



**National Union Fire Insurance Company of Pittsburgh, Pa.®**

A capital stock company

**NOT-FOR-PROFIT PROTECTOR®**

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by application forming a part hereof and its attachments and the material incorporated therein, the insurance company designated in Item 8 of the Declarations, herein called the "Insurer", agrees as follows:

**1. INSURING AGREEMENTS**

**COVERAGE A: INDIVIDUAL INSURED INSURANCE**

This policy shall pay on behalf of each and every Individual Insured Loss arising from a Claim first made against such Individual Insured during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act in his/her respective capacities as an Individual Insured of the Organization, except when and to the extent that the Organization has indemnified the Individual Insured. The Insurer shall, in accordance with and subject to Clause 8, advance Defense Costs of such Claim prior to its final disposition.

**COVERAGE B: ORGANIZATION INDEMNIFICATION REIMBURSEMENT INSURANCE**

This policy shall pay on the behalf of the Organization Loss arising from a Claim first made against an Individual Insured during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act in his/her respective capacities as an Individual Insured of the Organization, but only when and to the extent that the Organization has indemnified such Individual Insured for such Loss pursuant to law, common or statutory, or contract, or the Charter or By-laws of the Organization duly effective under such law which determines and defines such rights of indemnity. The Insurer shall, in accordance with and subject to Clause 8, advance Defense Costs of such Claim prior to its final disposition.

**COVERAGE C: ORGANIZATION ENTITY COVERAGE**

This policy shall pay on behalf of the Organization Loss arising from a Claim first made against the Organization during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act of the Organization. The Insurer shall, in accordance with and subject to Clause 8, advance Defense Costs of such Claim prior to its final disposition.

**DEFENSE PROVISIONS**

The Insurer does not assume any duty to defend; provided, however, the Named Organization may at its sole option, and in accordance with Clause 8, tender to the Insurer the defense of a Claim for which coverage is provided by this policy. Regardless of whether the defense is so tendered, the Insurer shall advance Defense Costs (excess of the Retention amount) of such Claim prior to its final disposition. Selection of counsel to defend a "Class Action Claim", as defined in Clause 9, shall be made in accordance with Clause 9 of the policy.

## 2. DEFINITIONS

(a) "Affiliate" shall mean any not for profit organization other than a Subsidiary which:

- (1) the Named Organization or any Subsidiary controls or otherwise has the ability to direct the financial or managerial decisions of such entity, whether through the operation of law, contract or agreement, stock ownership or membership, charter, articles of incorporation, or by-law provisions; or
- (2) is granted by contract the right to control the financial or managerial decisions of the Organization or any Subsidiary.

Provided, however that such coverage as is provided by sections (1) and (2) above shall be limited solely to Wrongful Acts occurring in the course of the exercise of such control of financial or managerial decisions.

(b) "Claim" means:

- (1) a written demand for monetary relief; or
- (2) a civil, criminal, regulatory or administrative proceeding for monetary or non-monetary relief which is commenced by:
  - (i) service of a complaint or similar pleading; or
  - (ii) return of an indictment (in the case of a criminal proceeding); or
  - (iii) receipt or filing of a notice of charges; or
- (3) any request to toll or waive any statute of limitations.

The term "Claim" shall include an Employment Practices Claim, provided however, that in no event shall the term "Claim" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

(c) "Continuity Date" means the date set forth in:

- (1) Item 6A of the Declarations with respect to all coverages other than Coverage C; or
- (2) Item 6B of the Declarations with respect to Coverage C only.

(d) "Defense Costs" means reasonable and necessary fees, costs and expenses consented to by the Insurer (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a Claim against the Insureds, but excluding salaries of Individual Insureds.

(e) "Employee(s)" means any past, present or future employee of the Organization, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal and temporary Employee of the Organization in his or her capacity as such.

(f) "Employment Practices Claim" means a Claim alleging an Employment Practices Violation.

(g) "Employment Practices Violation(s)" means any actual or alleged:

- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
- (2) harassment (including sexual harassment whether "quid pro quo", hostile work environment or otherwise);

- (3) discrimination, (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability);
- (4) Retaliation (including lockouts);
- (5) employment-related misrepresentation(s) to an Employee or applicant for employment with the Organization;
- (6) employment-related libel, slander, humiliation, defamation or invasion of privacy;
- (7) wrongful failure to employ or promote;
- (8) wrongful deprivation of career opportunity, wrongful demotion or negligent Employee evaluation, including the giving of negative or defamatory statements in connection with an employee reference;
- (9) wrongful discipline;
- (10) failure to grant tenure or practice privileges;
- (11) failure to provide or enforce adequate or consistent organization policies or procedures relating to any other Employment Practices Violation;
- (12) violation of any individual's civil rights relating to any of the above,

but only if the Employment Practices Violation relates to an Individual Insured, or applicant for employment, with the Organization or an Outside Entity, whether direct, indirect, intentional or unintentional.

- (h) "Financial Insolvency" means: (1) entering into proceedings in bankruptcy or (2) becoming a debtor in possession; or (3) the taking of control, the supervision of, or the managing or liquidating the financial affairs of such entities by a receiver, conservator, liquidator, trustee, rehabilitator, or similar official.
- (i) "Individual Insured(s)" means a past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head, committee member (of a duly constituted committee of the Organization), staff or faculty member (salaried or non-salaried), Employee or volunteer of the Organization. Coverage will automatically apply to all new persons who become Individual Insureds after the inception date of this policy.
- (j) "Insured(s)" means the Organization and all Individual Insureds.
- (k) "Loss" means damages, (including back pay and front pay), judgments, settlements, pre- and post-judgment interest, the multiple or liquidated damages awards under the Age Discrimination in Employment Act and the Equal Pay Act and Defense Costs; however, Loss shall not include: (1) any amount for which the Insureds are not financially liable or which are without legal recourse to the Insureds; (2) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; (3) any liability or costs incurred by any Insured to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar relating to an Employment Practices Claim; or (4) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

If an additional premium is stated in Item 7B of the Declarations page, then Loss shall specifically include, (subject to the policy's other terms, conditions and exclusions) punitive, exemplary and multiple damages. It is further understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages. If an additional premium is not stated in Item 7B of the Declarations, then Loss shall not include punitive, exemplary damages or the multiplied portion of multiple damages. In all events, coverage shall not be provided to any particular Insured who has been adjudicated to have obtained a profit or advantage or committed a fraudulent or dishonest act or a willful violation of any statute, rule or law.

- (l) "No Liability" means: (1) a final judgment of no liability obtained prior to trial, in favor of all Insureds, by reason of a motion to dismiss or a motion for summary judgment, after the exhaustion of all appeals; or (2) a final judgment of no liability obtained after trial, in favor of all Insureds, after the exhaustion of all appeals. In no event shall the term "No Liability" apply to a Claim made against an Insured for which a settlement has occurred.
- (m) "Non-Employment Discrimination" means any actual or alleged sexual harassment or unlawful discrimination, as described in paragraphs (2) and (3) of the definition of Employment Practices Violation, or the violation of the civil rights of a person relating to such sexual harassment or discrimination, when such acts are alleged to be committed against anyone other than an Individual Insured, or applicant for employment with the Organization or an Outside Entity, including, but not limited to: students, patients, members, customers and suppliers.
- (n) The "Organization" means: (1) the Named Organization designated in Item 1 of the Declarations; (2) any Subsidiary thereof; and (3) and Affiliate thereof listed by endorsement to this policy.
- (o) "Outside Entity" means a not-for-profit organization, other than a Subsidiary or listed Affiliate, on which an Individual Insured serves, at the specific written request of the Organization, as a director, trustee, trustee emeritus or governor. Such coverage as is provided by this policy shall be specifically excess of any insurance in force as respects such Outside Entity and any indemnification provided by such Outside Entity.
- (p) "Policy Period" means the period of time from the inception date shown in Item 3 of the Declarations to the earlier of the expiration date shown in Item 3 of the Declarations or the effective date of cancellation of this policy.
- (q) "Policy Year" means a period of one year, within the Policy Period, commencing each year on the day and hour first named in Item 3. of the Declarations, or if the time between the effective date or anniversary and termination of the Policy is less than one year, then such lesser period.
- (r) "Related Wrongful Acts" shall mean Wrongful Acts which are the same, related or continuous, or Wrongful Acts which arise from a common nucleus of facts. Claims can allege Related Wrongful Acts regardless of whether such Claims involve the same or different claimants, Insureds or legal causes of action.
- (s) "Retaliation" means a Wrongful Act of an Insured relating to or alleged to be in response to any of the following activities: (1) the disclosure or threat of disclosure by an Employee to a superior or to any governmental agency of any act by an Insured which is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (2) the actual or attempted exercise by an Employee of any right that such Employee has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; (3) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or (4) Employee strikes.

(t) "Subsidiary" means:

- a) any organization which, on or before the inception of the Policy Period the Organization owns more than fifty percent (50%) of the voting interest, either directly, or indirectly through one or more of its Subsidiaries, or has, on or before the inception of the Policy Period, the right to elect or appoint more than fifty percent (50%) of the voting directors, or trustees, either directly or indirectly through one or more of its Subsidiaries;
- b) automatically any not for profit organization which becomes a Subsidiary during the Policy Period and where the book value of such entity's assets determined in accordance with Generally Accepted Accounting Principles ("GAAP") totals less than 30% of the similarly calculated assets of the Named Organization as of the inception date of the Policy Period; or
- c) any for profit organization which becomes a Subsidiary during the Policy Period and where the book value of such entity's assets determined in accordance with "GAAP" totals less than 20% of the similarly calculated assets of the Named Organization as of the inception date of the Policy Period.

With regard to paragraphs b) and c) above, the Named Organization shall provide the Insurer with full particulars of the Subsidiary before the end of the Policy Period.

Any organization which becomes a Subsidiary during the Policy Period but exceeds the asset limitations stated in b) or c) above, (hereinafter "New Subsidiary") shall be provided coverage under this policy, but only upon the condition that within 90 days after the date of its becoming a Subsidiary, the Named Organization shall have provided the Insurer with full particulars of the New Subsidiary and agreed to any additional premium or amendment of the provisions of this policy required by the Insurer relating to such New Subsidiary. Further, such coverage as shall be afforded to the New Subsidiary is conditioned upon the Named Organization paying when due any additional premium required by the Insurer relating to such New Subsidiary.

An organization becomes a Subsidiary when the Named Organization owns more than fifty percent (50%) of the voting interest, either directly, or indirectly through one or more of its Subsidiaries, or has, on or before the inception of the Policy Period, the right to elect or appoint more than fifty percent (50%) of the voting directors, or trustees, either directly or indirectly through one or more of its Subsidiaries.

In all events, such coverage as is afforded under this policy with respect to a Claim made against any Subsidiary, or any Individual Insured of a Subsidiary, shall only apply for Wrongful Acts committed or allegedly committed after the effective time that such Subsidiary became a Subsidiary and prior to the time that such Subsidiary ceased to be a Subsidiary.

(u) "Wrongful Act" means:

- (1) with respect to Individual Insureds, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such Insureds in his/her respective capacities as such, or any matter claimed against such Individual Insured solely by reason of his/her status as Individual Insureds of the Organization;
- (2) with respect to the Organization under Coverage C, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by or on behalf of the Organization;
- (3) with respect to service on an Outside Entity, any matter claimed against such Individual Insureds arising out of such Insured serving as a director, trustee, trustee emeritus or governor of an Outside Entity in such capacity, but only if such service is at the specific written request or direction of the Organization;

(4) with respect to both the Individual Insureds and the Organization and subject to paragraphs 1, 2 and 3 above, "Wrongful Act" shall specifically include:

- (a) Employment Practices Claims;
- (b) Non-Employment Discrimination;
- (c) violation of the Sherman Antitrust Act or similar federal, state or local statutes or rules;
- (d) libel, slander, defamation or publication or utterance in violation of an individual's right of privacy;
- (e) wrongful entry or eviction or other invasion of the right of occupancy;
- (f) false arrest or wrongful detention;
- (g) plagiarism; and
- (h) infringement of copyright or trademark or unauthorized use of title.

### 3. EXTENSIONS

Subject otherwise to the terms hereof, this policy shall cover Loss arising from any Claims made against the estates, heirs, or legal representatives of deceased Individual Insureds, and the legal representatives of Individual Insureds in the event of an Individual Insured's incompetency, insolvency or bankruptcy, who were Individual Insureds at the time the Wrongful Acts upon which such Claims are based were committed.

Subject otherwise to the terms hereof, this policy shall cover Loss arising from all Claims made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an Individual Insured for all Claims arising solely out of his or her status as the spouse of an Individual Insured, including a Claim that seeks damages recoverable from marital community property, property jointly held by the Individual Insured and the spouse, or property transferred from the Individual Insured to the spouse; provided, however, that this extension shall not afford coverage for any Claim for any actual or alleged Wrongful Act of the spouse, but shall apply only to Claims arising out of any actual or alleged Wrongful Acts of an Individual Insured, subject to the policy's terms, conditions and exclusions.

### 4. EXCLUSIONS

The Insurer shall not be liable to make any payment for Loss in connection with a Claim made against an Insured:

- (a) arising out of, based upon or attributable to the gaining in fact of any profit or advantage to which an Insured was not legally entitled;
- (b) arising out of, based upon or attributable to the committing in fact of any criminal, or deliberate fraudulent act;

[The Wrongful Act of an Insured shall not be imputed to any other Insured for the purpose of determining the applicability of exclusions 4(a) through 4(b).]

- (c) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or Related Wrongful Act alleged or contained, in any Claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- (d) alleging, arising out of, based upon or attributable to as of the Continuity Date, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation; or the alleging of any Wrongful Act which is the same or a Related Wrongful Act to that alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;

- (e) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an Individual Insured serving in any capacity, other than with the Organization or as a director, trustee, trustee emeritus, or governor of an Outside Entity;
- (f) which is brought by or on behalf of the Organization against any Individual Insured; provided however, this exclusion shall not apply to any derivative Claim made on behalf of the Organization by a member, an attorney general or any other such representative party if such action is brought and maintained independently of and without the solicitation of or assistance of, or active participation of or intervention of any Individual Insured or the Organization or any Affiliate thereof;
- (g) for any Wrongful Act arising out of an Individual Insured serving as a director, trustee, trustee emeritus or governor of an Outside Entity if such Claim is brought by the Outside Entity or by any director, trustee, trustee emeritus or governor thereof;
- (h) for bodily injury, sickness, disease, death of any person, or damage to or destruction of any tangible property, including the loss of use thereof;
- (i) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly:
  - (1) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or
  - (2) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants,

including but not limited to a Claim alleging damage to the Organization or its members.

Pollutants include (but are not limited to) any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes (but is not limited to) materials to be recycled, reconditioned or reclaimed;

- (j) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar provisions of any federal, state or local statutory law or common law; provided, however, that this exclusion shall not apply to Loss arising from a Claim for Retaliation;
- (k) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of an Insured under any express contract or agreement; provided, however, that this exclusion shall not apply to liability which would have attached in the absence of such express contract or agreement;
- (l) for any civil or criminal fines imposed by law and any taxes (whether imposed by federal, state, local or other governmental authority); or
- (m) alleging, arising out of, or in any way relating to any purchase or sale of securities by the Named Organization, Subsidiary or Affiliate or Claims brought by securities holders of the Organization in their capacity as such; provided, however, this exclusion shall not apply to the issuance by the Organization of tax exempt bond debt or Claims brought by tax exempt bond debt holders.

## 5. LIMIT OF LIABILITY - (FOR ALL LOSS - INCLUDING DEFENSE COSTS)

The Limit of Liability stated in Item 4 of the Declarations is the limit of the Insurer's liability for all Loss, under Coverage A, Coverage B and Coverage C combined, arising out of all Claims first made against the Insureds during a Policy Year or the Discovery Period (if applicable); however, the Limit of Liability for the Discovery Period shall be part of, and not in addition to, the Limit of Liability for the Policy Year in which the Discovery Period is elected. Further, any Claim which is made subsequent to the Policy Year or Discovery Period (if applicable) which, pursuant to Clause 7(b) or 7(c), is considered made during the Policy Year or Discovery Period shall also be subject to the one applicable aggregate Limit of Liability stated in Item 4 of the Declarations.

**Defense Costs are not payable by the Insurer in addition to the Limit of Liability. Defense Costs are part of Loss and as such are subject to the Limit of Liability for Loss.**

**This policy provides one aggregate Limit of Liability for each Policy Year. In no event shall the Limit of Liability for any one Policy Year exceed the aggregate Limit of Liability as stated in Item 4 of the Declarations.**

## 6. RETENTION CLAUSE

The Insurer shall only be liable for the amount of Loss arising from a Claim which is in excess of the Retention amount stated in Item 5(B) of the Declarations, such Retention amount to be borne by the Organization and shall remain uninsured, with regard to all Loss for which the Organization has indemnified or is permitted or required to indemnify the Individual Insureds ("Indemnifiable Loss") and Loss under Coverage C. A single Retention amount shall apply to Loss arising from all Claims alleging the same Wrongful Act or Related Wrongful Acts.

Except as hereinafter stated, no Retention shall apply to a Claim in the event of the Financial Insolvency of the Named Organization and all Subsidiaries or Affiliates which are permitted or required to indemnify the Individual Insured with regard to such Claim. Provided, however, the Organization hereby agrees to indemnify the Insureds to the fullest extent permitted by law, taking all steps necessary in furtherance thereto, including the making in good faith of any required application for court approval and the passing of any required corporate resolution or the execution of any contract. The Named Organization and all Subsidiaries and Affiliates will be conclusively deemed to have indemnified the Individual Insureds to the extent that the Organization is permitted or required to indemnify them pursuant to law, common or statutory, or contract, or the charter or by-laws of the Organization.

Further, no Retention shall apply to all coverages for any Claim which is in the form of a civil litigation for monetary relief, and the Insurer shall thereupon reimburse the Defense Costs paid by the Insured, in the event of:

- (1) a determination of No Liability of all Insureds; or
- (2) a dismissal or a stipulation to dismiss the civil litigation Claim without prejudice and without the payment of any consideration by any Insured;

provided, however, that in the case of (2) above, such reimbursement shall occur one hundred twenty (120) days after the date of dismissal or stipulation as long as the Claim is not re-brought (or any other Claim which is subject to the same single retention by virtue of Clause 6 is not brought) within ninety (90) days from the time of such dismissal or stipulation, and further subject to an undertaking by the Organization in a form acceptable to the Insurer that such reimbursement shall be paid back by the Organization to the Insurer in the event the Claim (or any other Claim which is subject to the same single retention by virtue of Clause 6) is brought after such 90-day period and before the expiration of the statute of limitations for such Claim.



## **7. NOTICE/CLAIM REPORTING PROVISIONS**

Notice hereunder shall be given in writing to the Insurer named in Item 8 of the Declarations at the address indicated in Item 8 of the Declarations. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice. A Claim shall be considered to have been first made against an Insured when written notice of such Claim is received by any Insured, by the Named Organization on the behalf of any Insured or by the Insurer, whichever comes first.

- (a) The Insureds shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of any Claim made against an Insured as soon as practicable and either:
  - (1) anytime during the Policy Year or during the Discovery Period (if applicable); or
  - (2) within 30 days after the end of the Policy Year or the Discovery Period (if applicable), as long as such Claim is reported no later than 30 days after the date such Claim was first made against an Insured.
- (b) If written notice of a Claim has been given to the Insurer pursuant to Clause 7(a) above, then any Claim which is subsequently made against the Insureds and reported to the Insurer alleging, arising out of, based upon or attributable to the facts alleged in the Claim for which such notice has been given, or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged in the Claim of which such notice has been given, shall be considered made at the time such notice was given.
- (c) If during the Policy Period or during the Discovery Period (if applicable) the Insureds shall become aware of any circumstances which may reasonably be expected to give rise to a Claim being made against the Insureds and shall 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, then any Claim which is 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 alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was given.

## **8. DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)**

The Insurer does not assume any duty to defend. The Insureds shall defend and contest any Claim made against them.

Notwithstanding the foregoing, the Insureds shall have the right to tender the defense of any Claim to the Insurer, which right shall be exercised in writing by the Named Organization on behalf of all Insureds to the Insurer pursuant to Clause 7 of this policy. This right shall terminate if not exercised within 30 days of the date the Claim is first made against an Insured, pursuant to Clause 7 of the policy. Further, from the date the Claim is first made against the Insureds to the date when the Insurer accepts the tender of the defense of such Claim, the Insureds shall take no action, or fail to take any required action, that prejudices the rights of the Insureds or the Insurer with respect to such Claim. Provided that the Insureds have complied with the foregoing, the Insurer shall be obligated to assume the defense of the Claim, even if such Claim is groundless, false or fraudulent. The assumption of the defense of the Claim shall be effective upon written confirmation thereof sent by the Insurer to the Named Organization. Once the defense has been so tendered, the Insured shall have the right to effectively associate with the Insurer in the defense of such Claim, including, but not limited to, negotiating a settlement, subject to the provisions of this Clause 8. However, the Insurer shall not be obligated to defend such

Claim after the Limit of Liability has been exhausted, or after an Insured's rejection of a Settlement Opportunity as described in this Clause 8.

When the Insurer has not assumed the defense of a Claim pursuant to Clause 8, the Insurer shall advance nevertheless, at the written request of the Insured, Defense Costs prior to the final disposition of a Claim. Such advanced payments by the Insurer shall be repaid to the Insurer by the Insureds, severally according to their respective interests, in the event and to the extent that the Insureds shall not be entitled under the terms and conditions of this policy to payment of such Loss.

**The Insureds shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any Defense Costs without the prior written consent of the Insurer. Only those settlements, stipulated judgments and Defense Costs which have been consented to by the Insurer shall be recoverable as Loss under the terms of this policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer, when it has not assumed the defense of a Claim pursuant to this Clause 8, shall be entitled to effectively associate in the defense and the negotiation of any settlement of any Claim, and provided further that in all events the Insurer may withhold consent to any settlement, stipulated judgment or Defense Costs, or any portion thereof, to the extent such Loss is not covered under the terms of this policy.**

The Insurer shall have the right to effectively associate with the Insureds in the defense of any Claim that appears reasonably likely to involve the Insurer, including but not limited to negotiating a settlement. The Insureds shall give the Insurer full cooperation and such information as it may reasonably require.

If the Insurer recommends a settlement within the policy's applicable Limit of Liability which is acceptable to the claimant (a "Settlement Opportunity"), and the Insureds consent to such settlement, then the Organization's applicable Retention amount shall be retroactively reduced by ten percent (10%) for such Loss. It shall be a condition to such reduction that the Insureds must consent to such settlement within thirty (30) days of the date the Insureds are first made aware of the Settlement Opportunity, or in the case of a Settlement Opportunity which arises from a settlement offer by the Claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made.

However, if a Settlement Opportunity arises and the Insureds do not consent to the settlement within the time prescribed above, the Retention amount shall remain the applicable amount set forth in Item 5 of the Declarations even if consent is given to a subsequent Settlement Opportunity.

Furthermore, in the event the Insureds do not consent to the first Settlement Opportunity within the time prescribed, then the Insurer's liability for all Loss on account of such Claim shall not exceed: (1) the amount for which the Insurer could have settled such Claim plus Defense Costs incurred as of the date such settlement was proposed in writing by the Insurer, ("Settlement Opportunity Amount") plus (2) 50% of covered Loss in excess of such Settlement Opportunity Amount subject to the policy's Limit of Liability. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the Retention amount stated in Item 5 of the Declarations.

## **9. PRE-AUTHORIZED CLASS ACTION DEFENSE ATTORNEYS**

This clause applies only to a Claim filed as a class action (hereinafter referred to as a "Class Action Claim").

Affixed as Appendix A hereto and made a part of this policy is a list of Panel Counsel law firms ("Panel Counsel Firms") from which a selection of legal counsel may be made to conduct the defense of any Class Action Claim against an Insured pursuant to the terms set forth below.

In the event the Insurer has assumed the defense pursuant to Clause 8 of this policy, then the Insurer shall be obligated to select a Panel Counsel Firm to defend the Insureds. In the event the Insureds are already defending a Class Action Claim, then the Insureds may at their option select a Panel Counsel firm to defend the Insureds. If the Insured does not select a Panel Counsel firm, such non-Panel Counsel firm selection shall be subject to the Insurer's consent, which consent shall not be unreasonably withheld.

The selection of the Panel Counsel Firm, when done by the Insurer, shall be from the jurisdiction in which the Class Action Claim is brought.

The list of Panel Counsel Firms may be amended from time to time by the Insurer. However, no change shall be made to the specific list attached to this policy during the Policy Period without the consent of the Named Organization.

#### **10. DISCOVERY CLAUSE**

Except as indicated below, if the Named Organization shall cancel or the Insurer or the Named Organization shall refuse to renew this policy, the Named Organization, upon payment of the respective "Additional Premium Amount" described below, shall have the right to a period of one, two or three years after the effective date of such cancellation or nonrenewal (herein referred to as the "Discovery Period") in which to give to the Insurer written notice of Claims first made against the Insureds during the selected period for any Wrongful Act occurring prior to the end of the Policy Period and otherwise covered by this policy. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the Insurer within 30 days of the effective date of cancellation or nonrenewal. The Additional Premium Amount for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period is not cancelable. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

The Additional Premium Amount for: (1) one year shall be 40% of the "full annual premium"; (2) two years shall be 75% of the "full annual premium"; (3) three years shall be 100% of the "full annual premium". As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the Policy Period.

In the event of a Transaction, as defined in Clause 12, the Named Organization shall have the right, within 30 days before the end of the Policy Period, to request an offer from the Insurer of a Discovery Period (with respect to Wrongful Acts occurring prior to the effective time of the Transaction) for a period of no less than six years or for such longer or shorter period as the Named Organization may request. The Insurer shall offer such Discovery Period pursuant to such terms, conditions and premium as the Insurer may reasonably decide. In the event of a Transaction, the right to a Discovery Period shall not otherwise exist except as indicated in this paragraph.

#### **11. CANCELLATION CLAUSE**

This policy may be canceled by the Named Organization only by mailing written prior notice to the Insurer or by surrender of this policy to the Insurer or its authorized agent. If this policy is canceled by the Named Organization, the Insurer shall retain the customary short rate proportion of the premium herein. However, if the Policy Period as designated in Item 3. of the Declarations is more than one year, this policy may not be cancelled by the Named Organization.

This policy may be canceled by or on the behalf of the Insurer only in the event of nonpayment of premium by the Named Organization. In the event of non-payment of premium by the Named Organization, the Insurer may cancel this policy by delivering to the Named Organization, or by mailing to the Named Organization, by registered, certified, or other first class mail, at the Named Organization's address as shown in Item 1 of the Declarations, written notice stating when, not less than 30 days thereafter, the cancellation

shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The Policy Period terminates at the date and hour specified in such notice, or at the date and time of surrender. The Insurer shall have the right to the premium amount for the portion of the Policy Year during which the policy was in effect.

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

## **12. CHANGE IN CONTROL OF NAMED ORGANIZATION**

If during the Policy Period:

- a. the Named Organization shall consolidate with or merge into, or sell all or substantially all of its assets to, any other person or entity, or group of persons or entities acting in concert;
- b. any person or entity or group of persons or entities, acting in concert shall acquire an amount of the voting interest representing more than fifty percent (50%) of the voting power for the election or appointment of directors or trustees of the Named Organization, or acquires the voting rights of such an amount of such interest; or
- c. the Named Organization shall change from not-for-profit to for-profit status;

(any of the above events herein referred to as the "Transaction")

then this policy shall continue in full force and effect as to Wrongful Acts occurring prior to the effective time of the Transaction, but there shall be no coverage afforded by any provision of this policy for any actual or alleged Wrongful Act occurring after the effective time of the Transaction. This policy may not be canceled after the effective time of the Transaction and the entire premium for this policy shall be deemed earned as of such time. The Named Organization shall also have the right to an offer by the Insurer of a Discovery Period described in Clause 10 of the policy.

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

## **13. SUBROGATION**

In the event of any payment under this policy, the Insurer shall be subrogated to the extent of such payment to all the Insureds' rights of recovery thereof, and the Insureds shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of any Insureds. In no event, however, shall the Insurer exercise its rights of subrogation against an Insured under this policy unless such Insured has been convicted of a criminal act, or been determined to have committed a dishonest or fraudulent act, or obtained any profit or advantage to which such Insured was not legally entitled.

## **14. OTHER INSURANCE AND INDEMNIFICATION**

Such insurance as is provided by this policy shall apply only as excess over any valid and collectible insurance. This policy shall be specifically excess of any other policy pursuant to which any other insurer has a duty to defend a Claim for which this policy may be obligated to pay Loss.

In the event of a Claim against a director, trustee, trustees emeritus or governor arising out of his or her serving as a director, trustee, trustees emeritus or governor of an Outside Entity, coverage as is afforded by this policy shall be specifically excess of

indemnification provided by such Outside Entity and any insurance provided to such Outside Entity with respect to its directors, trustees, trustees emeriti or governors.

Further, in the event such other insurance is provided to an Outside Entity by the Insurer or any member company of Chartis Inc. (Chartis) (or would be provided but for the application of the retention amount, exhaustion of the Limit of Liability or failure to submit a notice of a Claim) then the Insurer's maximum aggregate Limit of Liability for all Losses combined in connection with a Claim covered, in part or in whole, by this policy and such other insurance policy issued by Chartis shall not exceed the greater of the Limit of Liability of this policy or the limit of liability of such other Chartis insurance policy.

#### **15. NOTICE AND AUTHORITY**

It is agreed that the Named Organization shall act on behalf of the Subsidiaries and all Insureds with respect to the giving of notice of Claim or giving and receiving notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy, the exercising or declining to tender the defense of a Class Action Claim to the Insurer and the exercising or declining of any right to a Discovery Period.

#### **16. ASSIGNMENT**

This policy and any and all rights hereunder are not assignable without the written consent of the Insurer.

#### **17. ACTION AGAINST INSURER**

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the Insureds' obligation to pay shall have been finally determined either by judgment against the Insureds after actual trial or by written agreement of the Insureds, the claimant and the Insurer.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Insurer as a party to any action against the Insureds to determine the Insureds' liability, nor shall the Insurer be impleaded by the Insureds or their legal representatives. Bankruptcy or insolvency of the Insureds or of their estates shall not relieve the Insurer of any of its obligations hereunder.

#### **18. REPRESENTATIONS AND SEVERABILITY**

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

With respect to such statements and representations, no knowledge or information possessed by any Individual Insured shall be imputed to any other Individual Insured. If any person who executed the application knew that such statement or representation was inaccurate or incomplete, such statement shall not be imputed to any trustee, trustee emeritus or governor other than such signator and any other Individual Insureds who knew such statement or representation was inaccurate or incomplete.

**19. HEADINGS**

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

**20. WORLDWIDE TERRITORY**

This policy shall apply to Claims made against an Insured anywhere in the world.