no obligation to make any payment for **Loss** in connection with any **Claim** against a spouse or Domestic Partner of an **Insured Person** for any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by such spouse or Domestic Partner.

R. ALLOCATION

1. If Duty-to-Defend coverage is indicated in ITEM 7 of the Declarations and there is a **Claim** under this **Policy** in which the **Insureds** who are afforded coverage for such **Claim** incur an amount consisting of both **Loss** that is covered by this **Policy** and also loss that is not covered by this **Policy** because such **Claim** includes both covered and uncovered matters, then such covered **Loss** and uncovered loss will be allocated as follows:
 - a. one hundred percent (100%) of **Defense Expenses** incurred by and on behalf of the **Insureds** who are afforded coverage for such **Claim** will be allocated to covered **Loss**; and
 - b. all loss other than **Defense Expense** will be allocated between covered **Loss** and uncovered loss based upon the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and settlement of the **Claim** by the **Insureds** and others not insured under this **Policy**. In making such a determination, the **Insureds** and the Company agree to use their best efforts to determine a fair and proper allocation of all such amounts. In the event that an allocation cannot be agreed to, then

the Company will be obligated to make an interim payment of the amount of **Loss** which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this **Policy** and applicable law.

2. If Reimbursement coverage is indicated in ITEM 7 of the Declarations and there is a **Claim** under this **Policy** in which the **Insureds** who are afforded coverage for such **Claim** incur an amount consisting of both **Loss** that is covered by this **Policy** and also loss that is not covered by this **Policy** because such **Claim** includes both covered and uncovered matters or covered and uncovered parties, the **Insureds** and the Company agree to use their best efforts to determine a fair and proper allocation of all such amounts. In making such a determination, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and settlement of the **Claim** by the **Insureds** and others not insured under this **Policy**. In the event that an allocation cannot be agreed to, then the Company will be obligated to make an interim payment of the amount of **Loss** which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this **Policy** and applicable law.

S. CANCELLATION

The Company may cancel this **Policy** for failure to pay a premium when due, in which case twenty (20) days written notice will be given to the **Insurance Representative**, unless payment in full is received within twenty (20) days of the **Insurance Representative's** receipt of such notice of cancellation. The Company has the right to the premium amount for the portion of the **Policy Period** during which this **Policy** was in effect.

Subject to the provisions set forth in section III. CONDITIONS, K. CHANGE OF CONTROL, the **Insurance Representative** on behalf of the **Insured** may cancel this **Policy** by mailing the Company written notice stating when thereafter, but not later than the Expiration Date set forth in ITEM 3 of the Declarations, such cancellation will be effective. In the event the **Insurance Representative** cancels, the earned premium will be computed on a pro-rata basis. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

The Company will not be required to renew this **Policy** upon its expiration. If the Company elects not to renew, it will provide to the **Insurance Representative** written notice to that effect at least thirty (30) days before the Expiration Date set forth in ITEM 3 of the Declarations.

T. OTHER INSURANCE

This **Policy** will apply only as excess insurance over, and will not contribute with any other valid and collectible insurance available to the **Insured**, including any insurance under which there is a duty to defend, unless such insurance is written specifically excess of this **Policy** by reference in such other policy to the Policy Number of this **Policy**. This **Policy** will not be subject to the terms of any other insurance.

U. ACTION AGAINST THE COMPANY

No action will lie against the Company unless there has been full compliance with all of the terms of this **Policy**.

No person or organization has any right under this **Policy** to join the Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor may the Company be impleaded by an **Insured** or said **Insured's** legal representative. Bankruptcy or insolvency of any **Insured** or an **Insured's** estate does not relieve the Company of any of its obligations hereunder.

V. CHANGES

Only the **Insurance Representative** is authorized to make changes in the terms of this **Policy** and solely with the Company's prior written consent. This **Policy's** terms can be changed, amended or waived only by endorsement issued by the Company and made a part of this **Policy**. Notice to any representative of the **Insured** or knowledge possessed by any agent or by any other person will not effect a waiver or

change to any part of this **Policy**, or estop the Company from asserting any right under the terms, conditions and limitations of this **Policy**, nor may the terms, conditions and limitations hereunder be waived or changed, except by a written endorsement to this **Policy** issued by the Company.

W. ASSIGNMENT

This **Policy** may not be assigned or transferred, and any such attempted assignment or transfer is void and without effect unless the Company has provided its prior written consent to such assignment or transfer.

X. REPRESENTATIONS

By acceptance of the terms set forth in this **Policy**, each **Insured** represents and agrees that the statements contained in the **Application**, which is deemed to be attached hereto, incorporated herein, and forming a part hereof, are said **Insured's** agreements and representations, that such representations are material to the Company's acceptance of this risk, that this **Policy** is issued in reliance upon the truth of such representations, and embodies all agreements existing between said **Insured** and the Company or any of its agents.

If any statement or representation in the **Application** is untrue, this **Policy** is void and of no effect whatsoever, but only with respect to:

1. any **Insured Person** who knew, as of the Inception Date set forth in ITEM 3 of the Declarations, that the statement or representation was untrue;
2. any **Benefit Plan**, with respect to its indemnification coverage, to the extent it indemnifies any **Insured Person** referenced in 1. above; and
3. any **Benefit Plan**, if the person who signed the **Application** knew that the statement or representation was untrue.

Whether an **Insured Person** had such knowledge will be determined without regard to whether the **Insured Person** actually knew the **Application**, or any other application completed for this **Policy**, contained any such untrue statement or representation.

Y. LIBERALIZATION

If, during the **Policy Period**, the Company is required, by law or by insurance supervisory authorities of the state in which this **Policy** was issued, to make any changes in the form of this **Policy**, by which the insurance afforded by this **Policy** could be extended or broadened without increased premium charge by endorsement or substitution of form, then such extended or broadened insurance will inure to the benefit of the **Insured** as of the date the revision or change is approved for general use by the applicable department of insurance.

Z. AUTHORIZATION

By acceptance of the terms herein, the **Insurance Representative** agrees to act on behalf of all **Insureds** with respect to the payment of premiums, the receiving of any return premiums that may become due hereunder, and the receiving of notices of cancellation, nonrenewal, or change of coverage, and the **Insureds** each agree that they have, individually and collectively, delegated such authority exclusively to the **Insurance Representative**; provided, that nothing herein will relieve the **Insureds** from giving any notice to the Company that is required under this **Policy**.

AA. ENTIRE AGREEMENT

This **Policy**, including the Declarations, the **Application**, and any endorsements attached hereto, constitutes the entire agreement between the Company and the **Insured**.

BB. HEADINGS

The titles of the various paragraphs of this Policy and its endorsements are inserted solely for convenience or reference and are not to be deemed in any way to limit or affect the provision to which they relate.

Specimen