



ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.
225 Franklin Street, Boston, MA 02110 · Tel. (857) 288-6000 · Fax (617) 556-8060

RESOLUTE PORTFOLIO SM
For Not-For-Profit Organizations

POLICY NUMBER:
RENEWAL OF:

NOTICE: EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS GENERALLY LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN.

NOTICE: THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS. AMOUNTS INCURRED FOR DEFENSE COSTS SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

NOTICE: THE INSURER HAS THE DUTY TO DEFEND ANY CLAIM UNDER THIS POLICY EXCEPT WITH RESPECT TO ANY CLAIM FOR WHICH THE POLICY SPECIFICALLY STATES THAT DUTY TO DEFEND COVERAGE IS NOT PROVIDED.

NOTICE: PLEASE READ THIS POLICY CAREFULLY AND DISCUSS THE COVERAGE HEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

DECLARATIONS

ITEM 1: PARENT ORGANIZATION:

ADDRESS:

ITEM 2: POLICY PERIOD:

From: To:
(12:01 a.m. Standard Time at the address stated in Item 1)

ITEM 3: COVERAGE SECTIONS

This policy provides coverage only for the following Coverage Sections if purchased by the Insured and indicated by an X.

Table with 3 columns: Coverage Section, Yes, No. Rows include Directors & Officers and Employment Practices Liability Coverage Section, Fiduciary Liability Coverage Section, and Voluntary Compliance Program Coverage.

ITEM 4: LIMITS OF LIABILITY

The Limits of Liability of this policy apply solely to the Coverage Section(s) for which a corresponding limit of liability amount is set forth below.

A. AGGREGATE LIMIT OF LIABILITY FOR EACH SEPARATE COVERAGE SECTION

(i)

Separate Coverage Section: Directors & Officers and Employment Practices Liability	\$
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(ii)

Separate Coverage Section: Fiduciary Liability	\$
Sublimit of Liability for Voluntary Compliance Program Coverage	\$
Sublimit of Liability for HIPAA Claim Coverage	\$

Each Sublimit of Liability set forth in Item 4 A. above is part of, and not in addition to, the Limit of Liability for the corresponding Separate Coverage Section.

B. AGGREGATE LIMIT OF LIABILITY FOR THE COMBINED COVERAGE SECTION

Combined Coverage Section: Directors & Officers and Employment Practices Liability / Fiduciary Liability	\$
Sublimit of Liability for Voluntary Compliance Program Coverage	\$
Sublimit of Liability for HIPAA Claim Coverage	\$

Each Sublimit of Liability set forth in Item 4 B. above is part of, and not in addition to, the Limit of Liability for the corresponding Combined Coverage Section.

The Limits of Liability set forth in Item 4 A. and B. above are the maximum limits of liability for all **Loss** including **Defense Costs**, under the applicable Coverage Section(s).

C. AGGREGATE POLICY LIMIT OF LIABILITY

\$

The Limit of Liability set forth in Item 4 C. above is the maximum limit of liability for all **Loss**, including **Defense Costs**, under the policy.

ITEM 5: RETENTION

A. Directors & Officers and Employment Practices Liability Coverage Section:

(i) Insuring Agreement A.	\$0
(ii) Insuring Agreement B. and C. All D&O Claims	\$
All Employment Practices Claims, except EPL Third-Party Liability Claims	\$
EPL Third-Party Liability Claims	\$

B. Fiduciary Liability Coverage Section:

(i) Insuring Agreement A. - Fiduciary Liability Coverage All Claims, except HIPAA Claims	\$
HIPAA Claims	\$0
(ii) Insuring Agreement B. - Voluntary Compliance Program Coverage	\$0

ITEM 6: PENDING OR PRIOR DATE

A. Directors & Officers and Employment Practices Liability Coverage Section:

(i) Insuring Agreement A.	
(ii) Insuring Agreement B. and C. All D&O Claims	
All Employment Practices Claims, except EPL Third-Party Liability Claims	
EPL Third-Party Liability Claims	

B. Fiduciary Liability Coverage Section:

(i) Fiduciary Liability Coverage	
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ITEM 7: PREMIUM

A. Directors & Officers and Employment Practices Liability Coverage Section:	\$
B. Fiduciary Liability Coverage Section:	\$
C. Total Policy Premium:	\$

ITEM 8: DISCOVERY PERIOD

- A. One Year: **100% of the applicable premium**
- B. Two Years: **150% of the applicable premium**
- C. Three to Six Years: **premium to be determined**

**ITEM 9: ADDRESS OF INSURER AND ITS AUTHORIZED AGENTS
FOR NOTICES UNDER THIS POLICY**

A. Claims-Related Notices

LVL CLAIMS SERVICES, LLC
111 JOHN STREET
SUITE 1500
NEW YORK, NEW YORK 10038
E-mail: notice@lvlclaims.com

B. All Other Notices

(i) To the Insurer:

ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.
ATTN: PROFESSIONAL LIABILITY UNDERWRITING
199 WATER STREET
NEW YORK, NY 10038

(ii) To the Program Manager:

C. V. STARR & COMPANY
ATTN: FINANCIAL LINES DEPARTMENT
90 PARK AVE. 6TH FLOOR
NEW YORK, NY 10016

In Witness Whereof, the **Insurer** has caused this policy to be executed and attested. This policy shall not be valid unless countersigned by a duly authorized representative of the **Insurer**.



President



Asst. Secretary

AUTHORIZED REPRESENTATIVE

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ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.

RESOLUTE PORTFOLIO
For Not-For-Profit Organizations

General Terms & Conditions Section

In consideration of the payment of the premium and in reliance upon the **Application**, which shall be deemed to be attached to, incorporated into, and made a part of this policy, and subject to this General Terms & Conditions Section and any applicable Coverage Section(s), if purchased by the **Insured** as indicated in Item 3 of the Declarations, ALLIED WORLD ASSURANCE COMPANY (U.S.) INC. (the “**Insurer**”) and the **Parent Organization**, on behalf of all **Insureds**, agree as follows:

1. TERMS & CONDITIONS

The terms and conditions set forth in this General Terms & Conditions Section shall apply to all applicable Coverage Sections of this policy. The terms appearing in this General Terms & Conditions Section which are defined in a Coverage Section shall have the meaning provided for such terms in such Coverage Section for purposes of coverage under such Coverage Section. The terms and conditions of each Coverage Section apply only to that particular Coverage Section. If any term or condition in this General Terms & Conditions Section is inconsistent or in conflict with the terms and conditions of any Coverage Section, the terms and conditions of such Coverage Section shall control.

2. GENERAL DEFINITIONS

- (a) “**Affiliate**” means any not-for-profit organization, other than a **Subsidiary**, which:
- (1) the **Parent Organization** or any **Subsidiary** controls or otherwise has the ability to direct the financial or managerial decisions of such entity, whether through the operation of law, contract or agreement, stock ownership or membership, charter, articles of incorporation, or by-law provisions; or
 - (2) is granted by contract the right to control the financial or managerial decisions of the **Parent Organization** or any **Subsidiary**;
- provided, however, that such coverage as may be provided under this policy for any organization described in items (1) or (2) above shall be limited solely to **Wrongful Acts** occurring in the course of the exercise of such control of financial or managerial decisions.
- (b) “**Application**” means all signed applications, including any attachments and other materials provided therewith or incorporated therein, submitted in connection with the underwriting of this policy or for any other policy of which this policy is a renewal, replacement or which it succeeds in time.
- (c) “**Cleanup 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**.

(d) **“Defense Costs”** means:

- (1) reasonable and necessary fees, costs, charges or expenses resulting from the investigation, defense or appeal of a **Claim**;
- (2) premium for an appeal, attachment or similar bond, but without any obligation to apply for and obtain such bond;
- (3) reasonable and necessary fees, costs, charges or expenses incurred in response to any extradition or similar proceeding brought against an **Insured** in connection with a **Claim**; and
- (4) any fees, costs, charges or expenses incurred by the **Insured** at the specific request of the **Insurer** to assist the **Insurer** in the investigation, defense or appeal of a **Claim**.

“Defense Costs” does not include: (i) amounts incurred prior to the date a **Claim** is first made and reported to the **Insurer**, pursuant to the terms of the applicable Coverage Section; and (ii) compensation or benefits of any **Insured Person** or any overhead expenses of the **Organization**.

(e) **“Financial Impairment”** means the **Organization** becoming a debtor-in-possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Organization**.

(f) **“Management Control”** means: (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the board of directors of a corporation; or the members of the management board of a limited liability company; or (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **Organization**, to elect, appoint or designate a majority of: the board of directors of a corporation or the management board of a limited liability company.

(g) **“Organization”** means:

- (1) the **Parent Organization**;
- (2) any **Subsidiary** of the **Parent Organization**;
- (3) any **Affiliate** listed by endorsement to this policy, but solely with respect to the Coverage Section(s) indicated in such endorsement; and
- (4) any **Parent Organization** or **Subsidiary** as a debtor, a debtor-in-possession or equivalent status;

provided, however, that Definition (g) (4) shall not apply to the Fiduciary Liability Coverage Section.

(h) **“Parent Organization”** means the entity named in Item 1 of the Declarations.

(i) **“Policy Period”** means the period from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of cancellation of this policy.

(j) **“Pollutants”** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on, any list of hazardous substances issued by the United States Environmental Protection Agency or any foreign, state, county, municipality, or

locality counterpart thereof. Such substances shall include, without limitation, nuclear material or waste, any solid, liquid, gaseous or thermal irritant or contaminant, or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.

(k) **“Pollution”** means the actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere. **Pollution** also means any **Cleanup Costs**.

(l) **“Subsidiary”** means:

- (1) any not-for-profit organization (except a partnership) or for-profit entity (except a partnership) of which the **Parent Organization** has **Management Control** (“Controlled Entity”) before the inception of the **Policy Period**, either directly or indirectly through one or more other Controlled Entities;
- (2) any not-for-profit organization (except a partnership) of which the **Parent Organization** first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, if such organization’s assets total less than 35% of the consolidated assets of the **Parent Organization** as of its latest fiscal year;
- (3) any for-profit entity (except a partnership) of which the **Parent Organization** first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, if such entity’s assets total less than 20% of the consolidated assets of the **Parent Organization** as of its latest fiscal year; or
- (4) any not-for-profit organization or for-profit entity of which the **Parent Organization** (except any such organization or entity described in items (2) or (3) above) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, but only if the **Parent Organization** provides the **Insurer** with full particulars of the new **Subsidiary** within ninety (90) days after its creation or acquisition and pays any additional premium with respect to such organization or entity within thirty (30) days after being requested to do so by the **Insurer**;

provided, however, that **Subsidiary** as defined in items (2), (3) and (4) above shall not mean any organization or entity which is publicly traded or which is a financial institution, including but not limited to a bank, insurance company, insurance agent/broker, securities broker/dealer, investment advisor, mutual fund or hedge fund, unless such organization or entity is included in the definition of **Subsidiary** by specific written endorsement attached to this policy.

With respect to a **Claim** made against any **Subsidiary** or any **Insured Person** thereof, this policy shall only apply to **Wrongful Acts** committed or allegedly committed after the effective time such organization or entity becomes a **Subsidiary** and prior to the effective time that such organization or entity ceases to be a **Subsidiary**.

3. LIMITS OF LIABILITY

The Aggregate Limit of Liability For Each Separate Coverage Section, as set forth in Item 4 A. of the Declarations, is the maximum limit of liability of the **Insurer** for all **Loss**, including **Defense Costs**, from all **Claims** first made during the **Policy Period** (or Discovery Period, if applicable)

and reported to the **Insurer** in accordance with the terms of this policy, for each applicable Separate Coverage Section.

The Aggregate Limit of Liability For The Combined Coverage Section, as set forth in Item 4 B. of the Declarations, is the maximum limit of liability of the **Insurer** for all **Loss**, including **Defense Costs**, from all **Claims** first made during the **Policy Period** (or Discovery Period, if applicable) and reported to the **Insurer** in accordance with the terms of this policy, for all of the Coverage Sections that comprise the Combined Coverage Section. Any **Loss** paid under one of the Coverage Sections that comprises a Combined Coverage Section will reduce, and may exhaust, the limit of liability available under the other Coverage Section(s) that comprise(s) such Combined Coverage Section.

Any Sublimit(s) of Liability, whether set forth in Item 4 of the Declarations or as otherwise provided under the terms of this policy, shall be part of, and not in addition to, the applicable Aggregate Limit of Liability set forth in Item 4 A. or 4 B. of the Declarations. Each Sublimit of Liability is the maximum limit of liability of the **Insurer** for all **Loss**, including **Defense Costs**, from all **Claims** first made during the **Policy Period** (or Discovery Period, if applicable) and reported to the **Insurer** in accordance with the terms of this policy, to which the Sublimit(s) of Liability applies.

The Aggregate Policy Limit of Liability, as set forth in Item 4 C. of the Declarations, is the maximum limit of liability of the **Insurer** for all **Loss**, including **Defense Costs**, from all **Claims** first made during the **Policy Period** (or Discovery Period, if applicable) and reported to the **Insurer** in accordance with the terms of this policy, for all Coverage Section(s) combined.

If any Aggregate Limit of Liability as set forth in Item 4 A. or 4 B. of the Declarations is exhausted by the payment of **Loss**, all obligations of the **Insurer** under this policy as respects the applicable Coverage Section(s) will be completely fulfilled and the **Insurer** will have no further obligations under this policy of any kind as respects the applicable Coverage Section(s) and the premium as respects the applicable Coverage Section(s) as set forth in Item 7 of the Declarations will be fully earned.

Any payment of **Loss** under any Aggregate Limit of Liability as set forth in Item 4 A. or 4 B. of the Declarations shall reduce and may exhaust the Aggregate Policy Limit of Liability as set forth in Item 4 C. of the Declarations. If the Aggregate Policy Limit of Liability is exhausted by the payment of such **Loss**, the **Insurer** will have no further obligations of any kind as respects this policy and the applicable premium set forth in Item 7 of the Declarations will be fully earned.

Defense Costs are part of, and not in addition to, the Aggregate Limit of Liability as set forth in Item 4 of the Declarations for each applicable Coverage Section and payment by the **Insurer** of **Defense Costs** shall reduce and may exhaust such Aggregate Limit(s) of Liability. **Defense Costs** are subject to the Aggregate Policy Limit of Liability set forth in Item 4 C. of the Declarations.

If a Discovery Period is purchased by the **Insured** pursuant to Clause 8 of this General Terms & Conditions Section, the Limit of Liability for the Discovery Period shall be part of, and not in addition to, the applicable Limits of Liability as set forth in Item 4 of the Declarations.

4. RETENTION CLAUSE

Subject to all other terms and conditions of this policy, the **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention amount as set forth in Item 5 of the Declarations for each Insuring Agreement of the applicable Coverage Section(s). A single Retention amount shall apply to all **Loss** alleging the same or related **Wrongful Acts**. The Retention amount shall be borne by the **Insureds** and remain uninsured.

The application of a Retention to **Loss** under one Insuring Agreement shall not reduce the Retention that applies to **Loss** under any other Insuring Agreement. If different Retention amounts apply to different parts of a single **Loss**, the applicable Retention shall be applied separately to each part of the **Loss** and the sum of such Retention amounts shall not exceed the largest of the applicable Retention amounts as set forth in Item 5 of the Declarations.

If the **Organization** is required or permitted to indemnify an **Insured Person** for any **Loss** pursuant to law, contract or the charter, bylaws, operating agreement or similar documents of an **Organization** and does not do so for any reason, the **Insurer** shall not require payment of the applicable Retention by the **Insured Person**. However, the **Organization** hereby agrees to reimburse the **Insurer** for the full amount of such applicable Retention, unless the **Organization** is unable to do so because of **Financial Impairment**.

5. NOTICE OF CLAIM

The **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice to the **Insurer's** authorized agent identified in Item 9 of the Declarations of a **Claim** made against an **Insured** as soon as practicable after any **Insured Person** becomes aware of the **Claim**; however, in no event shall such notice be provided later than thirty days after the expiration of the **Policy Period** (or Discovery Period, if applicable). If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

If written notice of a **Claim** has been given to the **Insurer** pursuant to this Clause 5, then a **Claim** which is subsequently made against an **Insured** and reported to the **Insurer** pursuant to this Clause 5, alleging, arising out of, based upon or attributable to the facts alleged in the previously noticed **Claim**, or alleging the same or related **Wrongful Act** alleged in the previously noticed **Claim**, shall be considered related to the previously noticed **Claim** and shall be deemed to have been made at the time notice of the previously noticed **Claim** was provided to the **Insurer**.

If during the **Policy Period** (or Discovery Period, if applicable) an **Insured** becomes aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured**, the **Insured** may provide written notice to the **Insurer's** authorized agent of such circumstances. This written notice shall include the **Wrongful Act** allegations anticipated and the reasons for anticipating a **Claim**, with full particulars as to dates, persons and entities involved. If a **Claim** is subsequently made against such **Insured** and reported to the **Insurer** arising out of, based upon or attributable to the previously noticed circumstances, such **Claim** shall be considered first made at the time notice of such circumstances was provided to the **Insurer**.

6. DEFENSE OF CLAIM AND SETTLEMENT

The **Insurer** has the right and duty to defend any **Claim** against any **Insured** covered under this policy, even if such **Claim** is false, fraudulent or groundless; however, the **Insurer** shall not have the right or duty to defend any **Claim** under Insuring Agreement B: Voluntary Compliance Program Coverage of the Fiduciary Liability Coverage Section.

With respect to Insuring Agreement B: Voluntary Compliance Program Coverage of the Fiduciary Liability Coverage Section, the **Organization**, and not the **Insurer**, has the duty to investigate and evaluate the **Voluntary Compliance Program Loss**. The **Insurer** shall have the right to effectively associate with the **Organization** in such process, including the negotiation of any settlement as respects the **Voluntary Compliance Program Loss**.

The **Insured(s)** shall not admit or assume any liability, incur any **Defense Costs**, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the

Insurer. Any **Loss** incurred by the **Insured(s)** and/or any settlements or judgments agreed to by the **Insured(s)** without such consent shall not be covered by this policy. However, the **Insurer's** consent is not required for the **Insured** to settle a **Claim** for a **Loss** amount within the applicable Retention.

Each and every **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require relating to the defense and settlement of any **Claim** and the prosecution of any counterclaim, cross-claim or third-party claim, including without limitation the assertion of an **Insured's** indemnification or contribution rights.

The **Insurer** shall have the right to investigate and conduct negotiations and, with the **Insured's** consent, which shall not be unreasonably withheld, enter into the settlement of any **Claim** that the **Insurer** deems appropriate. In the event the **Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the **Insurer's** recommendation, the **Insurer's** liability for **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled the **Claim**; plus (2) any **Defense Costs** incurred up to the date the **Insured** refused to settle such **Claim**; plus (3) eighty percent (80%) of covered **Loss**, other than **Defense Costs**, in excess of the amount for which the **Insurer** could have settled the **Claim**. However, in no event shall the **Insurer's** liability exceed the applicable Limit of Liability as set forth in Item 4 of the Declarations.

The **Insurer** shall pay **Defense Costs** prior to the final disposition of any **Claim**, excess of the applicable retention and subject to all other terms and conditions of this policy. In the event and to the extent that the **Insureds** shall not be entitled to payment of such **Loss** under the terms and conditions of this policy, such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests.

7. ALLOCATION

In the event the **Insured(s)** incurs **Loss** that is both covered and not covered by this policy, either because the **Claim** includes both covered and uncovered matters or because the **Claim** includes both insured and uninsured parties, the **Insured** and the **Insurer** agree to use their best efforts to determine a fair and appropriate allocation between covered and uncovered **Loss** based upon the relative legal and financial exposures of the parties to such matters. In the event of a settlement of such **Claim**, the allocation shall also be based upon the relative benefits to the **Insureds** from such a settlement.

If an allocation of **Loss** cannot be agreed to by the **Insurer** and the **Insured**: (1) the **Insurer** shall pay those amounts which it believes to be fair and equitable until an amount shall be agreed upon or determined pursuant to the provisions of this policy; and (2) there will be no presumption of allocation of **Loss** in any arbitration, suit or other proceeding.

8. DISCOVERY CLAUSE

If the **Organization** or the **Insurer** refuses to renew one or more Coverage Sections of this policy, or if this policy is terminated by the **Insurer** for any reason (except for non-payment of premium), or if an **Organizational Change** as defined in Clause 13 occurs, the **Insured(s)** shall have the right to purchase a Discovery Period of up to six years following the effective date of such non-renewal, termination or **Organizational Change**. In the event of the non-renewal of one or more Coverage Sections of this policy, the **Insured** may purchase a Discovery Period solely as respects the Coverage Section(s) that has been non-renewed.

The **Insured's** right to purchase a Discovery Period shall lapse unless written notice of election to purchase such Discovery Period and the additional premium for such Discovery Period is

received by the **Insurer** or its authorized agent within sixty days after such non-renewal, termination or **Organizational Change**. The additional premium for a Discovery Period of one or two years is set forth in Item 8 of the Declarations and shall be determined by multiplying the applicable percentage set forth in Item 8 of the Declarations by the premium for each applicable Coverage Section(s) as set forth in Item 7 of the Declarations. The additional premium for a Discovery Period of more than two years shall be determined by the **Insurer**.

During such **Discovery Period**, the **Insured** may provide the **Insurer** with written notice, pursuant to Clause 5 of this policy, of **Claims** made against an **Insured** solely with respect to **Wrongful Acts** occurring prior to the effective date of the non-renewal or termination of the policy or the effective date of the **Organizational Change** and otherwise covered by this policy.

The Limit of Liability for the Discovery Period shall be part of, and not in addition to, the applicable Limits of Liability set forth in Item 4 of the Declarations.

The Discovery Period premium shall be fully earned at the inception of the Discovery Period. The Discovery Period is non-cancellable.

9. OTHER INSURANCE

The insurance provided by this policy shall apply only as excess over any other valid and collectible insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically as excess insurance over the applicable Limit of Liability provided by this policy. This policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**. This policy shall not be subject to the terms and conditions of any other insurance policy.

In connection with any covered **Claim** made against an **Outside Entity Insured Person**, a leased employee, or an **Independent Contractor**, and subject to all other terms and conditions herein, this policy shall apply specifically excess of any indemnification and any other insurance coverage available to an **Outside Entity Insured Person**, a leased employee or an **Independent Contractor**. In the event such other insurance coverage available to an **Outside Entity Insured Person**, a leased employee or an **Independent Contractor** is provided by the **Insurer** (or would be provided except for the application of any retention, exhaustion of a limit of liability or failure to submit notice of a claim) then the **Insurer's** maximum aggregate limit of liability for all **Loss** combined in connection with a **Claim** covered, in whole or in part, by this policy and such other insurance policy, shall be the greater of (1) the Limit of Liability of the applicable Coverage Section(s) of this policy; or (2) the limit of liability of such other insurance policy.

10. REPRESENTATIONS AND SEVERABILITY

It is agreed that the **Insurer** has relied upon the information contained in the **Application** in issuing this policy. In regard to the statements, warranties, representations and information contained in the **Application**, no knowledge of any **Insured** shall be imputed to any other **Insured** for the purpose of determining whether coverage is available under this policy for any **Claim** made against such **Insured**. However, the knowledge possessed by any **Insured Person** who is a past or current chairman of the board, chief executive officer, president or chief financial officer of the **Organization** shall be imputed to the **Organization**.

11. COVERAGE EXTENSIONS

This policy shall cover **Loss** arising from any **Claims** made against the estates, heirs, or legal representatives of any deceased person who was an **Insured Person** at the time the **Wrongful Acts** upon which such **Claims** are based were committed; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** by or on the part of any such estates, heirs, or legal representatives, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.

This policy shall also cover **Loss** arising from any **Claims** made against the legal representatives of any incompetent, insolvent or bankrupt person who was an **Insured Person** at the time the **Wrongful Acts** upon which such **Claims** are based were committed; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** by or on the part of any such legal representatives, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.

This policy shall also cover **Loss** arising from any **Claims** made against the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world or any formal program established by the **Organization**) of an **Insured Person** for all **Claims** arising solely out of his or her status as the spouse or domestic partner of an **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Insured Person** and the spouse or domestic partner, or property transferred from the **Insured Person** to the spouse or domestic partner; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** by or on the part of the spouse or domestic partner, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.

The coverage extensions set forth in this Clause 11 are subject to all other terms and conditions of this policy.

12. CANCELLATION AND NON RENEWAL CLAUSE

This policy, or any applicable Coverage Section(s), may be cancelled by the **Parent Organization** by sending written prior notice to the **Insurer** or its authorized agent as set forth in Item 9 of the Declarations stating when thereafter the cancellation of the policy, or the applicable Coverage Section(s), shall be effective. The policy, or the applicable Coverage Section(s), terminates at the date and hour specified in such notice. This policy may also be cancelled by the **Parent Organization** by surrender of this policy to the **Insurer** or its authorized agent as set forth in Item 9 of the Declarations. The policy terminates as of the date and time of surrender. The **Insurer** shall retain the customary short rate proportion of the premium, unless stated otherwise herein.

This policy, or any applicable Coverage Section(s), shall not be cancelled by or on behalf of the **Insurer** except by reason of non-payment of the premium set forth in Item 7 of the Declarations. The **Insurer** may cancel the policy by delivering to the **Parent Organization** or by mailing to the **Parent Organization**, by registered mail, or by courier at the **Parent Organization's** address set forth in the Declarations, written notice stating when, not less than twenty (20) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. In the event of such cancellation, the policy will be deemed terminated as of the date indicated in the **Insurer's** written notice of cancellation to the **Parent Organization**.

Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable. If the period of limitation relating to the giving of notice is prohibited or made void by any law

controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

The **Insurer** shall have no obligation to renew this policy or any applicable Coverage Section. In the event the **Insurer** decides to non-renew this policy or any applicable Coverage Section, it shall deliver or mail to the **Parent Organization**, as identified in Item 1 of the Declarations, written notice of such decision at least sixty (60) days prior to the expiration of the **Policy Period**.

13. ORGANIZATIONAL CHANGES

If during the **Policy Period**:

- (1) the **Parent Organization** shall consolidate with, merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert;
- (2) any person or entity or group of persons or entities acting in concert shall acquire more than 50% of the **Parent Organization**; or
- (3) the status of the **Parent Organization** is changed from a not-for-profit organization to a for-profit entity,

(any events described in (1), (2) or (3) are referred to herein as an “**Organizational Change**”) then this policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of an **Organizational Change**. However, there shall be no coverage afforded by this policy for any actual or alleged **Wrongful Act** occurring after the effective time of the **Organizational Change**. This policy shall be non-cancellable and the entire premium shall be deemed fully earned upon the effective time of the **Organizational Change**. The **Insured(s)** shall also have the right to purchase a Discovery Period described in Clause 8 in the event of an **Organizational Change**.

The **Parent Organization** shall give the **Insurer** written notice of the **Organizational Change** as soon as practicable, but no later than thirty days after the effective date of the **Organizational Change**.

14. AUTHORIZATION AND NOTICES

The **Parent Organization** shall act on behalf of all **Insureds** with respect to all matters as respects this policy including: (1) giving of notice of **Claim**; (2) giving and receiving of all correspondence and information; (3) giving and receiving notice of cancellation; (4) payment of premiums; (5) receiving of any return premiums; (6) receiving and accepting of any endorsements issued to form a part of this policy; and (7) the exercising of any right to a Discovery Period.

15. VALUATION AND CURRENCY

All amounts stated in this policy are expressed in United States dollars and all amounts payable under this policy are payable in United States dollars. If a judgment rendered or settlement entered into under this policy are stated in a currency other than United States dollars, then payment under this policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the final judgment is rendered or the settlement payment is established.

16. TERRITORY

This policy extends to **Wrongful Acts** occurring, or **Claims** made, anywhere in the world to the extent permitted by law.

17. ASSIGNMENT AND CHANGES TO THE POLICY

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

Notice to any agent or knowledge possessed by any agent or person acting on behalf of the **Insurer**, other than the **Insurer's** authorized agent as identified in Item 9 of the Declarations, will not result in a waiver or change in any part of this policy or prevent the **Insurer** from asserting any right under the terms and conditions of this policy. The terms and conditions of this policy may only be waived or changed by written endorsement signed by the **Insurer** or its authorized agent.

18. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** shall not relieve the **Insurer** of any of its obligations hereunder.

It is understood and agreed that the coverage provided under this policy is intended to protect and benefit the **Insured Persons**. Further, if a liquidation or reorganization proceeding involving the **Organization** is commenced (whether voluntarily or involuntarily) 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** shall:

- a. waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the policy or its proceeds under such Bankruptcy Law; and
- b. agree not to oppose or object to any efforts by the **Organization**, the **Insurer** or any **Insured Person** to obtain relief from any such stay or injunction.

In the event the **Organization** becomes a debtor-in-possession or equivalent status under such Bankruptcy Law, and the total covered **Loss** under this policy exceeds the available applicable Limit of Liability, the **Insurer** shall:

- a. first pay the **Loss** allocable to **Wrongful Acts** that are actually or allegedly caused, committed, or attempted prior to the **Organization** becoming a debtor-in-possession or some equivalent status, then
- b. pay any remaining **Loss** allocable to **Wrongful Acts** that are actually or allegedly caused, committed, or attempted after the **Organization** became a debtor-in-possession or some equivalent status.

19. SUBROGATION

In addition to any right of subrogation existing at law, in equity or otherwise, in the event of any payment by the **Insurer** under this policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insured(s)**' rights of recovery. The **Insured(s)** shall execute all papers required (including those documents necessary for the **Insurer** to bring suit or other form of

proceeding in their name) and do everything that may be necessary to pursue and secure such rights.

20. ACTION AGAINST THE INSURER

No action may be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all material terms of this policy and the amount of the **Insured's** obligation has been fully determined either by judgment against the **Insured** after actual trial, or by written agreement of the **Insured**, the claimant and the **Insurer**.

No person or entity shall have any right under this policy to join the **Insurer** as a party to any action against any **Insured** to determine such **Insured's** liability nor shall the **Insurer** be impleaded by such **Insured** or legal representatives of such **Insured**.

21. CONFORMITY TO STATUTE

Any terms of this policy which are in conflict with the terms of any applicable laws construing this policy, including any endorsement to this policy which is required by any state Department of Insurance, or equivalent authority ("State Amendatory Endorsement"), are hereby amended to conform to such laws. Nothing herein shall be construed to restrict the terms of any State Amendatory Endorsement.

In the event any portion of this policy shall be declared or deemed invalid or unenforceable under applicable law, such invalidity or unenforceability shall not affect the validity or enforceability of any other portion of this policy.

22. HEADINGS

The descriptions in the headings and any subheading of this policy (including any titles given to any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of this policy's terms or conditions.



ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.

RESOLUTE PORTFOLIO
For Not-For-Profit Organizations

Directors & Officers and Employment Practices Liability Coverage Section

In consideration of the payment of the premium and in reliance upon the **Application**, which shall be deemed to be attached to, incorporated into, and made a part of this policy, and subject to the General Terms & Conditions Section and this Coverage Section, if purchased by the **Insured** as indicated in Item 3 of the Declarations, ALLIED WORLD ASSURANCE COMPANY (U.S.) INC. (the “**Insurer**”) and the **Parent Organization**, on behalf of all **Insureds**, agree as follows:

1. INSURING AGREEMENTS

- A. The **Insurer** shall pay on behalf of any **Insured Person** the **Loss** arising from a **Claim** (including an **Employment Practices Claim**) first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured Person** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy, except if the **Organization** has indemnified the **Insured Person** for such **Loss**.
- B. The **Insurer** shall pay on behalf of the **Organization** the **Loss** arising from a **Claim** (including an **Employment Practices Claim**) first made during the **Policy Period** (or Discovery Period, if applicable) against any **Insured Person** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy, if the **Organization** has indemnified the **Insured Person** for such **Loss**.
- C. The **Insurer** shall pay on behalf of the **Organization** the **Loss** arising from a **Claim** (including an **Employment Practices Claim**) first made during the **Policy Period** (or Discovery Period, if applicable) against the **Organization** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy.

2. DEFINITIONS

- (a) “**Benefits**” means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with any employee-related plan. **Benefits** shall not include salary, wages, bonuses or non-deferred cash incentive compensation.
- (b) “**Claim**” means any:
 - (1) written demand for monetary, non-monetary or injunctive relief made against an **Insured**;
 - (2) judicial, administrative or regulatory proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief commenced against an **Insured**, including any appeal therefrom, which is commenced by:
 - (i) service of a complaint or similar pleading;
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or

- (iii) receipt or filing of a notice of charges;
- (3) arbitration proceeding commenced against an **Insured** by service of a demand for arbitration;
- (4) notification of an investigation of an **Insured** by the Equal Employment Opportunity Commission (“EEOC”) or similar governmental agency commenced by the filing of a notice of charges, formal investigative order or similar document;
- (5) audit of an **Insured** conducted by the United States of America Office of Federal Contract Compliance Programs (“OFCCP”), but only if commenced by the receipt of a notice of violation, order to show cause, or a written demand for monetary or non-monetary or injunctive relief; and
- (6) written request to toll or waive the applicable statute of limitations relating to a potential **Claim** against an **Insured** for a **Wrongful Act**.

Notwithstanding the foregoing, **Claim** does not include:

- (i) any criminal proceeding, but only if such **Claim** alleges an **Employment Practices Wrongful Act(s)** or a **Third-Party Wrongful Act**; or
 - (ii) any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.
- (c) **“Discrimination”** means any violation of employment discrimination laws, including but not limited to any actual, alleged or constructive employment termination, dismissal, or discharge, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote, or any limitation or segregation of any **Employee** or applicant for employment by the **Organization** in any way that would deprive any person of employment opportunities based on such person's race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, veteran status or any other status that is protected pursuant to any foreign, federal, state, or local statutory law or common law.
- (d) **“Employee”** means:
- (1) any person who was, now is, or shall become a full-time, part-time, seasonal, or temporary employee of the **Organization**, but only while that person is acting in the capacity as such;
 - (2) any person leased to the **Organization** or any **Independent Contractor** so long as this person is working solely for the **Organization** and only for conduct within his or her duties as such, but only if the **Organization** indemnifies such leased person or any **Independent Contractor** in the same manner as the **Organization’s** employees; and
 - (3) any volunteer whose labor and service is engaged and directed by the **Organization**, but only while that person is acting in the capacity as such.
- (e) **“Employment Practices Claim”** means any **Claim** alleging an **Employment Practices Wrongful Act(s)** or a **Third-Party Wrongful Act**.
- (f) **“Employment Practices Wrongful Act(s)”** means any actual or alleged **Discrimination, Harassment, Retaliation, Workplace Tort** or **Wrongful Employment Decision** committed by the **Insured** but only if such act relates to an **Employee** or an applicant for employment with the **Organization** or an **Outside Entity**.

(g) **“Harassment”** means:

- (1) sexual harassment, including unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within the **Organization** or **Outside Entity**; or
- (2) workplace harassment, including work-related harassment of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within the **Organization** or **Outside Entity**.

(h) **“Independent Contractor”** means any natural person working in the capacity of an independent contractor pursuant to a written contract or agreement between the **Independent Contractor** and the **Organization** which specifies the terms of the **Organization’s** engagement of the **Independent Contractor**.

(i) **“Insured”** means the **Organization** and any **Insured Person**.

(j) **“Insured Person(s)”** means any: (1) past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head, management committee member, member of board of managers, staff, faculty member (salaried or non-salaried) or **Employee** of the **Organization**. Coverage will automatically apply to all new persons who become **Insured Persons** after the inception of this policy.

(k) **“Loss”** means:

- (1) damages, settlements or judgments;
- (2) pre-judgment or post-judgment interest;
- (3) costs or fees awarded in favor of the claimant;
- (4) punitive, exemplary or the multiplied portion of any multiple damages awards (including the multiple or liquidated damages awarded pursuant to the Age Discrimination in Employment Act or Equal Pay Act), but only to the extent that such damages are insurable under the applicable law most favorable to the insurability of such damages; and
- (5) **Defense Costs**.

“Loss” does not include:

- (i) any amounts for which the **Insureds** are not legally liable;
- (ii) any amounts which are without legal recourse to the **Insureds**;
- (iii) taxes;
- (iv) fines and penalties, except as provided for in Definition (k) (4) above;
- (v) matters which may be deemed uninsurable under applicable law;
- (vi) any costs or liability incurred by any **Insured** to modify any building or property to make it more accessible or accommodating to any disabled person, or in connection with any educational, sensitivity or other corporate program, policy or seminar;

- (vii) **Stock Benefits** due or to become due or the equivalent value of such **Stock Benefits**; or
- (viii) any future compensation, including any **Benefits**, for any person hired, promoted or reinstated pursuant to a judgment, settlement, order or other resolution of a **Claim**.

Loss shall include **Defense Costs** incurred in a **Claim** involving any matter set forth in items (i) through (viii) above. **Loss** shall also include **Defense Costs** incurred in connection with 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):

- Section 4911 (tax on excess expenditures to influence legislation);
- Section 4940 (a) (tax on net investment income of tax-exempt foundations);
- Section 4941 (taxes on self-dealing);
- Section 4942 (taxes on failure to distribute income);
- Section 4943 (taxes on excess business holding);
- Section 4944 (taxes on investments which jeopardize charitable purpose);
- Section 4945 (taxes on taxable expenditures);
- Section 6652 (c) (1) (A) and (B) (penalties for failure to file certain information returns or registration statements);
- Section 6655 (a) (1) (penalties for failure to pay estimated income tax); and
- Section 6656 (a) and (b) (penalties for failure to make deposit of taxes).

Loss shall also include any “**Excess Benefits**” penalty assessed in the amount of 10% by the Internal Revenue Service (“IRS”) against any **Insured(s)** for management’s involvement in the award of “**Excess Benefits**” and the **Defense Costs** attributable thereto. **Loss** shall specifically exclude: (1) any 25% penalty assessed by the IRS against an **Insured** deemed to have received an **Excess Benefit**; (2) **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an **Excess Benefit**; and (3) any 200% penalty assessed by the IRS for failure to correct the award of an **Excess Benefit**. The term “**Excess Benefit**” means an excess benefit as defined in the Taxpayer Bill of Rights Act, 2, 26 U.S.C. 4958.

- (l) “**Outside Entity**” means: (1) any not-for-profit entity which is exempt from taxation under Section 501(c)(3), (4) or (10) of the IRS Code, as amended, or any rule or regulation promulgated thereunder; or (2) any other entity listed as such by endorsement to this policy, for which an **Insured Person** acts as a director, officer, trustee, trustee emeritus or governor (or the equivalent thereof) at the specific request or direction of the **Organization**. Any such person shall be referred to herein as an “**Outside Entity Insured Person**”, but only while that person is acting in the capacity as a director, officer, trustee, trustee emeritus or governor (or the equivalent thereof) of an **Outside Entity**. In the event of a disagreement between the **Parent Organization** and the **Insurer** as to whether an individual was acting “at the specific request or direction of the **Organization**”, this policy shall abide by the determination of the **Parent Organization** on this issue and such determination shall be made by written request to the **Insurer** within 30 days after the **Claim** is first reported to the **Insurer** pursuant to the terms of this policy. In the event no determination is made within such period, this policy shall apply as if the **Parent Organization** determined that such **Insured** was not acting at the **Parent Organization’s** specific request or direction.
- (m) “**Retaliation**” means retaliatory treatment of an **Employee** or an employee of an **Outside Entity** alleged to be on account of such individual:

- (1) exercising his or her rights under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights;
 - (2) refusing to violate any law or opposing any unlawful practice;
 - (3) having assisted or testified in or cooperated with any legal proceeding or formal governmental investigation regarding alleged violations of law by any **Insured**;
 - (4) disclosing or expressing an intent to disclose to a superior or to any governmental agency any alleged violations of law; or
 - (5) filing or expressing an intent to file any claim against the **Organization** or **Outside Entity** under the Federal False Claims Act or any other similar foreign, federal, state, or local "whistle blower" law.
- (n) **"Stock Benefits"** means any offering, plan or agreement between the **Organization** and any **Insured Person** thereof, which grants stock or stock options or stock appreciation rights to such individual, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.
- (o) **"Third-Party Liability Claim"** means any **Claim** alleging a **Third-Party Wrongful Act**.
- (p) **"Third-Party Wrongful Act"** means any actual or alleged discrimination, sexual harassment, or violation of the civil rights of any individual relating to such discrimination or sexual harassment when such acts are committed against anyone other than an **Insured Person** or an applicant for employment with the **Organization** or an **Outside Entity**, including but not limited to a student, patient, member, customer, client or supplier of the **Organization**.
- (q) **"Wrongful Act(s)"** means:
- (1) with respect to an **Insured Person**, any actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, or misleading statement by an **Insured Person** in his or her capacity as such or any matter claimed against an **Insured Person** by reason of such capacity;
 - (2) with respect to an **Outside Entity Insured Person**, any actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, or misleading statement by a person in his or her capacity as an **Outside Entity Insured Person** or any matter claimed against such **Outside Entity Insured Person** by reason of such capacity; or
 - (3) with respect to the **Organization**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the **Organization**.

"Wrongful Act(s)" shall also specifically include any:

- (1) **Employment Practices Wrongful Act;**
- (2) **Third-Party Wrongful Act;**
- (3) violation of the Sherman Antitrust Act or similar federal, state or local statutes or rules;
- (4) libel, slander, defamation or publication or utterance in violation of any individual's right of privacy;

- (5) wrongful entry or eviction or other invasion of the right of occupancy;
 - (6) false arrest or wrongful detention;
 - (7) plagiarism or misappropriation of ideas; and
 - (8) infringement or violation of any copyright or trademark or unauthorized use of title.
- (r) **“Workplace Tort”** means any employment-related:
- (1) misrepresentation, defamation (including libel and slander), false arrest, detention, imprisonment, invasion of privacy, negligent evaluation, wrongful discipline or wrongful deprivation of a career opportunity; or
 - (2) negligent retention, supervision, hiring or training, wrongful infliction of emotional distress, mental anguish or humiliation or failure to provide or enforce consistent employment-related corporate policies and procedures,
- when alleged as part of a **Claim** for actual or alleged **Wrongful Employment Decision, Discrimination, Harassment, or Retaliation**.
- (s) **“Wrongful Employment Decision”** means any actual or alleged: (1) wrongful termination, dismissal, or discharge of employment, demotion, denial of tenure, or failure or refusal to hire or promote; or (2) breach of any implied employment contract or obligation, including but not limited to any such obligation arising out of any personnel manual, employee handbook or policy statement.

3. EXCLUSIONS

This policy shall not cover any **Loss** in connection with any **Claim**:

- (a) arising out of, based upon or attributable to any deliberate fraudulent act or any willful violation of law by an **Insured** if a final judgment or adjudication establishes that such act or violation occurred;

In determining the applicability of Exclusion (a), the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured** shall not be imputed to any other **Insured**.

- (b) alleging, arising out of, based upon or attributable to any facts or circumstances of which an **Insured Person** had actual knowledge or information of, as of the Pending or Prior Date set forth in Item 6 of the Declarations as respects this Coverage Section, and that he or she reasonably believed may give rise to a **Claim** under this policy;
- (c) based upon, arising from, or in consequence of any actual or alleged liability of any **Insured** under any express contract or agreement, except to the extent that such **Insured** would have been liable in the absence of such contract or agreement; provided, however, that this exclusion shall apply only to any **Claim** under Insuring Agreement C.;
- (d) alleging, arising out of, based upon or attributable to, as of the applicable Pending or Prior Date set forth in Item 6 of the Declarations as respects this Coverage Section, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an **Insured** had notice, including any **Claim** alleging or derived from the same or essentially the same facts, or the same or related **Wrongful Act(s)**, as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;

- (e) alleging, arising out of, based upon or attributable to the same or essentially the same facts alleged, or to the same or related **Wrongful Act(s)** alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, before the inception date of this policy as set forth in Item 2 of the Declarations, under any policy, whether excess or underlying, of which this policy is a renewal or replacement or which it may succeed in time;
- (f) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of any **Insured Person** serving in any capacity other than as an **Insured Person** or an **Outside Entity Insured Person**;
- (g) alleging, arising out of, based upon, attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**;
- (h) alleging, arising out of, based upon or attributable to any actual or alleged violation of the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and any amendments thereto, or any similar foreign, federal, state or statutory law or common law; provided, however, that this exclusion shall not apply to any **Claim** for **Retaliation**;
- (i) for any **Wrongful Act** arising out of any **Insured Person** serving as a director, officer, trustee, trustee emeritus or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee, trustee emeritus or governor thereof;
- (j) for bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, that this exclusion shall not apply to any **Employment Practices Claim** for emotional distress or mental anguish when associated with a **Wrongful Act**;
- (k) alleging, arising out of, based upon, attributable to or in any way relating to the refusal, failure or inability of any **Insured** to pay wages or overtime pay for services rendered (exclusive of tort-based front pay or back pay), improper classification of any **Employee(s)**, improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**, or failure to provide or enforce legally required meal or rest break periods; provided, however, that this exclusion shall not apply to any **Claim** for **Retaliation**;
- (l) brought by or on behalf of the **Organization** against any **Insured Person**; provided, however, that 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 instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any **Insured Person** or the **Organization** or any **Affiliate**;
- (m) alleging, arising out of, based upon or attributable to any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, that this exclusion shall not apply to any **Claim** for **Retaliation**;
- (n) alleging, arising out of, based upon or attributable to any lockout, strike, picket line, hiring of replacement workers, or other similar actions in connection with labor disputes or labor negotiations; provided, however, that this exclusion shall not apply to any **Claim** for **Retaliation**;

- (o) alleging, arising out of, based upon or attributable to any purchase or sale of securities by the **Parent Organization**, any **Subsidiary**, any **Outside Entity** or any **Affiliate** or **Claims** brought by securities holders of the **Organization** in their capacity as such; provided, however, that this exclusion shall not apply to the issuance by the **Organization** of tax exempt bond debt or **Claims** brought by tax exempt bond debt holders.

4. ORDER OF PAYMENTS

In the event of **Loss** arising from a covered **Claim** for which payment is due under the provisions of this Coverage Section, the **Insurer** shall in all events:

- (1) first, pay **Loss** for which coverage is provided under this Coverage Section for any **Insured Person** under Insuring Agreement A.;
- (2) second, only after payment of **Loss** has been made pursuant to item (1) above, with respect to whatever remaining amount of any Limit of Liability applicable to this Coverage Section is available, pay the **Loss** for which coverage is provided under this Coverage Section for the **Organization** under Insuring Agreement B.; and
- (3) third, only after payment of **Loss** has been made pursuant to items (1) and (2) above, with respect to whatever remaining amount of any Limit of Liability applicable to this Coverage Section is available, pay the **Loss** for which coverage is provided under this Coverage Section for the **Organization** under Insuring Agreement C.

5. NON-RESCINDABLE CLAUSE

The **Insurer** irrevocably waives any right it may have to rescind coverage available under Insuring Agreement A. of this Coverage Section, in whole or in part, on any grounds.