



- ACE American Insurance Company
- Illinois Union Insurance Company
- Westchester Fire Insurance Company
- Westchester Surplus Lines Insurance Company

ACE Advantage[®] Management Protection Fiduciary Liability Policy

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

I. INSURING AGREEMENTS

A. Fiduciary Liability

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Acts** by the **Insureds**, or by any employee for whom such **Insured** is legally responsible, provided the **Claim** is reported to the **Insurer** as set forth in Section IX below.

B. Voluntary Compliance Program and Delinquent Filer Penalties

If **Voluntary Compliance Program** and **Delinquent Filer Penalties** coverage is purchased pursuant to Item 7 of the Declarations, the **Insurer** shall pay **Delinquent Filer Penalties** assessed against an **Insured**, and **Voluntary Compliance Loss** of the **Insureds** relating to a **Voluntary Compliance Notice** first given to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, or within 30 days after the end of the **Policy Period** or, if elected, the **Extended Reporting Period**, provided the **Voluntary Compliance Loss** is incurred after such **Voluntary Compliance Notice** is first given to the **Insurer**.

II. DEFINITIONS

When used in this **Policy**:

- A. **Administration** means: (i) counseling employees, beneficiaries or **Plan** participants with respect to any **Plan**; (ii) providing interpretations with respect to any **Plan**; (iii) handling records in connection with any **Plan**; and (iv) enrolling, terminating or canceling employees, participants and beneficiaries under any **Plan**.
- B. **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 of which this **Policy** is a direct or indirect renewal or replacement. **Application** also includes any public documents filed by the **Sponsor Company** or a **Plan** within 12 months prior to inception of this **Policy** with the Securities and Exchange Commission or the U.S. Department of Labor, or similar state, local or foreign regulatory agency. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.
- C. **Claim** means:
 - 1. a written demand against the **Insured** for monetary damages or non-monetary or injunctive relief;
 - 2. a civil, criminal or arbitration proceeding against the **Insured** commenced by the service of a complaint or similar pleading; a return of an indictment, information, or similar document; or a demand for arbitration;
 - 3. a civil, administrative or regulatory proceeding against the **Insured** commenced by the filing of a notice of charges, investigative order or similar document;
 - 4. a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation or any similar governmental authority anywhere in the world,

- including without limitation the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services or the United Kingdom Occupational Pensions Regulatory Authority, commenced by the service upon or other receipt by the **Insured** of a written notice or subpoena from the investigating authority identifying the **Insured** as an individual or entity against whom a civil, administrative or regulatory proceeding may be commenced;
5. solely with respect to Insuring Agreement B, if purchased, a **Voluntary Compliance Notice**; or
 6. a written request received by an **Insured** to toll or waive a statute of limitations, relating to a potential **Claim** described in paragraphs one through five above, inclusive, including any appeal from matters described in paragraphs 1 through 5 above, inclusive.
- D. **Defense Costs** means reasonable and necessary costs, charges, fees and expenses incurred by any **Insured** 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. **Defense Costs** do not include wages, salaries, fees or other compensation of the directors, officers, trustees or employees of the **Sponsor Company** or **Plan**.
- E. **Delinquent Filer Penalties** means penalties assessed by the U.S. Department of Labor or the 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.
- F. **Employee Benefit Law** means the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended (including but not limited to amendments thereto by 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, and the Women's Health and Cancer Rights Act of 1998, as amended), or any similar common or statutory law anywhere in the world (including without limitation the English Pension Scheme Act 1993 and the English Pension Act 1995, all as amended), and any rules and regulations promulgated thereunder. Solely with respect to paragraph 2 of the definition of **Wrongful Act**, **Employee Benefit Law** also includes: (i) Part 164 of the regulations under the Health Insurance Portability and Accountability Act of 1996, popularly known as HIPAA Privacy Regulations; and (ii) any workers' compensation, unemployment insurance, social security, government-mandated disability benefits or similar law.
- G. **ESOP** means any employee stock ownership plan as defined in an **Employee Benefit Law**, or any other **Pension Plan** under which investments are made primarily in securities of the **Sponsor Company**, or whose assets at any time within twelve months prior to the inception date of this **Policy** were comprised of 20% or more of securities of the **Sponsor Company**.
- H. **Fiduciary** means, with respect to a **Plan**, a fiduciary as defined in an **Employee Benefit Law**, or a person or entity who exercises discretionary control with respect to the management of the **Plan** or the disposition of **Plan** assets.
- I. **Financial Impairment** means the status of the **Sponsor Company** resulting from the **Sponsor Company** becoming a debtor-in-possession, or from 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 **Sponsor Company**.
- J. **Insured** means any **Insured Person**, the **Sponsor Company**, and the **Plans**.
- K. **Insured Person** means any natural person who was, now is or shall become:
1. a duly elected or appointed director, trustee (excluding a bankruptcy trustee), officer, general counsel, governor, general partner or similar executive of the **Sponsor Company**, and, with respect to any **Sponsor Company** that is a limited liability company, any member of the board of managers or management committee;

2. a natural person not described in paragraph 1 above who was, is or shall become a full-time or part-time employee of the **Sponsor Company**;
 3. a duly elected or appointed trustee, director, officer or employee of any **Plan**;
 4. a natural person holding a position equivalent to those described in paragraphs 1 through 3, inclusive, above, in a **Sponsor Company** operating in a jurisdiction other than the United States of America, its territories or possessions; and
 5. a natural person who is a trustee or fiduciary of a multi-employer plan, but solely if such natural person is added by specific written endorsement to this **Policy**.
- L. **Insurer** means the insurance company providing this insurance.
- M. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- N. **Loss** means the damages, judgments, any award of pre-judgment and post-judgment interest on that part of any judgment paid under this **Policy**, settlements, **Defense Costs** and, solely with respect to Insuring Agreement B, if purchased, **Voluntary Compliance Loss**, which the **Insured** becomes legally obligated to pay on account of any covered **Claim for Wrongful Acts** to which this **Policy** applies. Such damages include punitive and exemplary damages and the multiple portion of any multiplied damage award, if and to the extent such punitive, exemplary or multiple damages are insurable under the law of the applicable jurisdiction most favorable to the insurability of such damages. **Loss** does not include the following, other than otherwise covered **Defense Costs** attributable thereto:
1. any amount for which the **Insured** is not financially liable or which is without legal recourse to the **Insureds**;
 2. matters uninsurable under the laws pursuant to which this **Policy** is construed;
 3. any obligation under a **Plan** to pay to a participant or beneficiary of the **Plan** money or property, or to grant a privilege, right, option or perquisite, including any such obligation which would exist under a **Plan** if the **Plan** complied with all applicable laws, or that portion of any settlement or judgment which constitutes any such obligation, unless and to the extent that such obligation is based upon a covered **Wrongful Act** by an **Insured Person** and such obligation is payable as a personal obligation of such **Insured Person**;
 4. taxes, fines or penalties except:
 - (a) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a **Fiduciary** under sections 502(i) or (l), respectively, of the Employment Retirement Income Security Act of 1974, as amended;
 - (b) civil fines or penalties imposed by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules or 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**; or
 - (c) solely with respect to Insuring Agreement B, if purchased, **Voluntary Compliance Loss**.
- O. **Named Sponsor** means the organization first named in Item 1 of the Declarations.
- P. **Pension Plan** means any employee pension benefit plan as defined in any **Employee Benefit Law**, other than any **ESOP**, which was, is or shall be sponsored solely by the **Sponsor Company**, or jointly by the **Sponsor Company** and a labor organization, solely for the benefit of the employees, directors, officers, governors, management committee members, members of the board of managers and/or natural person general partners of the **Sponsor Company**.
- Q. **Plan** means:

1. any **Pension Plan** or any **Welfare Plan** established anywhere in the world which was, is now, or hereafter becomes sponsored solely by the **Sponsor Company**, or sponsored jointly by the **Sponsor Company** and a labor organization, solely for the benefit of the employees, directors, officers, governors, management committee members, members of the board of managers and/or natural person general partners of the **Sponsor Company**. However, any **Pension Plan** created or acquired by the **Sponsor Company** during the **Policy Period** shall be included in this definition only if and to the extent coverage is afforded with respect thereto pursuant to subsection A of Section XIII of this **Policy**;
2. any government-mandated insurance for workers' compensation, unemployment, social security or disability benefits for employees of the **Sponsor Company**, but solely for a **Wrongful Act** as defined in paragraph 2 of the definition of **Wrongful Act**;
3. any deferred compensation plan, supplemental executive retirement plan, top-hat plan, or excess benefit plan for a select group of management or highly compensated directors, officers, governors, management committee members, member of the board of managers, natural person general partners and/or employees of the **Sponsor Company**;
4. any other plan, fund, trust or program specifically included in the definition of **Plan** pursuant to an endorsement to this **Policy**.

However, **Plan** does not include any multiemployer plan as defined in any **Employee Benefit Law**.

- R. **Policy** means, collectively, the **Declarations**, the **Application**, this policy form and any endorsements.
- S. **Policy Period** means the period of time specified in Item 2 of the **Declarations**, subject to prior termination pursuant to Section XV, **Termination of the Policy**.
- T. **Sponsor Company** means the **Named Sponsor** and any **Subsidiary**, including 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.
- U. **Subsidiary** means:
 1. any for-profit organization, or
 2. any not-for-profit organization which is sponsored exclusively by the **Named Sponsor**,

with respect to which the **Name Sponsor**, on or before the inception date of this **Policy**, either directly or indirectly through one or more of its **Subsidiaries**, owns or controls by reason of stock ownership, a written agreement, by-laws, charter or similar document the present right to select more than 50% of the directors, trustees, governors, general partners, or members of the management committee or board of managers of the organization.

- V. **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 **Defense Costs** 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.
- W. **Voluntary Compliance Notice** means prior written notice to the **Insurer** by the **Insured** of the **Insured's** intent to enter into a **Voluntary Compliance Program**.

- X. **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.
- Y. **Welfare Plan** means any employee welfare benefit plan as defined in an **Employee Benefit Law**, including without limitation any plan from which participants may choose among two or more benefits consisting of cash and qualified benefits; and any cafeteria plan, dependent care assistance program, and fringe benefit and voluntary employees' beneficiary association as defined in sections 125, 129, 132 and 501(c)(9) of the U.S. Internal Revenue Code of 1986, as amended; where sponsored solely by the **Sponsor Company**, or jointly by the **Sponsor Company** and a labor organization, solely for the benefit of current or former employees, directors, officers, governors, management committee members, members of the board of managers or natural person general partners of the **Sponsor Company**.
- Z. **Wrongful Act** means:
 1. any violation of any of the responsibilities, obligations or duties imposed upon **Fiduciaries** under any **Employee Benefit Law** with respect to any **Plan**, or any matter claimed against any **Insured** solely by reason of his, her or its status as a **Fiduciary**, the **Plan**, or the **Sponsor Company**, but solely with respect to a **Plan**;
 2. any act, error or omission actually or allegedly committed or attempted solely in the **Administration** of a **Plan**; and
 3. solely with respect to an **Insured Person**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or in the **Administration** of any multiemployer plan as defined in an **Employee Benefit Law**, but only if such service is at the specific written request or direction of the **Named Sponsor** and such multiemployer plan is added by specific written endorsement to this **Policy**, identified as a multiemployer plan and any required premium is paid. In no event shall coverage under this **Policy** extend to a **Claim** against a multiemployer plan itself, its contributing employer(s), or any other fiduciaries or administrators of such plan, other than an **Insured Person**.

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

III. EXCLUSIONS

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

A. Bodily Injury and Property Damage

for bodily injury, mental anguish or emotional distress, 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.

B. Fraud

alleging, based upon, arising out of, or attributable to any deliberately fraudulent or deliberately criminal act, error or omission, or any intentional or knowing violation of any law, by the **Insured**. However, this exclusion shall not apply unless there is a final adjudication against any **Insured** as to such conduct.

C. Personal Profit

alleging, based upon, arising out of, or attributable to the gaining in fact of any profit or financial advantage to which the **Insured** was not legally entitled.

D. Pollution

alleging, based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or 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. However, this exclusion shall not apply, except as to **Clean Up Costs**, on account of a **Claim** against **Insured Persons** alleging damages to a **Plan** if and to the extent the **Sponsor Company** does not indemnify the **Insured Persons** for such **Loss** either because the **Sponsor Company** is neither permitted nor required to grant such indemnification or because of the **Financial Impairment** of the **Sponsor Company**.

For the purpose of this exclusion, **Pollutants** mean 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 or thermal irritants, contaminants 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, 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.

For the purpose 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**.

E. Prior Notice

alleging, based upon, arising out of, or attributable to any **Wrongful Act**, fact, or circumstance 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.

F. Prior or Pending Proceeding

alleging, based upon, arising out of, or attributable to any prior or pending litigation or administrative or regulatory proceeding which was filed against an **Insured**, and of which an **Insured** had notice, on or before the prior or pending proceeding date shown in Item 5 of the Declarations or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein.

G. Remedial, Preventative and Non-Monetary Relief

to the extent such **Loss** constitutes the cost of any remedial, preventive 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.

H. Contract or Agreement

alleging, based on, arising out of or attributable to liability of others assumed by the **Insureds** under any contract or agreement. However, this exclusion shall not apply to: (i) **Defense Costs**; and (ii) to the extent that liability would have attached to the **Insured** in the absence of such contract or agreement, or where the liability was assumed in accordance with or under the agreement or declaration of trust or equivalent document pursuant to which the **Plan** was established.

I. Contributions Owed

for the failure to collect from the **Sponsor Company** contributions owed to any **Plan**, or the failure to fund a **Plan** in accordance with any **Employee Benefit Law** or the **Plan** instrument. However, this exclusion shall not apply to **Defense Costs**.

J. Discrimination

for discrimination in violation of any law other than any **Employee Benefit Law**.

K. Government Mandated Insurance

for any actual or alleged obligation of any **Insured** pursuant to any government-mandated insurance for worker's compensation, unemployment, social security or disability benefits. However, this exclusion shall not apply to any actual or alleged obligation of any **Insured** pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 or the Health Insurance Portability and Accountability Act of 1996, all as amended.

IV. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of exclusions B, Fraud, and C, Personal Profit, the **Wrongful Act** of any **Insured** shall not be imputed to any other **Insured**.

V. ESTATES, HEIRS, LEGAL REPRESENTATIVES, ASSIGNS, SPOUSES AND DOMESTIC PARTNERS

The estates, heirs, legal representatives, assigns, spouses of **Insured Persons**, and any natural person qualifying as a domestic partner of **Insured Persons** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Sponsor Company**, shall be considered **Insureds** under this **Policy**; but 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 **Insured Person** 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 Retention applicable to **Loss** incurred by **Insured Persons** shown in Item 3 of the Declarations, shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partners.

VI. EXTENDED REPORTING PERIOD

- A. If the **Insurer** or **Named Sponsor** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), the **Named Sponsor** shall have the right, upon payment of the additional extended reporting period premium set forth in Item 6B of the Declarations, to a continuation of the coverage granted by this **Policy** for an extended reporting period of one year ("**Extended Reporting Period**") following the effective date of such termination or nonrenewal, but only with respect to **Claims** first made during the **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This right to continue coverage shall lapse unless the **Named Sponsor** gives written notice of such election and pays the **Extended Reporting Period** premium to the **Insurer** within 30 days following the effective date of termination or nonrenewal. A change in policy terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the **Extended Reporting Period**.
- B. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.
- C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability and Sublimit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability or the Sublimit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

VII. LIMITS OF LIABILITY

- A. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.
- B. The amount stated in Item 3A(i) 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 the number of **Claims** or losses or the time of payment by the **Insurer**. However, if **Voluntary Compliance Program** coverage is purchased pursuant to Item 7 of the Declarations, the **Voluntary Compliance Loss Sublimit of Liability** set forth in Item 3A(ii) of the Declarations is the maximum liability of the **Insurer** for all **Voluntary Compliance Loss** resulting from all **Voluntary Compliance Notices** first given to the **Insurer** in the **Policy Period**. Such **Voluntary Compliance Loss Sublimit of Liability** is part of, and not in addition to, the **Aggregate Limit of Liability** set forth in Item 3A(i) of the Declarations and in no way shall be deemed to increase the **Aggregate Limit of Liability** as set forth therein.
- C. **Defense Costs** shall be part of and not in addition to the applicable **Limit of Liability** and **Sublimit of Liability** shown in Item 3 of the Declarations, and **Defense Costs** shall reduce such **Limit of Liability** and **Sublimit of Liability**. If the **Limit of Liability** or **Sublimit of Liability** is exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** with respect to **Claims** and **Loss** subject to such **Limit of Liability** or **Sublimit of Liability** shall be completely fulfilled and extinguished.

VIII. RETENTIONS

- A. Except as otherwise provided in this Section, the liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the applicable **Retention** amount shown in Item 3B of the Declarations. Such **Retention** shall be borne uninsured by the **Sponsor Company** or **Plan** and at their own risk. If different parts of a single **Claim** are subject to different applicable **Retentions**, 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**.
- B. A single **Retention** amount shall apply to **Loss** arising from all **Claims** alleging **Interrelated Wrongful Acts**.
- C. No **Retention** shall apply to: (i) any **Voluntary Compliance Loss** under Insuring Agreement B, if purchased; or (ii) any **Loss** under Insuring Agreement A incurred by any **Insured Person** when and to the extent that the **Sponsor Company** and **Plan** are either not permitted or required by applicable law to indemnify the **Insured Person** for such **Loss**, or are unable to indemnify the **Insured Person** for such **Loss** by reason of **Financial Impairment** ("Non-Indemnifiable Loss"). The **Retention** for **Indemnifiable Loss** shown in Item 3B(ii) of the Declarations shall apply to all other **Loss**.
- D. If **Loss** on account of a single **Claim** is subject to different **Retentions**, the maximum aggregate **Retention** applicable to all such **Loss** shall be the largest of such **Retentions**.

IX. NOTICE

- A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against the **Insureds** as soon as practicable after the **Sponsor Company's** general counsel, risk manager, or the director of human resources, or the equivalent, first learns of the **Claim**, but in no event later than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or if elected, the **Extended Reporting Period**, 30 days after termination of the **Policy Period**, or if elected, the **Extended Reporting Period**.

- B. If during the **Policy Period** or, if elected, the **Extended Reporting Period**, the **Insureds** first become aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds** first give written notice to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, of the identity of the potential claimants; a description of the anticipated **Wrongful Act** allegations; the identity of the **Insureds** allegedly involved; the circumstances by which the **Insureds** first became aware of the facts or circumstances; the consequences which have resulted or may result; and the nature of the potential monetary damages and non-monetary relief, then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first 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**.
- C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Sponsor** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or potential **Claim** shall be given to the **Insurer** at the address shown in Item 4A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address shown in Item 4B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee.

X. DEFENSE AND SETTLEMENT

- A. The **Insurer** shall have the right and duty to defend any **Claim** covered by this **Policy**, even if any of the allegations in such **Claim** are groundless, false or fraudulent. However, the **Insureds** may, at their sole option, assume such defense. This right shall be exercised in writing by the **Named Sponsor** giving notice to the **Insurer** on the behalf of all **Insureds** within 60 days of the reporting of the **Claim** to the **Insurer**. Upon receipt of such notice, the **Insurer** shall tender the defense of the **Claim** to the **Insureds**. Once the defense has been so tendered, the **Insurer** cannot re-assume the defense of the **Claim**. The **Insurer** shall thereafter advance **Defense Costs** covered under this **Policy** in excess of the applicable Retention, subject to repayment to the **Insurer** by the **Insureds**, severally according to their interests, if and to the extent that such **Defense Costs** are later determined not to be covered under this **Policy**.
- B. The **Insurer's** duty to defend any **Claim** shall cease upon exhaustion of the Limit of Liability.
- C. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, which shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, 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).
- D. The **Insurer** shall have the right and shall be given the opportunity to effectively associate with the **Insureds** regarding the defense and negotiation of any settlement of any **Claim**.
- E. 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. The **Insurer** may make any investigation it deems necessary.
- F. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is acceptable to the claimant, but the **Insureds** do not consent to such settlement within 30 days of the date the **Insureds** are first made aware of the potential settlement, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (i) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date the potential settlement was proposed in writing by the **Insurer** to the **Insureds**; and (ii) 70% of all subsequent covered **Loss** in excess of such amount, the remaining 30% of which shall be borne by the **Insureds** uninsured and at their own risk.

XI. PRESUMPTIVE INDEMNIFICATION

If with respect to any Claim the Sponsor Company is permitted or required by common or statutory law to indemnify the Insured Persons for any Loss, or to advance Defense Costs on their behalf ("Indemnifiable Loss"), and does not in fact do so other than for reasons of Financial Impairment, then the Retention for Indemnifiable Loss shown in Item 3B(ii) of the Declarations shall apply to such Loss. The resolutions of the board of directors or equivalent body of the Sponsor Company shall be deemed to provide indemnification for Loss to the fullest extent permitted by law. The Sponsor Company agrees to indemnify the Insured Persons to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval.

XII. OTHER INSURANCE

If any Loss covered under this Policy is covered under any other valid 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 provided by this Policy.

XIII. MATERIAL CHANGES IN CONDITIONS

A. Acquisition or Creation of Another Organization or Plan

If, during the Policy Period, the Sponsor Company acquires voting securities in another organization or creates another organization which as a result of such acquisition or creation becomes a Subsidiary; acquires any organization by merger into or consolidation with the Sponsor Company; or creates a Plan, then, subject to the terms and conditions of this Policy including the paragraph immediately below, such organization, Plan and its Insured Persons shall be covered under this Policy but only with respect to Claims for Wrongful Acts taking place after such acquisition or creation, unless the Insurer agrees to provide coverage by endorsement for Wrongful Acts taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization or Plan, as reflected in the then most recent consolidated financial statements of the organization, or most recent financial statements of the Plan, exceeds 10% of the total assets of the Named Sponsor and the Subsidiaries as reflected in the then most recent consolidated financial statements of the Named Sponsor, or 10% of the total assets of the Plan as reflected in its most recent financial statements, coverage shall be provided for such acquired or created organization or Plan for a period of 30 days after the effective date of such acquisition or creation, or until the end of the Policy Period, whichever is earlier, so long as the Named Sponsor gives written notice of such acquisition or creation to the Insurer prior to the end of the Policy Period. Coverage otherwise afforded under this paragraph for such acquired or created organization or Plan shall terminate 30 days after the effective date of such acquisition or creation, or at the end of the Policy Period, whichever is earlier, unless the Named Sponsor agrees to and pays any additional premium required by the Insurer, and agrees to any additional terms and conditions of this Policy as required by the Insurer.

B. Acquisition of the Named Sponsor

If, during the Policy Period, any of the following events occurs:

1. the acquisition of the Named Sponsor, or of all or substantially all of its assets, by another person or entity or group of persons or entities acting in concert, or the merger or consolidation of the Named Sponsor into or with another entity or group of entities such that the Named Sponsor is not the surviving entity; or
2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors, trustees, governors, general

partners or members of the management committee or board of managers of the **Named Sponsor**; or

3. a general partner of the **Named Sponsor**, if the **Named Sponsor** is a partnership, withdraws, resigns or is terminated;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims for Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims for Wrongful Acts** taking place after such event. This **Policy** may not be cancelled after such effective date and the entire premium shall be deemed fully earned and non-refundable as of such effective date. The **Named Sponsor** shall have the right to an **Extended Reporting Period** pursuant to Section VI of this **Policy**.

C. Termination of a **Subsidiary**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its **Insured Persons** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims for Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

D. Termination of a **Plan**

If before or during the **Policy Period** a **Plan** is terminated, sold or run-off, coverage with respect to such **Plan** and its **Insured Persons** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims for Wrongful Acts** taking place prior to the date such **Plan** was sold or run-off, or, in the case of a terminated **Plan**, for **Wrongful Acts** taking place prior to the date of the last asset distribution of such **Plan**.

E. Other Organizational Changes

Coverage with respect to an **Insured** is afforded only for **Wrongful Acts** committed or allegedly committed after the effective time such **Insured** became an **Insured** and prior to the effective time that such **Insured** ceases to be an **Insured**.

XIV. REPRESENTATIONS

- A. The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate, are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**. They shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.
- B. In the event the **Application**, including materials submitted or required to be submitted therewith, contains any misrepresentation or omission made with the intent to deceive or which materially affects either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Policy**, this **Policy** shall be void ab initio as to: (i) any **Sponsor Company** or **Plan** if the chief executive officer, chief financial officer, or the **Application** signatory knew the facts that were not truthfully disclosed or that were omitted in the **Application**; and (ii) any **Insured Person** who knew the facts that were not truthfully disclosed or that were omitted, whether or not such **Insured** knew the **Application** contained such misrepresentation or omission. The knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**, and only the knowledge of the chief executive officer, chief financial officer and the **Application** signatory shall be imputed to the **Sponsor Company** and **Plan**.

XV. TERMINATION OF THE POLICY

- A. This **Policy** shall terminate at the earliest of the following times:
 1. the effective date of termination specified in a prior written notice by the **Named Sponsor** to the **Insurer**. However, this **Policy** may not be terminated by the **Named Sponsor** after

the effective date of any acquisition of the **Named Sponsor** as described in Section XIII, Material Changes in Conditions;

2. 15 days after receipt by the **Named Sponsor** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 15 day period;
3. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or
4. at such other time as may be agreed upon by the **Insurer** and the **Named Sponsor**.

B. If this **Policy** is terminated by the **Named Sponsor**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If this **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XVI. TERRITORY AND VALUATION

A. All premiums, limits, retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States of America dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively or, if not published on such date, the next date of publication of *The Wall Street Journal*.

B. Coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

XVII. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**, including without limitation any right of recovery by **Insured Persons** against the **Sponsor Company** or **Plan** for indemnification. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

XVIII. ACTION AGAINST THE INSURER

No action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives.

XIX. 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**.

XX. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Sponsor** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or termination, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any other notice provided for in this **Policy**, and the **Insureds** agree that the **Named Sponsor** shall so act on their behalf.

XXI. ALTERATION, ASSIGNMENT AND HEADINGS

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**. The titles and headings to the various parts, sections, subsections and endorsements

of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XXII. **WAIVER OF RECOURSE**

If this **Policy** is purchased by an **Insured** other than a **Plan**, the **Insurer** shall have no right of recourse against an **Insured**. Notwithstanding the foregoing, the **Insurer** shall have a right of recourse against an **Insured** arising out of a **Claim** by an **Insured** against another **Insured**, unless such **Claim** is instigated and continued totally independent of, and totally without the solicitation of, assistance of or active participation by, the **Insured** claimed against.

XXIII. **PAYMENT PRIORITY**

The **Insurer** shall pay all covered **Loss** under this **Policy** in the following priority: (i) first, the **Insurer** shall pay any covered **Loss** of the **Insured Persons**, in excess of any applicable Retention shown in Item 3B of the Declarations; (ii) second, only if and to the extent the payments under (i) above does not exhaust the applicable Limit of Liability, the **Insurer** shall pay all covered **Loss** of the **Sponsor Company** and any **Plan**, in excess of any applicable Retention shown in Item 3B of the Declarations.