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. RE COURSE

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.