

# **U.S. SPECIALTY INSURANCE COMPANY**

## **FIDUCIARY LIABILITY INSURANCE POLICY**



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## U.S. SPECIALTY INSURANCE COMPANY

### FIDUCIARY LIABILITY INSURANCE POLICY

**This is a claims-made policy. Please read it carefully.**

In consideration of the payment of the premium, and in reliance upon the statements made in the **Application**, including attachments, all of which are made a part hereof and are deemed attached hereto, and subject to the Declarations and the limitations, conditions and provisions of, any endorsements to, and all other terms of this Policy, the Insurer and the **Insureds** agree as follows:

#### INSURING AGREEMENTS

- (A) The Insurer will pay to or on behalf of the **Insureds Loss** in the form of **Damages** and **Defense Costs** arising from **Claims** first made against them during the **Policy Period** or the Discovery Period (if applicable) for **Wrongful Acts** committed or allegedly committed by an **Insured** or by any person for whose **Wrongful Acts** an **Insured** is legally responsible.
- (B) The Insurer will pay to or on behalf of the **Insureds Loss** in the form of **VCP Costs** arising from **VCP Proceedings** first commenced or entered into by the **Insureds** during the **Policy Period** or the Discovery Period (if applicable), subject to the sublimit set forth in ITEM 3(a) of the Declarations.

#### DEFINITIONS

- (A) **Administration** means, with respect to a **Plan**, communicating with participants and beneficiaries, providing advice to participants and beneficiaries, interpreting and explaining **Plan** documents and forms, effecting enrollment, termination or cancellation of participants and beneficiaries, determining eligibility for participation or benefits, calculating benefits, performing record-keeping and data processing, preparing and filing required reports or returns and processing benefit requests, applications and appeals.
- (B) **Application** means:
  - (1) the application attached to and forming a part of this Policy; and
  - (2) any materials submitted in connection with such application and any documents filed by any **Sponsor Organization** or **Plan** during the one-year period before the inception of this Policy with the Securities and Exchange Commission, the Department of Labor or any similar governmental authority, either within or outside of the United States, all of which are deemed a part of this Policy.
- (C) **Claim** means:
  - (1) any written demand for monetary or non-monetary relief;
  - (2) any civil proceeding commenced by service of a complaint or similar proceeding;
  - (3) any arbitration, mediation or similar dispute resolution proceeding;
  - (4) any criminal proceeding commenced by return of an indictment or criminal information;
  - (5) the receipt by an **Insured Person** of a target letter or similar document in connection with a criminal investigation of such **Insured Person**;
  - (6) any administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;

- (7) any written notice of commencement of a fact-finding investigation by the Department of Labor, the Pension Benefit Guaranty Corporation or any similar governmental authority located outside the United States, including the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services, the United Kingdom Occupational Regulatory Authority or the United Kingdom Pensions Regulator (“U.K. Pension Authorities”); or
  - (8) any appeal from, and any written request to waive or toll any statute of limitations in connection with, any matter described in this DEFINITION (C).
- (D) **Damages** means monetary damages, judgments or settlements which an **Insured** is legally obligated to pay as a result of any **Claim**, including punitive or exemplary damages and the multiple portion of any multiplied damage award (if and where insurable by law), pre- and post-judgment interest and legal fees and expenses awarded pursuant to a court order or judgment; provided, that **Damages** will not include fines, taxes or penalties, except:
- (1) civil penalties of up to five percent (5%) imposed pursuant to Section 502(i) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”);
  - (2) civil penalties of up to twenty percent (20%) of any judgment or settlement imposed pursuant to Section 502(l) of ERISA for breach of fiduciary duty;
  - (3) civil fines and penalties imposed pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), subject to the sublimit set forth in ITEM 3(b) of the Declarations;
  - (4) civil penalties imposed pursuant to Title V of the Pension Protection Act of 2006 (“PPA”), subject to the sublimit set forth in ITEM 3(c) of the Declarations; and
  - (5) civil penalties imposed by U.K. Pension Authorities pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995 or the English Pensions Act 2004 (“U.K. Pension Laws”), if the funds or assets of the subject **Plan** are not used to pay, fund or reimburse the premium for this coverage.

For purposes of determining whether punitive or exemplary damages or the multiple portion of any multiplied damage award arising from any **Claim** are insurable by law, the Insurer agrees to abide by the law of whichever jurisdiction is applicable to such **Claim** and is most favorable to the **Insureds** in that regard.

- (E) **Defense Costs** means reasonable fees, costs and expenses, including attorneys’ fees, experts’ fees and premiums for an appeal bond, attachment bond or similar bond, incurred by the **Insureds** in the investigation, adjustment, defense or appeal of a **Claim** against an **Insured**.
- (F) **Director** means any natural-person director or equivalent executive of any entity, including any trustee, manager, member of a management board or committee, governor or general partner of an entity.
- (G) **Employee Benefit Law** means ERISA, HIPAA, PPA, the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), any similar common or statutory law of any domestic or foreign jurisdiction governing any **Plan** (including but not limited to U.K. Pension Laws, the Pension Benefits Act (Ontario) and the Pension Benefit Standards Act 1985 of Canada), any amendments to the foregoing, and any rules or regulations promulgated thereunder.
- (H) **Insured** means any **Plan**, **Sponsor Organization** or **Insured Person**.
- (I) **Insured Person** means any person during any time in which he or she holds or held the position of **Director**, officer or employee of any **Sponsor Organization** or **Plan**, including any in-house

general counsel thereof, or any position functionally equivalent to the foregoing with respect to a **Sponsor Organization** or **Plan** located outside the United States.

- (J) **Loss** means **Damages, Defense Costs** and **VCP Costs**. **Loss** will not include fees or other charges of the **Insureds**, including but not limited to salaries, wages, benefits or overhead expenses of any **Insured**, or any matter which is uninsurable under the law pursuant to which this Policy is construed.
- (K) **Named Organization** means the entity identified as such in ITEM 1 of the Declarations.
- (L) **Noncompliance** means actual or alleged inadvertent noncompliance with any statute or regulation governing a **Plan**.
- (M) **Non-Indemnifiable Loss** means **Loss** incurred by an **Insured Person** with respect to which indemnification or advancement by a **Sponsor Organization** or **Plan** is not legally permissible or is not possible by reason of the **Sponsor Organization's** or **Plan's** financial insolvency. For purposes of this DEFINITION (M), the certificate of incorporation, charter, articles of association or other organizational documents of each **Sponsor Organization** and **Plan**, including the bylaws and resolutions thereof, will be deemed to have been adopted or amended to provide indemnification and advancement to the **Insured Persons** to the fullest extent permitted by law.
- (N) **Pension Benefit Plan** means any employee pension benefit plan as defined in Section 3 of ERISA.
- (O) **Plan** means:
- (1) any **Pension Benefit Plan** or **Welfare Benefit Plan** which, before or during the **Policy Period**, is operated solely by a **Sponsor Organization** or jointly by a **Sponsor Organization** and a labor organization solely for the benefit of such **Sponsor Organization's Directors**, officers or employees;
  - (2) any other employee benefit plan or program which is not subject to ERISA and which, before or during the **Policy Period**, is sponsored by a **Sponsor Organization** solely for the benefit of its **Directors**, officers or employees, including but not limited to any cafeteria plan, dependent care assistance program, fringe benefit plan, deferred compensation plan, employee stock ownership plan, supplemental executive retirement plan, top-hat plan, excess benefit plan or voluntary employees' beneficiary association; and
  - (3) any plan or program described in Subsection (1) or (2) above while being actively developed, formed or proposed by a **Sponsor Organization** prior to formal creation; provided, that no coverage will be afforded under this Policy for any **Insured** in a settlor or similar uninsured capacity with respect to such plan or program.
- (P) **Policy Period** means the period set forth in ITEM 2 of the Declarations, subject to prior termination or cancellation pursuant to CONDITION (E).
- (Q) **Pollutants** means any seepage, pollution or contamination, including solid, liquid, gaseous or thermal irritants or contaminants, smoke, vapors, soot, fumes, acids, alkalis, chemicals, waste and materials to be recycled, reconditioned or reclaimed.
- (R) **Sponsor Organization** means the **Named Organization** and any **Subsidiary** thereof including, in the event a bankruptcy proceeding is instituted by or against any such entity, the resulting debtor-in-possession (or equivalent status outside the United States), if any.
- (S) **Subsidiary** means any entity:

- (1) during any time on or before the inception of the **Policy Period** in which the **Named Organization** owned, directly or indirectly through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities, voting rights or interests representing the present right to vote for the election or appointment of such entity's **Directors**; or
- (2) created or acquired during the **Policy Period** during any time in which the **Named Organization** owns, directly or indirectly through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities, voting rights or interests representing the present right to vote for the election or appointment of such entity's **Directors**.

The coverage afforded under this Policy as to any **Subsidiary** or any **Plans** or **Insured Persons** thereof will apply only with respect to **Wrongful Acts** committed or allegedly committed after the date such entity became a **Subsidiary** and before the date such entity ceases to be a **Subsidiary**.

- (T) **VCP Costs** means any of the following incurred by an **Insured**, subject to the sublimit set forth in ITEM 3(a) of the Declarations:
- (1) reasonable costs, charges and expenses of attorneys, accountants or other professionals incurred solely in investigating and evaluating a **Plan's Noncompliance** and effecting a resolution thereof as part of a **VCP Proceeding**;
  - (2) fees, fines, penalties or sanctions paid to a governmental authority as a result of a **VCP Proceeding**; and
  - (3) costs incurred to correct a **Plan's Noncompliance** as a result of a **VCP Proceeding**.
- (U) **VCP Proceeding** means the investigation and evaluation of a **Plan's Noncompliance** and effecting a resolution thereof pursuant to a **Voluntary Compliance Program**; provided, that **VCP Proceeding** will not include any investigation, evaluation or resolution of a **Plan's Noncompliance** of which any **Insured** was aware as of the Inception Date set forth in ITEM 2(a) of the Declarations or the inception of the first policy in an uninterrupted series of policies issued by the Insurer of which this Policy is a direct or indirect renewal or replacement (whichever is earlier).
- (V) **Voluntary Compliance Program** means:
- (1) any voluntary compliance resolution program or similar voluntary settlement program administered by the Internal Revenue Service or the Department of Labor, including but not limited to the Audit Closing Agreement Program, Voluntary Compliance Resolution Program and Tax Sheltered Annuity Voluntary Correction Program; and
  - (2) any similar program administered by any governmental authority located outside the United States.
- (W) **Welfare Benefit Plan** means any employee welfare benefit plan as such term is defined in Section 3 of ERISA.
- (X) **Wrongful Act** means any:
- (1) actual or alleged breach of the responsibilities, obligations or duties imposed upon fiduciaries of any **Plan** by any **Employee Benefit Law**;
  - (2) actual or alleged negligent act, error or omission by an **Insured** in the **Administration** of any **Plan**; or
  - (3) other matter claimed against an **Insured** due solely to such **Insured's** service as fiduciary of any **Plan**.

## EXCLUSIONS

- (A) The Insurer will not be liable to make any payment of **Loss** in connection with any **Claim** or **VCP Proceeding**:
- (1) arising out of, based upon or attributable to the gaining by any **Insured** of any profit or advantage to which such **Insured** was not legally entitled; provided, that this EXCLUSION (A)(1) will apply only if there has been a final adjudication adverse to such **Insured** establishing that the **Insured** gained such a profit or advantage;
  - (2) arising out of, based upon or attributable to the commission by any **Insured** of any criminal or deliberately fraudulent or dishonest act; provided, that this EXCLUSION (A)(2) will apply only if there has been a final adjudication adverse to such **Insured** establishing that the **Insured** so acted;
  - (3) for any actual or alleged bodily injury, sickness, disease, mental anguish, emotional distress or death of any person or damage to or destruction of any tangible property, including the loss of use thereof; provided, that this EXCLUSION (A)(3) will not apply to **Defense Costs** incurred in the defense of a **Claim** alleging any breach of the responsibilities, obligations or duties imposed upon fiduciaries of any **Plan** by any **Employee Benefit Law**;
  - (4) for any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided, that this EXCLUSION (A)(4) will not apply to:
    - (a) any **Claim** for diminution in the value of securities held by a **Plan** (other than securities issued by a **Sponsor Organization**), if such diminution in value allegedly results from matters described above in this EXCLUSION (A)(4); or
    - (b) **Non-Indemnifiable Loss**;
  - (5) for any actual or alleged failure to comply with any law concerning workers' compensation, unemployment insurance, Social Security or disability benefits, any similar common or statutory law of any domestic or foreign jurisdiction, any amendments to any of the foregoing or any rules or regulations promulgated thereunder; provided, that this EXCLUSION (A)(5) will not apply to any actual or alleged failure by any **Insured** to comply with HIPAA or COBRA;
  - (6) arising out of, based upon or attributable to any liability of others assumed by any **Insured** under any contract or agreement, whether oral or written; provided, that this EXCLUSION (A)(6) will not apply:
    - (a) to the extent an **Insured** would have been liable in the absence of such contract or agreement; or
    - (b) to liability assumed by an **Insured** under any Agreement and Declaration of Trust or similar agreement creating or establishing a **Plan**;
  - (7) arising out of, based upon or attributable to facts or circumstances alleged, or to the same or related **Wrongful Acts** alleged or contained, in any matter which has been reported, or with respect to which notice has been given, under any policy of which this Policy is a renewal or replacement or which this Policy may succeed in time; or
  - (8) arising out of, based upon or attributable to any prior or pending litigation, proceeding or demand as of the Prior or Pending Date set forth in ITEM 6 of the Declarations, or alleging or derived from the same or essentially the same facts, circumstances or **Wrongful Acts** underlying or alleged therein.

- (B) The Insurer will not be liable to make any payment of **Loss**, other than **Defense Costs**, in connection with any **Claim** or **VCP Proceeding**:
- (1) for injunctive or other non-monetary relief, or the costs of complying with any order or agreement to provide such relief (other than **VCP Costs** for which coverage is afforded under INSURING AGREEMENT (B) of this Policy);
  - (2) for the failure to collect contributions owed to any **Plan**, unless such failure is due to an **Insured's** negligence;
  - (3) for the return or reversion to any employer of any contributions or assets of any **Plan**; or
  - (4) for benefits due or to become due under the terms of any **Plan** (or which would be due if such **Plan** were in compliance with all applicable law); provided, that this EXCLUSION (B)(4) will not apply:
    - (a) if and to the extent recovery for such benefits is based on an **Insured Person's Wrongful Act** and is payable by him or her solely as a personal obligation; or
    - (b) to **Damages** in the form of a monetary award in, or fund for settling, any **Claim** against any **Insured** to the extent such **Claim** alleges loss to a **Plan** by reason of a change in the value of investments held by that **Plan**, regardless of whether the amounts sought in such **Claim** have been characterized by plaintiffs or held by a court to be "benefits."

For purposes of determining the application of the above EXCLUSIONS, no **Wrongful Act** of any **Insured** will be imputed to any other **Insured**.

## DISCOVERY PERIOD

If the Insurer or the **Named Organization** fails or refuses to renew this Policy, or if the **Named Organization** cancels this Policy, any **Insured** will have the right, upon payment of the Discovery Period Premium set forth in ITEM 5(a) of the Declarations, to an extension of the coverage granted by this Policy for the period of time set forth in ITEM 5(b) of the Declarations after the effective date of such non-renewal or cancellation (the "Discovery Period"). If purchased, the Discovery Period will operate as an extension of coverage only with respect to:

- (A) **Claims** first made or deemed first made during the Discovery Period for **Wrongful Acts** committed or allegedly committed before the effective date of the Policy's non-renewal or cancellation; and
- (B) **VCP Proceedings** first commenced or entered into by the **Insureds** during the Discovery Period in connection with **Noncompliance** that first became known to the **Insureds** before the effective date of the Policy's non-renewal or cancellation.

A written request to purchase the Discovery Period, together with payment of the Discovery Period Premium, must be made within thirty (30) days after the effective date of the Policy's non-renewal or cancellation. The Discovery Period Premium will be deemed fully earned as of inception of the Discovery Period. This clause and the right contained herein will not apply if this Policy is terminated by the Insurer for failure to pay a premium when due.

## EXTENSIONS

- (A) Subject to its terms and conditions, this Policy will afford coverage for **Claims** for **Wrongful Acts** of an **Insured Person** if such **Claims** are made against the estates, heirs, legal representatives or assigns of an **Insured Person** who is deceased or against the legal representatives or assigns of an **Insured Person** who is incompetent, insolvent or bankrupt, to the extent that such **Claims**, if brought against the **Insured Person**, would have been covered in the absence of such **Insured Person's** death, incompetence, insolvency or bankruptcy.

- (B) Subject to its terms and conditions, this Policy will afford coverage for **Claims** for **Wrongful Acts** of an **Insured Person** if such **Claims** are made against such **Insured Person's** lawful spouse or domestic partner solely by reason of such person's status as an **Insured Person's** spouse or domestic partner or such person's ownership interest in property which the claimant seeks as recovery for **Wrongful Acts** of such **Insured Person**. For purposes of this Policy, amounts which an **Insured Person's** lawful spouse or domestic partner becomes legally obligated to pay by reason of any such **Claim** will be treated as **Loss** which the **Insured Person** is legally obligated to pay. This coverage extension does not apply, however, to the extent any **Claim** alleges any wrongful act or omission by an **Insured Person's** lawful spouse or domestic partner.

## CONDITIONS

### (A) Limits of Liability and Retentions

- (1) The Insurer's maximum aggregate liability under this Policy for all **Loss** will not exceed the amount set forth in ITEM 3(d) of the Declarations. Subject to the foregoing:
  - (a) the Insurer's maximum liability under INSURING AGREEMENT (B) for all **VCP Costs** will be the amount set forth in ITEM 3(a) of the Declarations;
  - (b) the Insurer's maximum liability for all civil fines and penalties imposed pursuant to HIPAA ("HIPAA Civil Penalties") will be the amount set forth in ITEM 3(b) of the Declarations; and
  - (c) the Insurer's maximum liability for all civil penalties imposed pursuant to PPA ("PPA Civil Penalties") will be the amount set forth in ITEM 3(c) of the Declarations.

The amounts set forth in ITEM 3(a), 3(b) and 3(c) of the Declarations are sublimits; accordingly, they will be part of, and not in addition to, the Insurer's maximum aggregate limit of liability for all **Loss** set forth in ITEM 3(d) of the Declarations.

- (2) **Defense Costs** will be part of, and not in addition to, the Insurer's maximum aggregate limit of liability for all **Loss** set forth in ITEM 3(d) of the Declarations, and payment of **Defense Costs** will reduce such limit of liability. **Defense Costs**, as incurred, will also be applied against any applicable retention.
- (3) Only one retention will apply to the covered portion of any single **Claim**. The Insurer will be liable only for the amount of **Loss** which is in excess of the applicable retention stated in ITEM 4 of the Declarations. Retentions will be borne by the **Insureds** at their own expense and remain uninsured. However, no retention will apply to **Non-Indemnifiable Loss, VCP Costs, HIPAA Civil Penalties** or **PPA Civil Penalties**.

### (B) Notice and Reporting

- (1) As a condition precedent to any right to coverage under INSURING AGREEMENT (A) of this Policy, the **Insureds** must give the Insurer written notice of any **Claim** as soon as practicable after such **Claim** is first made.
- (2) As a condition precedent to any right to coverage under INSURING AGREEMENT (B) of this Policy, the **Insureds** must give the Insurer written notice as soon as practicable after the **Insureds** first commence or enter into any **VCP Proceeding**.
- (3) If, during the **Policy Period** or the Discovery Period (if applicable), the **Insureds** first become aware of any circumstances which may reasonably be expected to give rise to a **Claim** against the **Insureds** and if, before the end of the **Policy Period** or the end of the Discovery Period (if applicable), the **Insureds** give written notice to the Insurer of the circumstances and the reasons for anticipating such a **Claim**, with full particulars as to

dates, persons and entities involved, anticipated allegations, potential claimants and the consequences which have resulted or may result therefrom, then any **Claim** subsequently made against the **Insureds** and reported to the Insurer alleging, arising out of, based upon or attributable to such circumstances or alleging any **Wrongful Act** which is the same as or related to any **Wrongful Act** described in such notice will be considered to have been made at the time such notice of circumstances was given.

- (4) All notices under this CONDITION (B) must refer to the policy number set forth on the Declarations, must be in writing, must request coverage under this Policy and must be given by certified mail or prepaid express courier to the address set forth in ITEM 8 of the Declarations.

(C) Interrelationship of Claims

All **Claims** alleging, arising out of, based upon or attributable to the same facts, circumstances, situations, transactions or events or to a series of related facts, circumstances, situations, transactions or events will be considered to be a single **Claim** and will be considered to have been made at the time the earliest such **Claim** was made.

(D) Defense Costs; VCP Costs; Settlements; Allocation of Loss; Priority of Payments

- (1) The Insurer will have no duty under this Policy to defend any **Claim**. The **Insureds** must defend **Claims** made against them. The **Insureds** may not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any **Defense Costs** or **VCP Costs** without the Insurer's prior written consent, and only those settlements, stipulated judgments, **Defense Costs** and **VCP Costs** to which the Insurer has consented will be recoverable as **Loss** under this Policy. The Insurer's consent may not be unreasonably withheld; provided, that the Insurer will be entitled to effectively associate in the defense and negotiation of any settlement of any **Claim**.
- (2) The Insurer will pay covered **Defense Costs** on an as-incurred basis, but if it is finally determined that any **Defense Costs** paid by the Insurer are not covered under this Policy, the **Insureds** will repay such non-covered **Defense Costs** to the Insurer.
- (3) If **Loss** covered by this Policy and loss not covered by this Policy are both incurred in connection with a single **Claim** or **VCP Proceeding**, either because the **Claim** or **VCP Proceeding** includes both covered and uncovered matters or because a **Claim** is made both against **Insureds** and against others not included within the definition of **Insured**, the **Insureds** and the Insurer agree to use their best efforts to determine a fair and proper allocation of all such amounts, taking into account the relative legal and financial exposures of the parties and the relative benefits to be obtained by resolution of the **Claim** or **VCP Proceeding**. The Insurer will be obligated to pay only those amounts or portions of **Loss** allocated to covered matters claimed against **Insureds**. If the **Insureds** and the Insurer are unable to agree upon an allocation, then until a final allocation is agreed upon or determined pursuant to the provisions of this Policy and applicable law, the Insurer will be obligated to make an interim payment of that amount or portion of **Loss**, including **Defense Costs**, which the parties agree is not in dispute.
- (4) With respect to any **Loss** payable under this Policy in connection with any **Claim** or **VCP Proceeding**, the Insurer will, subject to the limit or limits of liability applicable to such **Loss**, first pay such **Loss** to which any **Insured Person** may be entitled under this Policy and, second, pay such **Loss** to which any **Plan** may be entitled under this Policy and, third, pay such **Loss** to which any **Sponsor Organization** may be entitled under this Policy.

(E) Cancellation; Nonrenewal

- (1) The Insurer may cancel this Policy for non-payment of premium by sending not less than ten (10) days' notice to the **Named Organization** at its last known address. The Insurer may not otherwise cancel this Policy.
- (2) The **Named Organization** may cancel this Policy by mailing the Insurer written notice stating when such cancellation will be effective; provided, that the **Named Organization** may not cancel this Policy after the effective date of any acquisition of the **Named Organization**, as described in CONDITION (F)(1) below. If the **Named Organization** cancels this Policy, the Insurer will retain the customary short rate premium. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment of unearned premium is not a condition of cancellation.
- (3) The Insurer will not be required to renew this Policy upon its expiration. If the Insurer elects not to renew this Policy, the Insurer must give the **Named Organization** notice of non-renewal no less than sixty (60) days before the end of the **Policy Period**.
- (4) If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period will be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

(F) Changes in Exposure

- (1) If, during the **Policy Period**, any of the following transactions or events (each a "Change in Control") occurs with respect to the **Named Organization**:
  - (a) the **Named Organization** merges into or consolidates with another entity such that the **Named Organization** is not the surviving entity; or
  - (b) any person, entity or group of persons or entities acting in concert acquires securities or voting rights which result in ownership or voting control by such person, entity or group of more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of the **Named Organization's Directors**;

then coverage under this Policy will continue in full force and effect until the end of the **Policy Period** with respect to **Claims** for **Wrongful Acts** committed or allegedly committed before the effective date of such Change in Control and **VCP Proceedings** in connection with **Noncompliance** that first became known to the **Insureds** before such date. Coverage will cease with respect to **Claims** for **Wrongful Acts** committed or allegedly committed after such date and **VCP Proceedings** in connection with **Noncompliance** that first became known to the **Insureds** after such date. This Policy may not be cancelled and the premium for this Policy will be deemed fully earned as of such date.

- (2) If, during the **Policy Period**, any **Subsidiary** ceases to be a **Subsidiary**, then coverage under this Policy as to such **Subsidiary**, its **Plans** and their **Insured Persons** will continue in full force and effect until the end of the **Policy Period** with respect to **Claims** for **Wrongful Acts** committed or allegedly committed before such event and **VCP Proceedings** in connection with **Noncompliance** that first became known to the **Insureds** before such event. Coverage as to such **Subsidiary**, its **Plans** and their **Insured Persons** will cease with respect to **Claims** for **Wrongful Acts** committed or allegedly committed after such event and **VCP Proceedings** in connection with **Noncompliance** that first became known to the **Insureds** after such event.
- (3) If any **Sponsor Organization** sells, spins off or terminates any **Plan**, then coverage under this Policy as to such **Plan** will continue in full force and effect until the end of the

**Policy Period** or the final distribution of such **Plan's** assets (whichever first occurs) with respect to **Claims** for **Wrongful Acts** committed or allegedly committed by those who were **Insureds** at the time of such sale, spin-off or termination (or would have been **Insureds** at the time of such sale, spin-off or termination had this Policy then been in effect) and **VCP Proceedings** in connection with such **Plan's Noncompliance**.

(G) Other Insurance

Such insurance as is provided by this Policy will apply only as excess over, and will not contribute with, any other valid and collectible insurance.

(H) Cooperation and Subrogation

- (1) In the event of any notice under CONDITION (B), the **Insureds** will give the Insurer all information, assistance and cooperation that the Insurer reasonably requests.
- (2) In the event of payment under this Policy, the Insurer will be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery, including without limitation the **Insured Persons'** rights to indemnification or advancement from any **Sponsor Organization** or **Plan**. The **Insureds** must execute all papers and do everything necessary to secure such rights and to enable the Insurer to bring suit in their name.

(I) No Action Against the Insurer

No action may be taken against the Insurer unless, as a condition precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **Insureds'** obligation to pay has been finally determined either by judgment against an **Insured** after actual trial or by written agreement of the **Insureds**, the claimant and the Insurer. No person or entity will have any right under this Policy to join the Insurer as a party to any action against the **Insureds** to determine the Insurer's liability; nor may the Insurer be impleaded by an **Insured** or his, her or its legal representative in any such action.

(J) Bankruptcy of Insureds

- (1) The Insurer will not be relieved of any of its obligations under the Policy by the bankruptcy or insolvency of any of the **Insureds** or their estates.
- (2) If a reorganization or liquidation proceeding is commenced by or against a **Sponsor Organization** or **Plan** pursuant to the United States Bankruptcy Code or any similar law of any domestic or foreign jurisdiction, the **Insureds** hereby waive and release any automatic stay or injunction under any such bankruptcy or insolvency laws which may apply in such proceeding to the proceeds of this Policy, and agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any such stay or injunction.

(K) Notices and Authority

By acceptance of this Policy, the **Insureds** agree that the **Named Organization** may act on their behalf with respect to all matters under this Policy, including but not limited to the giving and receiving of notices, the payment of premiums and the receiving of any return premiums, the cancellation, renewal or non-renewal of this Policy and the acceptance of any endorsements.

(L) Assignment

No assignment of interest under this Policy will bind the Insurer without the Insurer's written consent.

(M) Representations, Severability and Non-Rescindability

The **Insureds** represent that the particulars and statements contained in the **Application** are true, accurate and complete and are deemed material to the acceptance of this risk assumed by the Insurer under this Policy. This Policy is issued in reliance on the truth of that representation. No knowledge or information possessed by any **Insured** will be imputed to any other **Insured**. The Insurer may not rescind this Policy.

(N) Titles and Headings

The titles and headings to the various paragraphs and sections in this Policy, including any attached endorsements, are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of the paragraphs and sections to which they relate.

(O) Changes

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer will not effect a waiver or change in any part of this Policy or stop the Insurer from asserting any right under the terms of this Policy. This Policy cannot be waived or changed, except by written endorsement issued to form a part of this Policy.

(P) Entire Agreement

By acceptance of this Policy, the **Insureds** and the Insurer agree that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between the parties relating to this insurance.

(Q) Territory

This Policy applies to **Wrongful Acts** committed or allegedly committed, or **Claims** made, anywhere in the world.

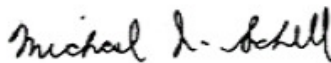
(R) Conformity to Statute

Any terms of this Policy which are in conflict with the terms of any applicable laws construing this Policy, including any endorsement to this Policy which is required by any state department of insurance or equivalent authority ("State Amendatory Endorsement"), are hereby amended to conform to such laws. Nothing herein will be construed to restrict the terms of any State Amendatory Endorsement. In addition, to the extent permissible by law, nothing in any State Amendatory Endorsement will be construed to restrict the terms of this Policy.

In witness whereof, the Insurer has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations Page by a duly authorized representative of the Insurer.



Secretary



President