



# ACE EXPRESS Not-for-Profit Organization Management Indemnity Package

## General Terms and Conditions

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows:

### A. SEVERABILITY OF GENERAL TERMS AND CONDITIONS

These General Terms and Conditions apply to each and every Coverage Section of this **Policy**. The terms and conditions of each Coverage Section apply only to that Coverage Section and shall not be construed to apply to any other Coverage Section.

### B. DEFINITIONS

Whenever used in this **Policy**, the terms that appear below in **boldface** type shall have the meanings set forth in this Definitions section of the General Terms and Conditions. However, if a term also appears in **boldface** type in a particular Coverage Section and is defined in that Coverage Section, that definition shall apply for purposes of that particular Coverage Section. Terms that appear in **boldface** in the General Terms and Conditions but are not defined in this Definitions section and are defined in other Coverage Sections of the **Policy** shall have the meanings ascribed to them in those Coverage Sections.

1. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy with an inception date within thirty-six months prior to the inception date of this **Policy**, of which this **Policy** is a renewal or replacement. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.
2. **Discovery Period** means one of the periods described in Item E of the Declarations which is elected and purchased pursuant to section H below.
3. **Domestic Partner** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Organization**.
4. **Extended Period** means the **Discovery Period** or the **Run-Off Period**, if such provision is elected and purchased pursuant to section H or I, respectively, below.
5. **Insurer** means the insurance company providing this insurance.
6. **Organization** means:
  - a) the **Parent Organization**; and
  - b) any **Subsidiary**;and includes any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.
7. **Parent Organization** means the entity first named in Item A of the Declarations.
8. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements.

9. **Policy Period** means the period from the effective date and hour of the inception of this **Policy** to the **Policy** expiration date and hour as set forth in Item B of the Declarations, or its earlier cancellation date and hour, if any.
10. **Run-Off Period** means one of the periods described in Item F of the Declarations, which is elected and purchased pursuant to section I below.
11. **Subsidiary** means:
- a) any entity of which the **Parent Organization** holds more than 50% of the present voting interest, either directly, or indirectly through one or more of its **Subsidiaries**, or has the right to elect or appoint more than 50% of the voting directors or trustees, either directly, or indirectly through one or more of its **Subsidiaries** ("**Control**"), if such entity:
    - (i) was so **Controlled** on or prior to the inception date of this **Policy**; or
    - (ii) becomes so **Controlled** after the inception date of this **Policy**; and
  - b) any joint venture entity in which the **Parent Organization**, or an entity described in a) above, has an exact 50% ownership of the interests of such joint venture entity and where, pursuant to a written joint venture agreement, the **Parent Organization** or entity described in a) above solely controls the management and operations of such joint venture entity.

12. **Takeover** means:

- a) the acquisition by any person or entity of all or substantially all of the **Parent Organization's** assets, or of the **Control** of the **Parent Organization**; or
- b) the merger or consolidation of the **Parent Organization** into another entity such that the **Parent Organization** is not the surviving entity.

All definitions shall apply equally to the singular and plural forms of the respective words.

#### C. LIMITS OF LIABILITY, RETENTIONS AND DEDUCTIBLES

1. If a single Aggregate Limit of Liability is granted as provided in Item C of the Declarations, the amount stated in Item C of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**, regardless of Coverage Section. The Limit(s) of Liability of each Coverage Section is part of, and not in addition to, the Aggregate Limit of Liability set forth in Item C of the Declarations and in no way shall be deemed to increase the Aggregate Limit of Liability as set forth therein. This paragraph 1 shall not apply to the Crime Coverage Section.
2. The Limits of Liability, Retentions and Deductibles for each Coverage Section are separate Limits of Liability, Retentions and Deductibles pertaining only to the Coverage Section for which they are shown. Subject to paragraph 1 above, the application of a Retention or Deductible to **Loss** under one Coverage Section shall not reduce the Retention or Deductible under any other Coverage Section, and no reduction in the Limit of Liability applicable to one Coverage Section shall reduce the Limit of Liability under any other Coverage Section.
3. In the event that any **Claim** is covered, in whole or in part, under two or more Insuring Clauses or more than one Coverage Section, the total applicable Retention or Deductible shall not exceed the single largest applicable Retention or Deductible. The largest applicable Retention or Deductible shall apply only once to such **Claim**.

#### D. WARRANTY AND NON-RESCINDABILITY

It is warranted that the particulars and statements contained in the **Application** are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy** and each Coverage Section. By acceptance of this **Policy**, the **Insureds** agree that the statements in the **Application** are their representations,

that such representations shall be deemed material to the acceptance of the risk or the hazard assumed by **Insurer** under this **Policy**, and that this **Policy** and each Coverage Section are issued in reliance upon the truth of such representations.

For purposes of this section, the knowledge of a natural person **Insured** shall not be imputed to any other natural person **Insured**, and the knowledge of only the chief executive officer, chief financial officer, and general counsel (and additionally, with respect to the Fiduciary Coverage Section, the **Application** signatory), or equivalent positions, shall be imputed to an entity **Insured**.

This **Policy** and any Coverage Sections shall not be rescinded by the **Insurer** in whole or in part for any reason.

## E. CANCELLATION

1. By acceptance of this **Policy**, the **Insureds** hereby confer to the **Parent Organization** the exclusive power and authority to cancel this **Policy** on their behalf. The **Parent Organization** may cancel this **Policy** in its entirety or any of the applicable Coverage Sections individually by surrender thereof to the **Insurer**, or by mailing written notice to the **Insurer** stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation shall be the date the **Insurer** received such notice or any later date specified in the notice, and such effective date shall become the end of the **Policy Period** or applicable Coverage Section. Delivery of such written notice shall be equivalent to mailing.
2. This **Policy** may be cancelled by the **Insurer** only for nonpayment of premium, by mailing written notice to the **Parent Organization** stating when such cancellation shall be effective, such date to be not less than 30 days from the date of the written notice. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the **Insurer** shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then the notice period shall be deemed to be the minimum notice period permitted under the governing law or regulation.
3. If this **Policy** or any Coverage Section is cancelled, the **Insurer** shall retain the pro rata proportion of the premium therefore. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation.

## F. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of natural persons who are **Insureds** shall be considered **Insureds** under this **Policy**; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the natural person who is an **Insured** to the spouse or **Domestic Partner**. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All of the terms and conditions of this **Policy** including, without limitation, the Retentions and Deductibles applicable to **Loss** incurred by natural persons who are **Insureds** shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

## G. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Parent Organization** agrees to act on behalf of all **Insureds**, and the **Insureds** agree that the **Parent Organization** will act on their behalf, with respect to the giving of all notices to **Insurer**, the receiving of notices from **Insurer**, the agreement to and acceptance of endorsements, the payment of the premium and the receipt of any return premium.

## H. DISCOVERY PERIOD

1. If this **Policy** or any Coverage Section is cancelled or is not renewed by the **Insurer**, for reasons other than non-payment of premium, or if the **Parent Organization** elects to cancel or not to renew this **Policy** or a Coverage Section, then the **Parent Organization** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item E of the Declarations of the total premium for this

**Policy**, or the total premium for the cancelled or not renewed Coverage Section, whichever is applicable, to purchase an extension of the coverage granted by this **Policy** or the applicable cancelled or not renewed Coverage Section with respect to any **Claim** first made during the period of time set forth in Item E of the Declarations, after the effective date of such cancellation or, in the event of a refusal to renew, after the **Policy** expiration date, but only with respect to any **Wrongful Act** committed before such date. The **Parent Organization** shall have the right to elect only one of the **Discovery Periods** set forth in Item E of the Declarations.

2. As a condition precedent to the right to purchase the **Discovery Period** set forth in section H.1. above, the total premium for the **Policy** must have been paid. Such right to purchase the **Discovery Period** shall terminate unless written notice, together with full payment of the premium for the **Discovery Period**, is received by **Insurer** within 30 days after the effective date of cancellation, or, in the event of a refusal to renew, within 30 days after the **Policy** expiration date. If such notice and premium payment is not so given to **Insurer**, there shall be no right to purchase the **Discovery Period**.
3. In the event of the purchase of the **Discovery Period**, the entire premium therefore shall be deemed earned at the commencement of the **Discovery Period**.
4. The exercise of the **Discovery Period** shall not in any way increase or reinstate the limit of **Insurer's** liability under any Coverage Section.

#### I. RUN-OFF COVERAGE AND TERMINATION OF A SUBSIDIARY

1. In the event of a **Takeover**:
  - a) The **Parent Organization** shall have the right, upon payment of an additional premium calculated at the percentage of the total premium for this **Policy** set forth in Item F of the Declarations, to an extension of the coverage granted by this **Policy** with respect to any **Claim** first made during the **Run-Off Period**, as set forth in Item F of the Declarations, but only with respect to any **Wrongful Act** committed before the effective date of the **Takeover** (herein defined as "**Run-Off Coverage**"); provided, however, such additional premium shall be reduced by the amount of the unearned premium from the date of the **Takeover** or the date of notice of the election of the **Run-Off Coverage**, whichever is later, through the expiration date set forth in Item B of the Declarations.
  - b) The **Parent Organization** shall have the right to elect only one of the periods designated in Item F of the Declarations. The election must be made prior to the expiration of the **Policy Period**. The right to purchase a **Run-Off Period** shall terminate on the expiration of the **Policy Period**.
  - c) If a **Run-off Period** is elected and purchased:
    - (i) Section E, above, is deleted in its entirety and neither the **Insureds** nor the **Insurer** may cancel this **Policy** or any Coverage Section thereof;
    - (ii) Section H, above, is deleted in its entirety; and
    - (iii) the Limit(s) of Liability of the **Insurer** for **Run-Off Coverage** for each Coverage Section purchased, and in the aggregate, shall be part of, and not in addition to, the Limit(s) of Liability shown in the Declarations. The purchase of the **Run-Off Coverage** shall not increase or reinstate the Limit(s) of Liability, which shall be the maximum Limit(s) of Liability of the **Insurer** for the **Policy Period** and the **Run-off Coverage**, combined.
2. If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its natural person **Insureds** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts**, or **Employment Practices Wrongful Acts**, taking place prior to the date such organization ceased to be a **Subsidiary**.

#### J. ALTERNATIVE DISPUTE RESOLUTION

The **Insureds** and the **Insurer** shall submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination or invalidity thereof to the alternative dispute resolution (“**ADR**”) process described in this subsection.

Either an **Insured** or the **Insurer** may elect the type of **ADR** process discussed below; provided, however, that the **Insured** shall have the right to reject the choice by the **Insurer** of the type of **ADR** process at any time prior to its commencement, in which case the choice by the **Insured** of **ADR** process shall control.

There shall be two choices of **ADR** process: (1) non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility; or (2) non-binding arbitration submitted to any arbitration facility to which the **Insured** and the **Insurer** mutually agree, in which the arbitration panel shall consist of three disinterested individuals. In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, and insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be provided to both parties, and the award of the arbitrators shall not include attorneys’ fees or other costs. In the event of either mediation or arbitration, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the conclusion of the arbitration, or in the event of mediation, at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the **ADR** process.

Either **ADR** process may be commenced in New York, New York or in the state indicated in Item A of the Declarations as the principal address of the **Parent Organization**. The **Parent Organization** shall act on behalf of each and every **Insured** in connection with any **ADR** process under this section.

#### K. TERRITORY

Where legally permissible, coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

#### L. ASSISTANCE, COOPERATION AND SUBROGATION

The **Insureds** agree to provide **Insurer** with such information, assistance and cooperation as **Insurer** reasonably may request, and they further agree that they shall not take any action which in any way increases **Insurer's** exposure under this **Policy**. In the event of any payments under this **Policy**, **Insurer** shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents as are necessary to enable **Insurer** effectively to bring suit or otherwise pursue subrogation in the name of the **Insureds**, and shall provide all other assistance and cooperation which **Insurer** may reasonably require.

#### M. ACTION AGAINST INSURER, ALTERATION AND ASSIGNMENT

Except as provided in section J above, Alternative Dispute Resolution, no action shall lie against **Insurer** unless, as a condition precedent thereto, there shall have been compliance with all of the terms of this **Policy**. No person or organization shall have any right under this **Policy** to join **Insurer** as a party to any action against the **Insureds** to determine their liability, nor shall **Insurer** be impleaded by the **Insureds** or their legal representative. No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**.

#### N. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the natural person **Insureds** such that, in the event of bankruptcy of the **Organization**, the **Insurer** shall first pay **Loss** covered under Insuring Clause A1 of the **Insured Persons** and **Organization** Coverage Section, and under the Employment Practices Liability Coverage Section for which the **Organization** is not permitted or required to indemnify the natural person **Insured**, prior to paying **Loss** under any other Insuring Clause. If a liquidation or reorganization proceeding is

commenced by the **Parent Organization** or any other **Organization** (whether voluntary or involuntary) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively, "**Bankruptcy Law**") then, in regard to a covered **Claim** under this **Policy**, the **Insureds** hereby waive and release any automatic stay or injunction ("**Stay**") to the extent such **Stay** may apply to the proceeds of this **Policy** under such **Bankruptcy Law**, and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from the **Stay** applicable to the proceeds of this **Policy** as a result of such **Bankruptcy Law**.

#### **O. ENTIRE AGREEMENT**

By acceptance of this **Policy**, the **Insureds** agree that this **Policy** embodies all agreements existing between them and **Insurer** or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of **Insurer** shall not effect a waiver or a change in any part of this **Policy** or estop **Insurer** from asserting any right under the terms of this **Policy** or otherwise, nor shall the terms be deemed waived or changed except by written endorsement or rider issued by **Insurer** to form part of this **Policy**.

SPECIMEN



**ACE EXPRESS Not-for-Profit  
Organization Management  
Indemnity Package  
Employment Practices Liability  
Coverage Section**

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows.

**A. INSURING CLAUSES**

1. **Employee** Insuring Clause

**Insurer** shall pay the **Loss** of the **Insureds** which the **Insureds** have become legally obligated to pay by reason of an **Employment Practices Claim** first made against the **Insureds** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to Section E.1 herein, for an **Employment Practices Wrongful Act** taking place prior to the end of the **Policy Period**.

2. **Third Party** Insuring Clause

In the event **Third Party** Coverage is affirmatively designated in Item C of the Declarations relating to this Coverage Section, the **Insurer** shall pay the **Loss** of the **Insureds** which the **Insureds** have become legally obligated to pay by reason of a **Third Party Claim** first made against the **Insureds** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to Section E.1 herein, for a **Third Party Wrongful Act** taking place prior to the end of the **Policy Period**.

**B. DEFINITIONS**

1. **Claim** means any:

- a) **Employment Practices Claim**; or
- b) **Third Party Claim**.

2. **Continuity Date** means the Continuity Date set forth in Item C of the Declarations relating to this Coverage Section.

3. **Costs, Charges and Expenses** means reasonable and necessary legal costs, charges, fees and expenses incurred by the **Insurer**, or by any **Insured** with the **Insurer's** consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds and only for the amount of such judgment that is up to the applicable Limit of Liability. **Costs, Charges and Expenses** do not include salaries, wages, fees, overhead or benefit expenses of or associated with officers or employees of the **Organization**.

4. **Employee** means any person who was, now is, or shall become:

- a) a full-time or part-time employee of the **Organization**, including seasonal and temporary employees;
- b) an applicant for employment with the **Organization**;
- c) any natural person who is a leased employee or contracted to perform work for the **Organization**, or is an independent contractor for the **Organization**, but only to the extent such individual performs work or services for or on behalf of the **Organization**; and,
- d) a volunteer whose labor or service is engaged and directed by the **Organization**, but only while that person is acting in the capacity as such.

5. **Employment Practices Claim** means:

- a) a written demand against an **Insured** for damages or other relief;
  - b) a civil, judicial, administrative, regulatory or arbitration proceeding against an **Insured** seeking damages or other relief, commenced by the service of a complaint or similar pleading, including any appeal therefrom;
  - c) a civil proceeding against an **Insured** before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body, commenced by the filing of a notice of charges, investigative order or similar document;
  - d) a criminal proceeding brought for an **Employment Practices Wrongful Act** against any **Insured**, commenced by a return of an indictment or similar document, or receipt or filing of a notice of charges;
  - e) a civil, criminal, administrative or regulatory investigation commenced by:
    - (i) the service upon or other receipt by any natural person **Insured** of a written notice, investigative order, or subpoena; or
    - (ii) the service upon or other receipt by any **Organization** of a written notice or investigative order;
- from the investigating authority identifying such natural person **Insured** as an individual, or such **Organization** as an entity, respectively, against whom a proceeding described in paragraphs b, c or d immediately above may be commenced; or
- f) a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs a through e immediately above;

brought by or on behalf of an **Employee** in his or her capacity as such. **Employment Practices Claim** does not include a labor or grievance proceeding, which is pursuant to a collective bargaining agreement.

6. **Employment Practices Wrongful Act** means any actual or alleged:

- a) violation of any common or statutory federal, state, or local law prohibiting any kind of employment related discrimination;
- b) harassment, including any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment, or unlawful workplace harassment, including workplace harassment by any non-employee;
- c) abusive or hostile work environment;
- d) wrongful discharge or termination of employment, whether actual or constructive;
- e) breach of an actual or implied employment contract;
- f) wrongful deprivation of a career opportunity, wrongful failure or refusal to employ, promote, or grant tenure, or wrongful demotion;
- g) employment-related defamation, libel, slander, disparagement, false imprisonment, misrepresentation, malicious prosecution, or invasion of privacy, or the giving of negative or defamatory statements in connection with an employee reference;
- h) wrongful failure or refusal to adopt or enforce workplace or employment practices, policies or procedures;
- i) wrongful discipline;
- j) employment-related wrongful infliction of emotional distress, mental anguish, or humiliation;



- k) **Retaliation**;
- l) negligent evaluation; or
- m) negligent hiring, supervision, retention or training of others, but only if employment-related and claimed by or on behalf of any **Employee** and only if committed or allegedly committed by any of the **Insureds** in their capacity as such.

7. **Insured Persons** means all persons who were, now are or shall become:

- a) a director, officer, trustee, trustee emeritus, governor, executive director, department head or committee member (of a duly constituted committee of the **Organization**) of the **Organization**;
- b) an **Employee**;
- c) an **Outside Entity Executive**; and,
- d) the functional equivalent of a director, officer or **Employee** in the event the **Organization** is incorporated or domiciled outside the United States.

8. **Insureds** means the **Organization** and any **Insured Persons**.

9. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of facts, circumstances, situations, events, transactions or causes.

10. **Loss** means the damages, judgments, settlements, front pay and back pay, pre-judgment or post-judgment interest awarded by a court, and **Costs, Charges and Expenses** incurred by any of the **Insureds**. **Loss** does not include:

- a) taxes, fines or penalties;
- b) matters uninsurable under the laws pursuant to which this **Policy** is construed;
- c) punitive or exemplary damages, liquidated damages awarded by a court pursuant to a violation of the Equal Pay Act, the Age Discrimination in Employment Act or the Family Medical Leave Act, all as amended, or any rules or regulations promulgated thereunder, or similar provisions of any common or statutory federal, state or local law, or the multiple portion of any multiplied damage award, except to the extent that such punitive, exemplary, or liquidated damages or the multiple portion of any multiplied damage award are insurable under the internal laws of any jurisdiction which most favors coverage for such damages and which has a substantial relationship to the **Insureds, Insurer, this Policy** or the **Claim** giving rise to such damages;
- d) the cost of any remedial, preventative or other non-monetary relief, including without limitation any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority;
- e) amounts owed under any employment contract, partnership, stock or other ownership agreement, or any other type of contract;
- f) disability, social security, workers compensation, medical insurance, retirement or pension benefit payments, or settlement amounts representing benefit payments;
- g) the costs to modify or adapt any building or property to be accessible or accommodating, or to be more accessible or accommodating, to any person;
- h) any amount owed as wages, compensation or commission to any **Employee**, other than front pay or back pay; or
- i) any amount for which the **Insured** is not financially liable or legally obligated to pay.

11. **Outside Entity** means:

- a) any non-profit company in which any **Insured Person** as defined in Section B, Definitions, subsection 7, paragraph (a), is a director, officer, trustee, governor, executive director or similar position of such non-profit company; and
- b) any other company specifically identified by endorsement to this **Policy**.

12. **Retaliation** means any actual or alleged response of any of the **Insureds** to:

- a) the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by any of the **Insureds** where such act is alleged to be a violation of any federal, state, local or foreign law, whether common or statutory, or any rule or regulation promulgated thereunder;
- b) the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under any worker's compensation law, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights;
- c) the filing of any claim under the Federal False Claims Act or any similar federal, state, local or foreign "whistleblower" law or "whistleblower" provision of any law;
- d) any legally-protected **Employee** work stoppage or slowdown; or
- e) an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder.

13. **Third Party** means any natural person who is a customer, vendor, service provider, client, or other business invitee of the **Organization**, or any other natural person or group of natural persons; provided, however, **Third Party** shall not include any **Employee**.

14. **Third Party Claim** means:

- a) any written demand for damages or other relief against an **Insured**;
- b) a civil, judicial, administrative or arbitration proceeding against an **Insured** seeking damages or other relief, including any appeal therefrom; or
- c) a criminal proceeding brought for an **Employment Practices Wrongful Act** in a court outside of the United States against any **Insured**, commenced by a return of an indictment or similar document, or receipt or filing of a notice of charges;

brought by or on behalf of a **Third Party** in their capacity as such.

15. **Third Party Wrongful Act** means any actual or alleged:

- a) harassment of a **Third Party**, including but not limited to any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment; or
- b) discrimination against a **Third Party**, including but not limited to any such discrimination on account of race, color, religion, age, disability or national origin.

16. **Wrongful Act** means any:

- a) **Employment Practices Wrongful Act**; or
- b) **Third Party Wrongful Act**.

### C. EXCLUSIONS

**Insurer** shall not be liable for **Loss** under this Coverage Section on account of any **Claim**:

1. for actual or alleged bodily injury, sickness, disease or death of any person, or damage to or destruction of any tangible or intangible property including loss of use thereof, whether or not such property is physically injured; provided, however, this exclusion shall not apply to mental anguish, emotional distress or humiliation;
2. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
  - a) any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
  - b) any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**;
3. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving: (i) improper payroll deductions, unpaid wages, misclassification of exempt or non-exempt employee status, compensation earned by or due to the claimant but not paid by the **Insured** (including but not limited to commission, vacation and sick days, retirement benefits, and severance pay), overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Organization**, or any employee of an **Outside Entity**, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject, or any rules, regulations or amendments thereto; or (ii) any violation of the responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except the Equal Pay Act), as amended, or any rules or regulations promulgated thereunder, or similar provisions of any common or statutory federal, state, local or foreign law. Provided, however, this exclusion does not apply to any back pay or front pay allegedly due as the result of discrimination, or that part of any such **Claim** alleging **Retaliation**;
4. for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, all as amended, or any rules or regulations promulgated thereunder, or similar provisions of any common or statutory federal, state or local law. Provided, however, this exclusion does not apply to that part of any such **Claim** alleging violations of the Equal Pay Act or **Retaliation**;
5. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any deliberately fraudulent or criminal act; provided, however this exclusion shall not apply unless and until there is a final adjudication against such **Insured** as to such conduct. If such excluded conduct is established through a final adjudication, the **Insured** shall reimburse the **Insurer** for any **Costs, Charges and Expenses**;
6. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
  - a) any prior or pending litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry, including without limitation any investigation by the U.S. Department of Labor or the U.S. Equal Employment Opportunity Commission, filed or pending on or before the **Continuity Date**; or
  - b) any fact, circumstance, situation, transaction or event underlying or alleged in such litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry, including any investigation by the U.S. Department of Labor or the U.S. Equal Employment Opportunity Commission;
7. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any actual or alleged responsibility, obligation or duty of any **Insured** pursuant to any workers compensation, unemployment insurance, social security, disability benefits or pension benefits or similar law; provided, however, this exclusion shall not apply to that part of any such **Claim** alleging **Retaliation**;
8. for a **Wrongful Act** actually or allegedly committed or attempted by any **Insured Person** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of

a limited liability company or employee of, or independent contractor for or in any other capacity or position with any entity other than the **Organization**; provided, however, that this exclusion shall not apply to **Loss** resulting from any such **Employment Practices Claim** to the extent that:

- a) such **Employment Practices Claim** is based on the service of any **Insured Person** as defined in Section B, Definitions, subsection 7, paragraph (a), as a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Organization**; and
  - b) such **Outside Entity** is not permitted or required by law to provide indemnification to such **Insured Person**; and
  - c) such **Loss** is not covered by insurance provided by any of the **Outside Entity's** insurer(s);
9. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover**; or
10. for that portion of **Loss** which is covered under any other Coverage Section of this **Policy**.

No **Wrongful Act** of one or more **Insureds** shall be imputed to any other **Insureds** for the purpose of determining the applicability of any of the above exclusions.

#### D. LIMIT OF LIABILITY AND RETENTIONS

1. The liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the Retention amount applicable to this Coverage Section, as shown in Item C of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions under this Coverage Section, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.
2. As shown in Item C.1 of the Declarations relating to this Coverage Section, the following Limits of Liability of the **Insurer** shall apply:
  - a) The amount set forth in Item C.1.a of the Declarations relating to this Coverage Section shall be the aggregate limit of liability for the payment of **Loss**, subject to additional payments for **Costs, Charges and Expenses** as further described in paragraph 2b) immediately below.
  - b) The amount set forth in Item C.1.b of the Declarations relating to this Coverage Section shall be the aggregate limit of liability for the payment of **Costs, Charges and Expenses** in addition to the limit described in paragraph 2a) immediately above; provided, all payments for **Costs, Charges and Expenses** under the additional limit described in this paragraph 2b) shall be excess of the limit described in paragraph 2a) above, and excess of any other available insurance that is specifically excess to this **Policy**. Such excess insurance must be completely and fully exhausted through the payment of loss, including but not limited to defense costs thereunder, before the **Insurer** shall have any obligations to make any payments under the additional limit described in this paragraph 2b).
  - c) The amount set forth in Item C.1.c of the Declarations relating to this Coverage Section shall be the maximum aggregate limit of liability under this Coverage Section, and the limit of liability set forth in C.1.a and C.1.b of the Declarations relating to this Coverage Section shall be a part of and not in addition to the maximum aggregate limit of liability set forth in Item C.1.c of the Declarations for this Coverage Section.
3. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed to be a single **Claim**, and such **Claim** shall be deemed to have been made at the earliest of the following times, regardless of whether such date is before or during the **Policy Period**:
  - a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; or

- b) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Section E.2 below.
4. Payments of **Loss** by **Insurer** shall reduce the Limit(s) of Liability under this Coverage Section. **Costs, Charges and Expenses** are part of, and not in addition to, the Limit(s) of Liability, and payment of **Costs, Charges and Expenses** reduce the Limit(s) of Liability. If such Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this Coverage Section are completely fulfilled and extinguished.

#### E. NOTIFICATION

1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give to **Insurer** written notice of any **Claim** made against the **Insureds** as soon as practicable after the **Organization's** general counsel, risk manager, human resources director, chief executive officer or chief financial officer (or equivalent positions) first becomes aware of such **Claim**, but in no event later than: (a) 60 days after such individual first becomes aware of such **Claim**; or (b) the expiration of the **Policy Period** or **Extended Period**, if purchased, whichever is later.
2. If, during the **Policy Period** or the **Discovery Period**, any of the **Insureds** first becomes aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds**, during the **Policy Period** or the **Discovery Period**, if purchased, give written notice to **Insurer** as soon as practicable of:
  - a) a description of the **Wrongful Act** allegations anticipated;
  - b) the identity of the potential claimants;
  - c) the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
  - d) the identity of the **Insureds** allegedly involved;
  - e) the consequences which have resulted or may result; and
  - f) the nature of the potential monetary damages and non-monetary relief;

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

3. Notice to **Insurer** shall be given to the address specified in Item G of the Declarations for this **Policy**.

#### F. SETTLEMENT AND DEFENSE

1. It shall be the duty of the **Insurer** and not the duty of the **Insureds** to defend any **Claim**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Insurer's** duty to defend any **Claim** shall cease when the Limits of Liability have been exhausted by the payment of **Loss** including **Costs, Charges and Expenses**.
2. The **Insurer** may make any investigation it deems necessary and shall have the right to settle any **Claim**; provided, however, no settlement shall be made without the consent of the **Parent Organization**, such consent not to be unreasonably withheld.
3. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Costs, Charges and Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Costs, Charges and Expenses**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s).

4. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim**, the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery.
5. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("**Settlement Opportunity**"), and:
  - a) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the **Settlement Opportunity**;
  - b) such consent occurs within the first 90 days after the **Claim** is first reported; and
  - c) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such **Settlement Opportunity**, the Retention applicable to such **Claim** shall be retroactively reduced by 10% for such **Loss**. It shall be a condition to such reduction that all **Insureds** must consent to such settlement.

## G. OTHER INSURANCE

1. Except as set forth in Exclusion 8, for any **Employment Practices Claim**, if any **Loss** covered under this Coverage Section is covered under any other valid and collectible insurance, then this **Policy** shall be primary insurance; provided that with respect to that portion of an **Employment Practice Claim** made against any leased, temporary or independently contracted **Employee**, **Loss**, including **Costs, Charges and Expenses**, payable on behalf of such **Employee** under this Coverage Section will be specifically excess of and will not contribute with such other insurance, including but not limited to any such other insurance under which there is a duty to defend, unless such insurance is specifically stated to be in excess over the Limit of Liability of this Coverage Section.
2. For any **Third Party Claim**, if any **Loss** covered under this Coverage Section is covered under any other valid and collectable insurance, then this **Policy** shall be specifically excess of and will not contribute with such other insurance, including but not limited to any such other insurance under which there is a duty to defend, unless such other insurance is specifically stated to be excess over the Limit of Liability of this Coverage Section.

## H. ALLOCATION

If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** (except for **Costs, Charges and Expenses**) and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss**.



# ACE EXPRESS Not-For-Profit Organization Management Indemnity Package

## Insured Persons and Organization Coverage Section

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows.

### A. INSURING CLAUSES

1. The **Insurer** shall pay the **Loss** of the **Insured Persons** for which the **Insured Persons** are not indemnified by the **Organization** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to section E.1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.
2. The **Insurer** shall pay the **Loss** of the **Organization** for which the **Organization** has indemnified the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to section E.1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.
3. The **Insurer** shall pay the **Loss** of the **Organization** which the **Organization** becomes legally obligated to pay by reason of a **Claim** first made against the **Organization** during the **Policy Period** or, if applicable, the **Extended Period**, and reported to the **Insurer** pursuant to section E.1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.
4. **Special Event Management Coverage**

The **Insurer** shall pay the **Special Event Management Expense** for which the **Organization** becomes legally obligated to pay by reason of a **Special Event** first occurring during the **Policy Period**, but only up to the limit of liability for the **Special Event Management Fund**.

### B. DEFINITIONS

1. **Adverse Publicity** means the publication of unfavorable information regarding the **Organization** which can reasonably be considered to materially reduce public confidence in the competence, integrity or viability of the **Organization** to conduct business. Such publication must occur in a report about an **Insured** appearing in:
  - a) a daily newspaper of general circulation; or
  - b) a radio or television news program.
2. **Claim** means:
  - a) a written demand against any **Insured** for monetary damages or non-monetary or injunctive relief;
  - b) a written demand by one or more of the securities holders of the **Organization** upon the board of directors or the management board of the **Organization** to bring a civil proceeding against any of the **Insured Persons** on behalf of the **Organization**;
  - c) a civil proceeding against any **Insured** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;
  - d) a criminal proceeding against any **Insured**, commenced by a return of an indictment or similar document, or receipt or filing of a notice of charges;

- e) an arbitration proceeding against any **Insured** seeking monetary damages or non-monetary or injunctive relief;
  - f) a civil, administrative or regulatory proceeding against any **Insured** commenced by the filing of a notice of charges or similar document;
  - g) a civil, criminal, administrative or regulatory investigation commenced by the service upon or other receipt by any natural person **Insured** of a written notice, investigative order, or subpoena from the investigating authority identifying such natural person **Insured** as an individual, against whom a proceeding described in paragraphs c, d or f immediately above may be commenced; or
  - h) a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs a through g immediately above.
3. **Continuity Date** means the date set forth in Item C of the Declarations relating to this Coverage Section.
4. **Costs, Charges and Expenses** means:
- a) reasonable and necessary legal costs, charges, fees and expenses incurred by the **Insurer**, or by any **Insured** with the **Insurer's** consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds and only for the amount of such judgment that is up to the applicable Limit of Liability; and
  - b) reasonable and necessary legal costs, charges, fees and expenses incurred by any of the **Insureds** in investigating a written demand, by one or more of the securities holders of the **Organization** upon the board of directors or the management board of the **Organization**, to bring a civil proceeding against any of the **Insured Persons** on behalf of the **Organization**.
- Costs, Charges and Expenses** do not include salaries, wages, fees, overhead or benefit expenses of or associated with officers or employees of the **Organization** or **Special Event Management Expenses**.
5. **Employee** means any past, present or future:
- a) full-time, part-time, seasonal, or temporary employee of the **Organization**, other than an **Executive**, but only while that person is acting in the capacity as such;
  - b) person leased to the **Organization** so long as such person is working solely for the **Organization** and only for conduct within his or her duties, but only if the **Organization** indemnifies such leased person in the same manner as the **Organization's** employees; and
  - c) volunteer whose labor or services is engaged and directed by the **Organization**, but only while that person is acting in the capacity as such.
6. **Executive** means any past, present or future:
- a) duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head or committee member (of a duly constituted committee) of the **Organization**;
  - b) the functional equivalent of an **Executive** listed in paragraph a above in the event the **Organization** is incorporated or domiciled outside the United States; or
  - c) General Counsel and Risk Manager (or equivalent position) of the **Parent Organization**.
7. **Excess Benefit** means an excess benefit as defined in the Taxpayer Bill of Rights Act 2, 26 U.S.C. 4958.
8. **Insured** means the **Organization** and any **Insured Person**.
9. **Insured Person** means any:
- a) **Executive** of an **Organization**;



b) **Employee** of an **Organization**; or

c) **Outside Entity Executive**.

10. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of facts, circumstances, situations, events, transactions or causes.

11. **Loss** means damages, judgments, settlements, pre-judgment or post-judgment interest awarded by a court, and **Costs, Charges and Expenses** incurred by **Insured Persons** under Insuring Clauses 1 or 2, or the **Organization** under Insuring Clause 3.

**Loss** also means any **Excess Benefits** penalty assessed in the amount of 10% by the Internal Revenue Service (herein known as the "IRS") against any **Insured** for management's involvement in the award of an **Excess Benefit** and **Costs, Charges and Expenses** attributable thereto. Provided, however, **Loss** shall not include:

- i) any 25% penalty assessed by the **IRS** against an **Insured** deemed to have received an **Excess Benefit**;
- ii) **Costs, Charges or Expenses** incurred to defend an **Insured Person** if it has been determined in fact that such **Insured Person** received an **Excess Benefit**; or
- iii) any 200% penalty assessed by the **IRS** for failure to correct the award of an **Excess Benefit**.

**Loss** does not include:

- a) taxes, fines or penalties, except an **Excess Benefits** penalty as set forth above;
- b) matters uninsurable under the laws pursuant to which this **Policy** is construed;
- c) punitive or exemplary damages, or the multiple portion of any multiplied damage award, except to the extent that such punitive or exemplary damages, or multiplied portion of any multiplied damage award are insurable under the internal laws of any jurisdiction which most favors coverage for such damages and which has a substantial relationship to the **Insureds, Insurer, this Policy** or the **Claim** giving rise to such damages;
- d) the cost of any remedial, preventative or other non-monetary relief, including without limitation any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority;
- e) any amount for which the **Insured** is not financially liable or legally obligated to pay;
- f) the costs to modify or adapt any building or property to be accessible or accommodating, or more accessible or accommodating, to any person; or,
- g) **Special Event Management Expense**.

Subject to the other terms, conditions and exclusions of this **Policy**, **Loss** shall also include **Costs, Charges and Expenses** for items specifically excluded from **Loss** pursuant to (a) through (f) above, including, but not limited to, **Costs, Charges and Expenses** incurred in connection with a **Tax Claim**.

12. **Outside Entity** means:

- a) any non-profit company in which any **Insured Person** is a director, officer, trustee, governor, executive director or similar position of such non-profit company; and
- b) any other company specifically identified by endorsement to this **Policy**.

13. **Personal Injury Offense** means:

- a) libel, slander, defamation or publication or utterance in violation of an individual's right of privacy;
  - b) wrongful entry or eviction or other invasion of the right of occupancy; or,
  - c) false arrest or wrongful detention.
14. **Publisher's Liability** means any actual or alleged infringement of trademark or copyright, unauthorized use of title, plagiarism, or misappropriation of ideas.
15. **Special Event** means one of the following, except where coverage is otherwise excluded under Exclusions 1(b) or (k) of this Coverage Section:
- a) The incapacity, death or state or federal criminal indictment of an **Insured Person** for whom the **Organization** has purchased and continues to maintain key individual life insurance;
  - b) The cancellation, withdrawal or revocation of \$100,000 or more in funding, donation(s), grant(s) or bequest(s) by a non-government entity or person to the **Organization**;
  - c) The disclosure by the **Organization** of (1) its intention to file or its actual filing for protection under federal bankruptcy laws; or, (2) a third-party's intention to file or its actual filing of an involuntary bankruptcy petition under federal bankruptcy laws with respect to the **Organization**;
  - d) The disclosure by the **Organization** of the threatened or actual commencement by a third-party of an action, audit or investigation alleging a **Wrongful Employment Practice** (as defined in the Employment Practices Coverage Section) by the **Organization** which has caused or is reasonably likely to cause **Adverse Publicity**;
  - e) The commencement or threat of litigation or other proceedings by any governmental or regulatory agency against an **Organization**;
  - f) An accusation that an **Insured Person**, or an individual for whom an **Insured** is legally responsible for, has intentionally caused bodily injury to, or death of, or has sexually abused any person in the performance of his or her duties with the **Organization**;
  - g) An **Employee** of the **Organization** was the victim of a violent crime while on the premises of the **Organization**;
  - h) A child was abducted or kidnapped while under the care or supervision of the **Organization**; or
  - i) Any other material event which, in the good faith opinion of the **Organization**, has caused or is reasonably likely to result in **Adverse Publicity**, but only if such material event is scheduled for coverage by written endorsement to this **Policy**.
16. **Special Event Management Expense** means the following expenses incurred by the **Organization** during a period beginning 90 days prior to and in reasonable anticipation of a **Special Event** and ending 90 days after an actual or reasonably anticipated **Special Event**, irrespective of whether a **Claim** is actually made with respect to the subject **Special Event**; provided, however, that the **Insurer** must have been notified of the **Special Event Management Expense** within 30 days of the date the **Organization** first incurs the subject **Special Event Management Expense**:
- a) The reasonable and necessary expenses directly resulting from a **Special Event** which the **Organization** incurs for **Special Event Management Services** provided to the **Organization** by a **Special Event Management Firm**, and
  - b) The reasonable and necessary expenses directly resulting from a **Special Event** which the **Organization** incurs for: (a) advertising, printing, or the mailing of matter relevant to the **Special Event**, and (b) out of pocket travel expenses incurred by or on behalf of the **Organization** or the **Special Event Management Firm**; provided, however, **Special Event Management Expense** does not include those amounts which otherwise would constitute compensation, benefits, fees, overhead, charges or expenses of an **Insured** or any of the **Insured's Employees**.

17. **Special Event Management Firm** means a marketing firm, public relations firm, law firm, or other professional services entity retained by the **Insurer**, or by the **Organization** with the **Insurer's** prior written consent, to perform **Special Event Management Services** arising from a **Special Event**.
18. **Special Event Management Fund** means the amount set forth in Item H of the Declarations.
19. **Special Event Management Services** means the professional services provided by a **Special Event Management Firm** in counseling or assisting the **Organization** in reducing or minimizing the potential harm to the **Organization** caused by the public disclosure of a **Special Event**.
20. **Tax Claim** means a **Claim** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following sections of the Internal Revenue Code of 1986 (as amended):
- a) Section 4911 (tax on excess expenditures to influence legislation);
  - b) Section 4940 (a) (tax on net investment income of tax-exempt foundations);
  - c) Section 4941 (taxes on self-dealing);
  - d) Section 4942 (taxes on failure to distribute income);
  - e) Section 4943 (taxes on excess business holding);
  - f) Section 4944 (taxes on investments which jeopardize charitable purpose);
  - g) Section 4945 (taxes on taxable expenditures);
  - h) Section 6652 (c) (1) (A) and (B) (penalties for failure to file certain information returns or registration statements);
  - i) Section 6655 (a) (1) (penalties for failure to pay estimated income tax); and
  - j) Section 6656 (a) and (b) (penalties for failure to make deposit of taxes).
21. **Wrongful Act** means any actual or alleged error, omission, misleading statement, misstatement, neglect, breach of duty, **Publishers' Liability** or **Personal Injury Offense** allegedly committed or attempted by:
- a) any **Insured Person**, while acting in the capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacity;
  - b) any **Insured Person**, while acting in the capacity as a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Organization**;
  - c) the **Organization**, but only with respect to Insuring Clause 3 of this Coverage Section;
  - d) with respect to all **Insureds**, subject to 21 a), b) and c) above, **Wrongful Act** shall specifically include violations of the Sherman Antitrust Act or similar federal, state or local statutes or rules.

## C. EXCLUSIONS

### 1. Exclusions Applicable To All Insuring Clauses

Except as limited under Insuring Agreement 4, **Special Event** Management Coverage, the **Insurer** shall not be liable for **Loss** under this Coverage Section on account of any **Claim**:

- a) for actual or alleged bodily injury, sickness, disease, death, false imprisonment, mental anguish, emotional distress, or damage to or destruction of any tangible or intangible property including loss of use thereof, whether or not such property is physically injured;

- b) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
  - (i) any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
  - (ii) any other **Wrongful Act**, whenever occurring, which together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
- c) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
  - (i) the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or
  - (ii) any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so;

provided, however, this exclusion shall not apply to any **Claim** brought directly, derivatively or otherwise by one or more members of the **Organization** in their capacity as such, or, except as to **Clean Up Costs**, to any **Non-Indemnifiable Loss** of an **Insured Person**, or **Loss** of an **Insured Person** for which the **Organization** does not indemnify such **Insured Person** because of either the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Organization**, or because of the **Organization** becoming a debtor-in-possession.

For purposes of this exclusion:

**Clean Up Costs** means expenses, including but not limited to legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**;

**Non-Indemnifiable Loss** means **Loss** for which a **Organization** has not indemnified, and is not permitted or required to indemnify, an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Organization**;

**Pollutants** means any substance exhibiting any hazardous characteristics as defined by, or identified on, a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous, biological, bacterial or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials (including materials to be reconditioned, recycled or reclaimed). **Pollutants** shall also mean any other air emission or particulate, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field;

- d) for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, as amended, or any rules or regulations promulgated thereunder, or similar provisions of any federal, state or local statutory or common law;
- e) brought by or on behalf of the **Organization** against any **Insured Person**; 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 totally independently of and totally without the solicitation, assistance, active participation or intervention of any **Insured Person** or the **Organization**; provided, however, that **Whistleblower Conduct** by an **Insured Person**, other than a director or equivalent position, shall not be considered solicitation, assistance, active participation, or intervention of an **Insured Person**.

Provided further that this exclusion shall not apply to any **Claim** that is brought or maintained by any bankruptcy or insolvency trustee or bankruptcy appointed representative of the **Organization**, or receiver, examiner, liquidator or similar official for the **Organization**.

For purposes of this exclusion, **Whistleblower Conduct** means any of the activity set forth in 18 U.S.C. Sec. 1514A(a), engaged in by a whistleblower with a federal regulatory or law enforcement agency, Member of Congress or any committee of Congress, or person with supervisory authority over the whistleblower, or an enforcement action by the whistleblower set forth in 18 U.S.C. Sec. 1514A (b).

- f) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
  - (i) any deliberately fraudulent or criminal act of an **Insured**; provided, however this exclusion f)(i) shall not apply unless and until there is a final adjudication against such **Insured** as to such conduct; or
  - (ii) the gaining of any profit, remuneration or financial advantage to which any **Insured Person** was not legally entitled; provided, however this exclusion f)(ii) shall not apply unless and until there is a final adjudication against such **Insured Person** as to such conduct.
- g) for the return by any **Insured Person** of any remuneration paid to him or her without the previous approval of the appropriate governing body of the **Organization** or **Outside Entity**, which payment without such previous approval shall be held to be in violation of law;
- h) against any **Insured Person** of any **Subsidiary** or against any **Subsidiary** alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Insured Person** thereof, before the date such entity became a **Subsidiary** or after the date such entity ceased to be a **Subsidiary**;
- i) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover**;
- j) for a **Wrongful Act** actually or allegedly committed or attempted by any **Insured Person** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with any entity other than the **Organization**; provided, however, that this exclusion shall not apply to **Loss** resulting from any such **Claim** to the extent that:
  - (i) such **Claim** is based on the service of any **Insured Person** as a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Organization**; and
  - (ii) such **Outside Entity** is not permitted or required by law to provide indemnification to such **Insured Person**; and
  - (iii) such **Loss** is not covered by insurance provided by any of the **Outside Entity's** insurer(s);
- k) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
  - (i) any prior or pending litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry filed or pending on or before the **Continuity Date**; or
  - (ii) any fact, circumstance, situation, transaction or event underlying or alleged in such litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry;
- l) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:

- (i) improper payroll deductions, unpaid wages or other compensation, misclassification of employee status, or any violation of any law, rule or regulation, or amendments thereto, that governs the same topic or subject; or
  - (ii) any other employment or employment-related matters brought by or on behalf of or in the right of an applicant for employment with the **Organization**, or any **Insured Person**, including any voluntary, seasonal, temporary, leased or independently-contracted employee of the **Organization**;
- m) alleging, arising out of, or in any way relating to any purchase or sale of securities by the **Parent Organization, Subsidiary, or Outside Entity** or **Claims** brought by securities holders of an **Organization** or **Outside Entity** in their capacity as such; provided, however, this exclusion shall not apply to the issuance by an **Organization** of bond debt or **Claims** brought by bond debt holders;
- n) for that portion of **Loss** which is covered under any other Coverage Section of this **Policy**.
2. Exclusions Applicable Only To Insuring Clause A3

**Insurer** shall not be liable for **Loss** on account of any **Claim**:

- a) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the actual or alleged breach of any contract or agreement; except and to the extent the **Organization** would have been liable in the absence of such contract or agreement; or
- b) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any infringement, misappropriation or violation of any patent, service marks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services.

No **Wrongful Act** of one or more **Insureds** shall be imputed to any other **Insureds** for the purpose of determining the applicability of any of the above exclusions.

#### D. LIMIT OF LIABILITY AND RETENTIONS

- 1. The liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the Retention amounts applicable to this Coverage Section, as shown in Item C of the Declarations. Such Retentions shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions under this Coverage Section, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- 2. As shown in Item C.1 of the Declarations relating to this Coverage Section, the following Limits of Liability of the **Insurer** shall apply:
  - a) The amount set forth in Item C.1.a relating to this Coverage Section shall be the aggregate limit of liability for the payment of **Loss** under all Insuring Clauses for this Coverage Section, subject to additional payments for **Loss** under Insuring Clause A1 as further described in paragraph 2b) immediately below.
  - b) The amount set forth in Item C.1.b of the Declarations relating to this Coverage Section shall be the aggregate limit of liability for the payment of **Loss** under Insuring Clause A1 in addition to the limit described in paragraph 2a) immediately above; provided, all payments for **Loss** under the additional limit described in this paragraph 2b) shall be excess of the limit described in paragraph 2a) above, and excess of any other available insurance that is specifically excess to this **Policy**. Such excess insurance must be completely and fully exhausted through the payment of loss, including but not limited to defense costs thereunder, before the **Insurer** shall have any obligations to make any payments under the additional limit described in this paragraph 2b).
  - c) The amount set forth in Item C.1.c of the Declarations relating to this Coverage Section shall be the maximum aggregate limit of liability for the payment of **Loss** under all Insuring Clauses for this Coverage Section. The limits of liability set forth in C.1.a and C.1.b relating to this Coverage Section shall be a part of and not in addition to the maximum aggregate limit of liability set forth in Item C.1.c for this Coverage Section.

3. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times, regardless of whether such date is before or during the **Policy Period**:
  - a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Act** is first made; or
  - b) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Section E.2, below.
4. The Retention applicable to Insuring Clause A.2 shall apply to **Loss** resulting from any **Claim** if indemnification for the **Claim** by the **Organization** is required or permitted by applicable law, to the fullest extent so required or permitted, regardless of whether or not such actual indemnification by the **Organization** is made, except and to the extent such indemnification is not made by the **Organization** solely by reason of the **Organization's** financial insolvency.
5. Payments of **Loss** by **Insurer** shall reduce the Limit(s) of Liability under this Coverage Section. **Costs, Charges and Expenses** are part of, and not in addition to, the Limits of Liability and payment of **Costs, Charges and Expenses** reduces the Limits of Liability. If such Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this Coverage Section are completely fulfilled and extinguished.
6. The **Special Event Management Fund** is the **Insurer's** maximum liability for all **Special Event Management Expenses** arising from any and all **Special Events** occurring during the **Policy Period**. This limit shall be the **Insurer's** maximum liability under this **Policy** regardless of the number of **Special Events** reported during the **Policy Period**. The **Insurer's** obligation to pay **Special Event Management Expenses** terminates and ends upon the exhaustion of the **Special Event Management Fund**. The **Special Event Management Fund** shall be in addition to the aggregate Limit of Liability set forth in Item H of the Declarations.

#### E. SPECIAL EVENT MANAGEMENT COVERAGE PROVISIONS

1. There shall be no Retention applicable to **Special Event Management Expenses** and the **Insurer** shall pay such **Special Event Management Expenses** from the first dollar subject to all other terms and conditions of this **Policy**, including the **Policy** limit.
2. An actual or anticipated **Special Event** shall be reported to the **Insurer** as soon as practicable, but in no event later than 30 days after the **Organization** first incurs **Special Event Management Expenses** for which coverage will be requested under this **Policy**.

#### F. NOTIFICATION

For coverage under this **Policy** (other than coverage for a **Special Event**):

1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give **Insurer** written notice of any **Claim** as soon as practicable after the **Organization's** general counsel, risk manager, chief executive officer or chief financial officer (or equivalent positions) first becomes aware of such **Claim**, but in no event later than 60 days after the end of the **Policy Period**, or respecting any **Claim** first made against the **Insureds** during the **Extended Period**, if purchased, 60 days after the end of the **Extended Period**.
2. If, during the **Policy Period** or the **Discovery Period**, if purchased, any of the **Insureds** first becomes aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds**, during the **Policy Period** or the **Discovery Period**, if purchased, give written notice to **Insurer** as soon as practicable of:
  - a) a description of the **Wrongful Act** allegations anticipated;
  - b) the identity of the potential claimants;
  - c) the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;

- d) the identity of the **Insureds** allegedly involved;
- e) the consequences which have resulted or may result; and
- f) the nature of the potential monetary damages and non-monetary relief;

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

- 3. Notice to **Insurer** shall be given to the address shown under Item G of the Declarations for this **Policy**.

#### G. SETTLEMENT AND DEFENSE

- 1. It shall be the duty of the **Insurer** and not the duty of the **Insureds** to defend any **Claim**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Insurer's** duty to defend any **Claim** shall cease when the Limits of Liability have been exhausted by the payment of **Loss** including **Costs, Charges and Expenses**.
- 2. The **Insurer** may make any investigation it deems necessary, and shall have the right to settle any **Claim**; provided, however, no settlement shall be made without the consent of the **Parent Organization**, such consent not to be unreasonably withheld.
- 3. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Costs, Charges and Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Costs, Charges and Expenses**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s).
- 4. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim**, the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery.
- 5. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("**Settlement Opportunity**"), and:
  - a) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the **Settlement Opportunity**; and
  - b) such consent occurs within the first 90 days after the **Claim** is first reported; and
  - c) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such **Settlement Opportunity**, the Retention applicable to such **Claim** shall be reduced by 10% for such **Claim**. It shall be a condition to such reduction that all **Insureds** must consent to such settlement.

#### H. OTHER INSURANCE

If any **Loss** covered under this Coverage Section is covered under any other valid and collectible insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability for this Coverage Section.



## I. PAYMENT PRIORITY

1. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss**, subject to such Limit of Liability, in the following priority:
  - a) first, the **Insurer** shall pay any **Loss** covered under Insuring Clause A1, in excess of any applicable Retention shown in Item C of the Declarations; and
  - b) second, only if and to the extent the payment under paragraph 1.a above does not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item C of the Declarations covered under any other applicable Insuring Clause.
  - c) Subject to the foregoing subsection, the **Insurer** shall, upon receipt of a written request from the Chief Executive Officer of the **Parent Organization**, delay any payment of **Loss** otherwise due and owing to or on behalf of the **Organization** until such time as the Chief Executive Officer of the **Parent Organization** designates, provided the liability of the **Insurer** with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

## J. ALLOCATION

If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** (except for **Costs, Charges and Expenses**) and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss**.

SPECIMEN



**ACE EXPRESS Not-for-Profit  
Organization Management Indemnity  
Package  
Fiduciary Coverage Section**

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows.

**A. INSURING CLAUSE**

1. **Insurer** shall pay the **Loss** of the **Insureds** which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against the **Insureds** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to Section E.1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

2. **Voluntary Compliance Loss Coverage**

**Insurer** shall:

- a) pay the **Voluntary Compliance Loss** and **Delinquent Filer Penalties**; and
- b) reimburse the **Voluntary Fiduciary Correction Expense**,

of the **Insureds** which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against the **Insureds** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to Section E.1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**, but only up to the limit of liability for **Voluntary Compliance Loss** as set forth in Item 1.b of the Declarations.

3. **HIPAA Penalties Coverage**

**Insurer** shall pay the **HIPAA Penalties** of the **Insureds** which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against the **Insureds** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to Section E.1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**, but only up to the limit of liability for **HIPAA Penalties** as set forth in Item 1.c of the Declarations.

**B. DEFINITIONS**

1. **Administration** means:

- a) counseling employees, beneficiaries or **Plan** participants with respect to any **Plan**;
- b) providing interpretations with respect to any **Plan**;
- c) handling records in connection with any **Plan**; or
- d) enrolling, terminating, or canceling employees under any **Plan**.

2. **Claim** means:
- a) a written demand for damages or other relief against an **Insured**;
  - b) a civil, criminal, administrative, regulatory or arbitration proceeding against any **Insured** seeking damages or other relief, commenced by the service of a complaint or similar pleading, including any appeal therefrom, or in the case of a criminal proceeding, a return of an indictment, information, or similar document;
  - c) a civil proceeding or formal investigation brought by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar federal, state or local governmental body, including but not limited to, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services, and the United Kingdom Occupational Pensions Regulatory Authority, including any appeal therefrom.
3. **Consulting Fees** means fees charged by a third party actuary, benefits consultant or accountant resulting solely from the correction of non-compliance set forth in a **Voluntary Compliance Program**. **Consulting Fees** do not include any fees, costs and expenses associated with:
- a) a **Plan** audit; or
  - b) identifying, finding or assessing such non-compliance.
4. **Continuity Date** means the date set forth in Item C of the Declarations relating to this Coverage Section.
5. **Costs, Charges and Expenses** means reasonable and necessary legal costs, charges, fees and expenses incurred by any of the **Insureds** in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds and only for the amount of such judgment that is up to the applicable Limit of Liability. **Costs, Charges and Expenses** do not include salaries, wages, overhead or benefit expenses associated with officers or employees of any of the **Insureds**.
6. **Delinquent Filer Penalties** means penalties assessed by the U.S. Department of Labor or the Internal Revenue Service (“**IRS**”) under a Delinquent Filer Voluntary Compliance Program for inadvertent failure to file Form 5500, provided that the failure to file such Form 5500 occurred during the **Policy Period** or during the policy period of a policy issued by the **Insurer** of which this **Policy** is a continuous renewal thereof.
7. **Employee Benefit Plan** means any plan so defined by the Employee Retirement Income Security Act of 1974 (“**ERISA**”), as amended (including, but not limited to, amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, the Health Insurance Portability and Accountability Act of 1996 as it relates to sections 102(b) and 104(b)(1) of **ERISA**, the Newborns’ and Mothers’ Health Protection Act of 1996, the Mental Health Parity Act of 1996, the Woman’s Health and Cancer Rights Act of 1998, and the Pension Protection Act of 2006, as amended), or any similar foreign, state or local common or statutory law, or any rules and regulations promulgated thereunder.
8. **HIPAA Penalties** means civil money penalties imposed upon an **Insured** for violation of Part 164 of the regulations under the Health Insurance Portability and Accountability Act of 1996, popularly known as HIPAA Privacy Regulations, and any rules or regulations promulgated thereunder.

9. **Insured Persons** means:
- a) any natural person who was, now is, or shall become a trustee, director, officer or employee of the **Sponsor Organization** or **Plan**,
  - b) any natural person who was, now is, or shall become a fiduciary of any **Plan**; and
  - c) any natural person for whose **Wrongful Acts** any of the **Insureds** are legally responsible.
10. **Insured Plan** means any government-mandated insurance for workers' compensation, unemployment, social security or disability benefits for employees of the **Sponsor Organization**.
11. **Insureds** means:
- a) the **Sponsor Organization**,
  - b) any **Plan**,
  - c) any **Insured Persons**; and
  - d) any other natural person or entity who was, now is, or shall be acting as a plan administrator of any of the **Plans** at the written request and consent of the **Sponsor Organization**.
12. **Interrelated Wrongful Acts** means all **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, cause, transaction or series of facts, circumstances, situations, causes, events or transactions.
13. **Loss** means:
- a) monetary damages, judgments, settlements, pre-judgment or post-judgment interest awarded by a court, and **Costs, Charges and Expenses** incurred by any of the **Insureds**;
  - b) **Voluntary Compliance Loss**;
  - c) **Delinquent Filer Penalties**; and
  - d) **Voluntary Fiduciary Correction Expense**.
- Loss** does not include:
- a) taxes, fines or penalties, except:
    - (i) civil fines and penalties imposed by the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services or the United Kingdom Occupational Pensions Regulatory Authority, by the Pensions Regulator in the United Kingdom, or any successor body thereto, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules and regulations thereunder; provided any coverage for such civil penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this **Policy**;

- (ii) the 5% or less, or the 20% or less, civil penalties imposed upon an **Insured** as a fiduciary under sections 502(i) or (l) of the Employee Retirement Income Security Act of 1974, as amended, or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder;
  - (iii) to the extent set forth in Item C.1.b of the Declarations, **Voluntary Compliance Loss and Delinquent Filer Penalties**, and
  - (iv) to the extent set forth in Item C.1.c. of the Declarations, **HIPAA Penalties**;
- b) matters uninsurable under the laws pursuant to which this **Policy** is construed;
- c) punitive or exemplary damages, or the multiple portion of any multiplied damage award, except to the extent such punitive or exemplary damages or the multiple portion of any multiplied damage award are insurable under the internal laws of any jurisdiction which most favors coverage for such damages and which has a substantial relationship to the **Insureds, Insurer, this Policy** or the **Claim** giving rise to such damages.

With regard to items specifically excluded from **Loss** pursuant to paragraphs a) through c) of this definition above, the **Insurer** shall provide **Costs, Charges and Expenses** subject to the other terms, conditions and exclusions of this **Policy**.

14. **Pension Benefit Plan** means any plan so defined in the Employee Retirement Income Security Act of 1974, as amended.

15. **Plan** means:

- a) any **Sponsored Plan**, and
- b) any **Insured Plan**,

established before or after the inception of this **Policy**.

16. **Plan Termination** means the termination, suspension, merger or dissolution of any **Plan**.

17. **Sponsor Organization** means the **Organization**.

18. **Sponsored Plan** means:

- a) any **Employee Benefit Plan, Pension Benefit Plan, or Welfare Benefit Plan** which is operated by the **Sponsor Organization** for the benefit of the employees of the **Sponsor Organization**;
- b) any other plan, fund or program specifically included as a **Sponsored Plan** by endorsement to this **Policy**; and
- c) any other employee benefit plan or program not subject to Title 1 of **ERISA**, or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder, sponsored by the **Sponsor Organization** for the benefit of the employees of the **Sponsor Organization**, including any employee stock ownership plan;

provided, however, that the **Sponsored Plan** shall not include any multi-employer plan, as defined in **ERISA**, or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder.

19. **Voluntary Compliance Loss** means fines, penalties, sanctions, voluntary correction fees, compliance fees or user fees assessed against or collected from an **Insured** by the U.S. Internal Revenue Service pursuant to a **Voluntary Compliance Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation if participation by the **Insured** in such **Voluntary Compliance Program** results in the **Insured** obtaining a "No Action" letter from the governmental authority; provided **Voluntary Compliance Loss** shall not include: (i) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (ii) any fees, fines, penalties, sanctions or **Costs, Charges and Expenses** relating to a **Plan** which, as of the earlier of inception of this **Policy** or 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, any **Insured Person** knew to be actually or allegedly non-compliant.
20. **Voluntary Compliance Program** means a written agreement to correct an inadvertent **Plan** defect under a voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service, the U.S. Department of Labor or other similar governmental authority, including without limitation the Employee Plans Compliance Resolution System, the Audit Closing Agreement Program, the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Tax Sheltered Annuity Voluntary Correction Program, the Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program, provided that such agreement to correct such **Plan** defect was entered into in writing by the **Insured** with the U.S. Internal Revenue Service during the **Policy Period**, or during the policy period of a policy issued by the **Insurer** of which this **Policy** is a continuous renewal.
21. **Voluntary Fiduciary Correction Expense** means **Costs, Charges and Expenses**, and **Consulting Fees** incurred in connection with correction of non-compliance set forth in a **Voluntary Compliance Program**.
- Voluntary Fiduciary Correction Expense** does not include (i) any other charges, expenses, taxes or damages, other than **Costs, Charges and Expenses**, and **Consulting Fees**; or (ii) any fees, fines, penalties, sanctions or **Costs, Charges and Expenses**, and **Consulting Fees**, relating to a **Plan** which, as of the earlier of inception of this **Policy** or 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, any **Insured Person** knew to be actually or allegedly non-compliant.
22. **Welfare Benefit Plan** means any employee welfare benefit plan so defined in **ERISA**, or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder.
23. **Wrongful Act** means:
- a) with respect to a **Sponsored Plan**:
    - (i) any actual or alleged breach of the responsibilities, obligations or duties imposed upon fiduciaries of the **Sponsored Plan** by **ERISA**, or by the Health Insurance Portability and Accountability Act of 1996, or any similar state or local common or statutory law, and any rules and regulations promulgated under either of these Acts;
    - (ii) any other matter claimed against the **Sponsor Organization** or any of the **Insured Persons** solely because of the service of the **Sponsor Organization** or any of the

**Insured Persons** as a fiduciary of any **Sponsored Plan**, including any actual or alleged violation of the Health Insurance Portability and Accountability Act of 1996 or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder; or

(iii) any actual or alleged act, error or omission in the **Administration** of any **Sponsored Plan**, including any actual or alleged violation of the Health Insurance Portability and Accountability Act of 1996 or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder; and

b) with respect to an **Insured Plan**, any actual or alleged act, error or omission in the **Administration** of such **Insured Plan**.

### C. EXCLUSIONS

1. **Insurer** shall not be liable for **Loss** under this Coverage Section on account of any **Claim**:

a) for actual or alleged bodily injury, sickness, disease, death, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy of any person, or damage to or destruction of any tangible or intangible property including loss of use thereof, whether or not such property is physically injured;

b) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:

(i) any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or

(ii) any other **Wrongful Act**, whenever occurring, which together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;

c) alleging, based upon, arising out of, or attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:

(i) the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or

(ii) any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so;

including without limitation any **Claim** by or on behalf of the **Organization**, its members, securities holders or creditors. Provided, however, this exclusion shall not apply to:

(i) **Non-Indemnifiable Loss** arising from a **Claim** alleging damage to a **Plan**, other than **Non-Indemnifiable Loss** constituting **Cleanup Costs**; or

(ii) any **Claim** brought by or on behalf of a beneficiary of or participant in any **Plan** based upon, arising from or in consequence of the diminution in value of any securities owned by the **Plan** in any organization other than the **Organization**, if such diminution in value is allegedly as a result of the matters described above in this exclusion C.1.(c).

**Clean Up Costs** means expenses, including but not limited to legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**;

**Non-Indemnifiable Loss** means **Loss** for which an **Organization** has not indemnified, and is not permitted or required to indemnify, an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of an **Organization**;

**Pollutants** means any substance exhibiting any hazardous characteristics as defined by, or identified on, a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous, biological, bacterial or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials (including materials to be reconditioned, recycled or reclaimed). **Pollutants** shall also mean any other air emission or particulate, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field;

- d) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, the failure to comply with any statutory or common law governing workers' compensation, unemployment, social security or disability benefits or any similar law; provided, however, this exclusion shall not apply to any actual or alleged obligation of any **Insured** pursuant to the:
- i) Consolidated Omnibus Budget Reconciliation Act of 1985, as amended; or
  - ii) Health Insurance Portability and Accountability Act of 1996, as amended;
- e) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
- i) any dishonest, deliberately fraudulent or criminal act of an **Insured**; provided, however this exclusion shall not apply unless and until there is a final adjudication against such **Insured** as to such conduct; or
  - ii) the gaining of any profit, remuneration or financial advantage to which any **Insured Person** was not legally entitled; provided, however this exclusion shall not apply unless and until there is a final adjudication against such **Insured Person** as to such conduct;
- f) against any **Subsidiary** or any of the **Insured Persons** of a **Subsidiary** alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or any of the **Insured Persons** of a **Subsidiary**:
- i) before the date such entity became a **Subsidiary** or after the date such entity ceased to be a **Subsidiary**; or
  - ii) occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring before the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**;



- g) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover**;
  - h) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
    - i) any prior or pending litigation, arbitration, or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry filed or pending on or before of the **Continuity Date**; or
    - ii) any fact, circumstance, situation, transaction, cause or event underlying or alleged in such litigation, arbitration, administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry;
  - i) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** actually or allegedly committed subsequent to a **Plan Termination**; provided, however, that this exclusion shall only apply to those **Plans** which were the subjects of the **Plan Termination**;
  - j) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any employment or employment-related matters; provided, however, this exclusion shall not apply to any **Claim** where such employment or employment-related matters involve actual or alleged violations of **ERISA**, or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder;
  - k) for that portion of **Loss** which is covered under any other Coverage Section of this **Policy**.
2. **Insurer** shall not be liable to make any payment under this Coverage Section, other than **Costs, Charges and Expenses**, on account of any **Claim**:
- a) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the actual or alleged breach of any contract or agreement; except to the extent that liability would have attached to the **Sponsor Organization** in the absence of such contract or agreement, or where the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which any of the **Plans** was established;
  - b) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, the failure to collect from the **Sponsor Organization** contributions owed to any of the **Plans**, or the failure to fund a **Plan** in accordance with **ERISA**, or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder, unless the failure is solely due to the negligence of any of the **Insureds**; or
  - c) which constitutes benefits due to or to become due under the terms of any **Plan** if such **Plan** complied with all applicable law, unless and to the extent that:
    - (i) the **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation; and
    - (ii) recovery for the benefits is based upon a covered **Wrongful Act**.

No **Wrongful Act** of one or more **Insureds** shall be imputed to any other **Insureds** for the purpose of determining the applicability of any of the above exclusions.

#### D. LIMIT OF LIABILITY AND RETENTION

1. The liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the Retention amount applicable to this Coverage Section, as shown in Item C of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk.
2. As shown in Item C.1. of the Declarations relating to this Coverage Section, the following Limits of Liability of the **Insurer** shall apply:
  - a) The amount shown in Item C.1.a. of the Declarations relating to this Coverage Section shall be the maximum aggregate Limit of Liability of **Insurer** under Insuring Clause 1.A. of this Coverage Section. Such amount shall be part of, and not in addition to, the limit described in paragraph 2d) below.
  - b) The amount shown in Item C.1.b. of the Declarations relating to this Coverage Section shall be the maximum aggregate Limit of Liability of **Insurer** for the payment of **Voluntary Compliance Loss, Delinquent Filer Penalties, and Voluntary Fiduciary Correction Expenses** combined resulting from all **Claims**. Such amount shall be part of, and not in addition to, the limit described in paragraph 2d) below.
  - c) The amount shown in Item C.1.c. of the Declarations relating to this Coverage Section shall be the maximum aggregate limit of liability of **Insurer** for the payment of **HIPAA Penalties** resulting from all **Claims**. Such amount shall be part of, and not in addition to, the limit described in paragraph 2d) below.
  - d) The amount shown in item C.1.d of the Declarations relating to this Coverage Section shall be the maximum aggregate Limit of Liability of **Insurer** under all Insuring Clauses of this Coverage Section. The amounts shown in Items C.1.a, b and c shall be part of, and not in addition to, the amount shown in Item C.1.d.
3. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed to be a single **Claim** and shall be deemed to have been made at the earliest of the following times, regardless of whether such date is before or during the **Policy Period**:
  - a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Act** is first made; or
  - b) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Section E.2, below.
4. Payments of **Loss** by **Insurer** shall reduce the Limit(s) of Liability under this Coverage Section. **Costs, Charges and Expenses** are part of, and not in addition to, the Limit(s) of Liability and payment of **Costs, Charges and Expenses** reduce the Limit(s) of Liability. If such Limit(s) of Liability are exhausted, the obligations of the **Insurer** under this Coverage Section are completely fulfilled and extinguished.

#### E. NOTIFICATION

- 1 The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give **Insurer** written notice of any **Claim** as soon as practicable, but in no event later than 60 days after the end of the **Policy Period**. If any **Claim** is first made against the **Insureds** during the **Extended Period**, if purchased, written notice to **Insurer** must be given

as soon as practicable, but in no event later than 60 days after the end of the **Extended Period**.

2. If, during the **Policy Period** or the **Discovery Period**, if purchased, any of the **Insureds** first becomes aware of a specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds**, during the **Policy Period** or the **Discovery Period**, if purchased, give written notice to **Insurer** as soon as practicable of:
  - a) a description of the **Wrongful Act** allegations anticipated;
  - b) the identity of the potential claimants;
  - c) the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
  - d) the identity of the **Insureds** allegedly involved;
  - e) the consequences which have resulted or may result; and
  - f) the nature of the potential monetary damages and non-monetary relief;

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

3. Notice to **Insurer** shall be given to the address shown under Item G of the Declarations for this **Policy**.

#### F. SETTLEMENT AND DEFENSE

- 1 It shall be the duty of the **Insurer** and not the duty of the **Insureds** to defend any **Claim**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Insurer's** duty to defend any **Claim** shall cease when the Limits of Liability have been exhausted.
- 2 The **Insurer** may make any investigation it deems necessary, and shall have the right to settle any **Claim**; provided, however, no settlement shall be made without the consent of the **Parent Organization**, such consent not to be unreasonably withheld
- 3 The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Costs, Charges and Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Costs, Charges and Expenses**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s).
- 4 The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim**, the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery.

5. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("**Settlement Opportunity**"), and:
- a) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the **Settlement Opportunity**; and
  - b) such consent occurs within the first 90 days after the **Claim** is first reported; and
  - c) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such **Settlement Opportunity**, the Retention applicable to such **Claim** shall be retroactively reduced by 10% for such **Loss**. It shall be a condition to such reduction that all **Insureds** must consent to such settlement.

#### G. OTHER INSURANCE

If any **Loss** covered under this Coverage Section is covered under any other valid and collectible insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability for this Coverage Section.

#### H. WAIVER OF RECOURSE

**Insurer** shall have no right of recourse, including but not limited to rights of contribution and subrogation, against any **Insureds** with respect to any **Claim** if this Coverage Section has been purchased by that **Insured**, with the exception of any of the **Plans**