

<INSURANCE POLICY>
POLICY TERMS AND CONDITIONS

In consideration of the payment of the premium, in reliance on all statements made in the **Application**, and subject to all of the provisions of this Policy, Underwriters and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

I. DEFINITIONS

The following terms whenever used in this Clause in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the applicable Clause.

- A. **“Change of Control”** means:
1. the acquisition by any person or entity of more than 50% of the outstanding securities or equity interest of the **Named Insured** representing the present right to vote for the election of directors or **Managers**; or
 2. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity.
- B. **“Financial Impairment”** means the appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Insured Organization**.
- C. **“Insured Organization”** means the **Named Insured** and its **Subsidiaries**, including any such organization as a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law.
- D. **“Interrelated Wrongful Acts”** means any and all **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally or logically connected facts, circumstances, situations, events, transactions or causes.
- E. **“Managers”** means all persons who were, now are, or shall be managers, managing members, members of the board of managers, managing partners, general partners of a limited partnership (including the board of directors of any such general partner that is a corporation) or equivalent executives of any **Insured Organization**.
- F. **“Named Insured”** means the entity designated in Item 1. of the Declarations.
- G. **“Optional Extension Period”** means the period described in Clause XI. of the Policy Terms and Conditions.
- H. **“Policy Period”** means the period from the effective date and hour of this Policy to the Policy expiration date and hour as set forth in Item 2. of the Declarations, or its earlier termination, if any.

- I. **“Pollutants”** means any substance located anywhere in the world 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, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, mold, spores, fungi, germs, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil product, infectious or medical waste, asbestos or asbestos product, lead or lead product, noise, and electric, magnetic or electromagnetic field.
- J. **“Subsidiary”** means:
1. any entity, while more than 50% of the outstanding voting securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured** directly or indirectly;
 2. any limited liability corporation while the right to elect or otherwise appoint or designate more than 50% of such limited liability corporation's **Managers** is owned or controlled by the **Named Insured** directly or indirectly; or
 3. any joint venture, which is a corporate entity, while the **Named Insured** has managerial control, or while the right to elect or otherwise appoint more than 50% of such entity's directors, trustees or other equivalent executive is owned or controlled by the **Named Insured** directly or indirectly

if such entity or corporation was so owned or controlled as of or prior to the inception date of this Policy.

II. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** in connection with or resulting from any **Claim**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any demand, suit, or other proceeding pending, or order, decree or judgment entered, against any **Insured** on or prior to the applicable Pending or Prior Litigation Date set forth in Item 9. of the Declarations, or any **Wrongful Act**, fact, circumstance or situation underlying or alleged therein;
 2. any **Wrongful Act** or any fact, circumstance, transaction or situation which has been the subject of any notice of a **Claim** or notice of a potential **Claim** given prior to the **Policy Period** under any other policy;
 3. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**; or

- B. against any of the **Insured Persons** of any **Subsidiary** or against any **Subsidiary** subsequent to the date such entity ceased to be a **Subsidiary** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**; or
 2. any **Wrongful Act** occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**.

III. LIMITS OF LIABILITY

A. Aggregate Limit(s) of Liability

The amount(s) shown in Item 4. of the Declarations shall be the Underwriters' maximum aggregate limit(s) of liability under the Policy.

B. Additional Defense Limit of Liability

If purchased as indicated in Item 4. of the Declarations, the applicable amount shown in Item 4. shall be the Additional Defense Limit of Underwriters applicable only to **Defense Costs** which Limit shall be separate and in addition to any other limit shown in Item 4. of the Declarations. Payment of **Defense Costs** shall erode the Additional Defense Limit first and will not erode any other limit shown in Item 4. until the Additional Defense Limit is exhausted.

C. If any **Claim** against the **Insureds** gives rise to an obligation both under this Policy and any other coverage, line slip or policy of insurance issued by Underwriters or any of its affiliates to any **Outside Entity**, Underwriters' maximum aggregate limit of liability under all such coverage, line slips or policies for all **Loss** from such **Claim** shall not exceed the greater of:

1. the applicable maximum aggregate limit(s) of liability of this Policy; or
2. the maximum aggregate limit of liability under any such other coverage, line slip or policy.

D. The payment of **Defense Costs** by Underwriters reduces and may totally exhaust the applicable Limit(s) of Liability.

E. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:

1. the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; or
2. the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause IX.B.

- F. If all aggregate limit(s) of liability are exhausted, Underwriters' obligations under this Policy shall be completely fulfilled and extinguished.

IV. RETENTIONS

- A. Underwriters shall be liable for only that part of **Loss** arising from a **Claim** which is excess of the applicable Retention set forth in Item 5. of the Declarations, and such Retention shall be borne by the **Insureds** uninsured and at their own risk. Any payments made to satisfy the retention or deductible under another policy of insurance shall not satisfy or apply towards the applicable Retention, or any portion thereof, under this Policy. The Retention shall not apply, however, if indemnification by the **Insured Organization** is not permitted by law or if the **Insured Organization** is not able to indemnify solely by reason of its **Financial Impairment**.
- B. In the event more than one of the Insuring Clauses are applicable to a **Claim**, the Retentions set forth in Item 5. of the Declarations shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Insuring Clause. The sum of the Retentions so applied shall constitute the Retention applicable to such **Claim**. The total Retention as finally determined shall in no event exceed the largest of the Retentions applicable to Insuring Clauses that are applicable to such **Claim**.

V. PRESUMPTIVE INDEMNIFICATION

For all purposes under this Policy, the **Insured Organization** is presumed to indemnify the **Insured Persons** to the fullest extent permitted by law or pursuant to the by-laws or other organizational documents of the **Insured Organization** for any **Loss**, or to advance any **Defense Costs** on their behalf, except to the extent that the **Insured Organization** cannot in fact do so for reasons of **Financial Impairment**.

VI. SETTLEMENT AND DEFENSE

- A. Underwriters shall have the right and duty to defend any **Claim**, including the right to select defense counsel, even if any of the allegations are groundless, false or fraudulent; provided, however, that Underwriters shall not be obligated to defend or to continue to defend any **Claim** after the applicable Limit of Liability set forth in Item 4. of the Declarations has been exhausted.
- B. The **Insureds** shall cooperate with Underwriters and, upon Underwriters' request, assist in the investigation, settlement and defense of **Claims** and in enforcing rights of contribution or indemnity against any person or entity which may be liable to the **Insureds**, shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- C. The **Insureds** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment or otherwise assume any contractual obligation without Underwriters' prior written consent, which shall not be unreasonably withheld. Underwriters shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which it has not consented or for which the **Insureds** are not legally obligated as a result of a **Claim** for a **Wrongful Act**. Notwithstanding the foregoing, if all **Insureds** are able to fully and finally dispose of, with

prejudice, all **Claims** that are subject to one Retention for an amount not exceeding such Retention, including **Defense Costs**, then Underwriters' consent shall not be required for such disposition.

- D. Underwriters may, with the consent of the **Insureds**, settle or compromise any **Claim** as they deem expedient. If the **Insureds** withhold consent to a settlement or compromise acceptable to the claimant and Underwriters, then Underwriters' liability for such **Claim** shall not exceed:
1. the amount for which the **Claim** could have settled or compromised and the **Defense Costs** incurred as of the date such settlement or compromise was proposed to the **Insureds**; plus
 2. 70% of any **Loss** incurred after the date such settlement or compromise was proposed to the **Insureds**, with the remaining 30% of such **Loss** to be borne by the **Insureds** at their own risk and uninsured or the applicable limit of liability whichever is less.

VII. ALLOCATION

If both **Loss** covered by this Policy and non-covered loss are incurred, either because the **Claim** made against the **Insured** includes both covered and non-covered matters, or because a **Claim** is made against both the **Insured** and others not insured under this Policy, then such covered **Loss** and non-covered loss shall be allocated as follows:

- a. one hundred percent (100%) of **Defense Costs** shall be allocated to covered **Loss**;
- b. Settlements, judgments, verdicts and awards shall be allocated between covered **Loss** and non-covered loss based upon the relative legal and financial exposures of, and the relative benefits obtained in connection with the resolution of the **Claim** as between the **Insureds**' or non-Insureds' exposure to non-covered loss, and the **Insureds**' exposure to covered **Loss**. In making such allocation determination, the **Insureds** and Underwriters agree to use their best efforts to determine a fair and proper allocation. In the event that an allocation cannot be agreed to, then Underwriters shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

VIII. SPOUSAL AND DOMESTIC PARTNER EXTENSION

Coverage under this Policy will apply to an **Insured Person's** lawful spouse, including any natural person qualifying as a domestic partner under the provisions of any applicable federal, state, or local law in the United States, but solely by reason of such spousal status or such spouse's ownership interest in property or assets that are sought as recovery for **Wrongful Acts**.

IX. NOTIFICATION

- A. In the event any **Executive Officer** becomes aware that a **Claim** has been made against any of the **Insureds**, the **Insureds** shall, as a condition precedent to their rights to payment under this Policy, give to Underwriters notice in writing of such **Claim** as soon as practicable provided all **Claims** must be reported no later than the end of the **Policy Period**, in accordance the requirements of the **Optional Extension Period** (if applicable), or sixty (60) days after the

expiration date of the **Policy Period** in the case of **Claims** first made against the **Insured** during the last sixty (60) days of the **Policy Period**.

B. If during the **Policy Period**, except for the **Optional Extension Period**, the **Insureds** first become aware of a specific **Wrongful Act** and if the **Insureds** during the **Policy Period**, except for the **Optional Extension Period**, give written notice to Underwriters as soon as practicable of:

1. the specific **Wrongful Act**;
2. the consequences which have resulted or may result therefrom; and
3. the circumstances by which the **Insureds** first became aware thereof,

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Policy to have been made at the time such notice was first given.

Underwriters shall have no obligation to cover any amounts, including any legal fees or expenses, incurred prior to the time such circumstances result in a **Claim**.

C. Notice to Underwriters provided for in Clause IX.A. and B. shall be given to the firm shown in Item 8.(a) of the Declarations. All other notices to Underwriters under this Policy shall be given to the firm shown in Item 8.(b) of the Declarations. All notices under any provision of this Policy must be made in writing. Notices given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee.

X. GENERAL CONDITIONS

A. Representations.

By acceptance of this Policy, the **Insureds** agree:

1. that the statements in the **Application** are their representations, and that this Policy is issued in reliance upon the truth of such representations;
2. that in the event that the **Application** contains misrepresentations made with the actual intent to deceive, or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by Underwriters under this Policy, this Policy shall not afford any coverage with respect to those **Insureds** who made or had knowledge of such misrepresentations; and
3. that this Policy shall not afford any coverage for amounts paid by the **Insured Organization** as indemnification of any of the **Insureds** who made or had knowledge of the misrepresentations set forth in Clause X.A.2.;

None of the foregoing provisions in Clause X.A. shall in any other way limit or void Underwriters' rights to rescind this Policy; provided, that the Underwriters shall not rescind this Policy where coverage is being provided to an **Insured Person** where indemnification by the

Insured Organization is not permitted by law or the **Insured Organization** is not able to indemnify solely by reason of its **Financial Impairment**.

B. Run-Off

1. In the event any entity ceases to be a **Subsidiary** as defined herein after the inception date of this Policy, or of any policy issued by Underwriters of which this Policy is a renewal or replacement, this Policy, subject to its terms including without limitation Exclusion B. above, shall continue to apply to any of the **Insured Persons** who were covered under this Policy because of their service with such entity and to such **Subsidiary**.
2. In the event of a **Change of Control** after the inception date of this Policy or of any policy issued by Underwriters of which this Policy is a renewal or replacement, this Policy, subject to its terms, shall continue to apply to the **Insureds** but only with respect to any **Wrongful Act** committed or allegedly committed prior to the **Change of Control**.

C. Cancellation/Nonrenewal

1. By acceptance of this Policy, the **Insureds** hereby confer the exclusive power and authority to cancel this Policy on their behalf to the **Named Insured**. Such entity may cancel this Policy by surrender thereof to Underwriters, or by mailing to Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
2. Underwriters may cancel this Policy only for nonpayment of premium by mailing to the **Named Insured** written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by Underwriters shall be equivalent to mailing.
3. If this Policy is cancelled pursuant to 1. hereinabove, Underwriters shall retain the customary short rate proportion of the premium hereon. If this Policy is cancelled pursuant to 2. hereinabove, Underwriters shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by Underwriters shall not be a condition precedent to the effectiveness of cancellation.
4. Underwriters may nonrenew this Policy by mailing to the **Named Insured** written notice of nonrenewal not less than sixty (60) days before the end of the **Policy Period**. The mailing of such notice shall be sufficient notice. Delivery of such written notice by Underwriters shall be equivalent to mailing.

D. Other Insurance

This Policy shall apply in excess of any other existing valid policy including any self Insured retention or deductible portion thereof, whether such other insurance is stated to be primary,

contributory, excess, contingent or otherwise, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy, unless such other policy is written only as specific excess insurance over the Limits of Liability of this Policy.

XI. OPTIONAL EXTENSION PERIOD

- A. If this Policy is cancelled by the **Named Insured** or if Underwriters nonrenew this Policy, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 7.a. of the Declarations of the total annual premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made during the period of time set forth in Item 7.b. of the Declarations after the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed before the effective date of cancellation or nonrenewal.
- B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Policy must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to Underwriters within thirty (30) days after the effective date of cancellation or nonrenewal. If such notice and premium payment is not so given to Underwriters, there shall be no right to purchase the **Optional Extension Period**.
- C. In the event of the purchase of the **Optional Extension Period**, the entire premium for the **Optional Extension Period** shall be deemed earned at its commencement.
- D. The exercise of the **Optional Extension Period** shall not in any way increase the Limit(s) of Liability of Underwriters.
- E. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Clause XI.

XII. ASSISTANCE, COOPERATION AND SUBROGATION

The **Insureds** agree to provide Underwriters with such information, assistance and cooperation as Underwriters or their counsel may reasonably request, and they further agree that they shall not take any action which in any way increases Underwriters' exposure under this Policy.

In the event of any payment under this Policy, Underwriters shall be subrogated to the **Insureds'** rights of recovery against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents as are necessary to enable Underwriters effectively to bring suit in their name, and shall provide all other assistance and cooperation which Underwriters may reasonably require.

XIII. ACTION AGAINST UNDERWRITERS

No action shall lie against Underwriters unless, as a condition precedent thereto, the **Insureds** shall have fully complied with all of the terms of this Policy, and the amount of the **Insureds'** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and Underwriters. Nothing contained herein shall give any person or organization any right to join Underwriters as a party to any **Claim** against the **Insureds** to

determine their liability, nor shall Underwriters be impleaded by the **Insureds** or their legal representative in any **Claim**.

XIV. ENTIRE AGREEMENT

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

XV. TERRITORY

This Policy shall apply to **Claims** made against the **Insureds** anywhere in the world.

XVI. VALUATION AND CURRENCY

All premiums, limits, Retentions, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars, 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 judgment becomes final or payment of the settlement or other element of **Loss** is due.

XVII. BANKRUPTCY

Bankruptcy or insolvency of the **Insureds** shall not relieve Underwriters of their obligations nor deprive Underwriters of their rights or defenses under this Policy.

XVIII. AUTHORIZATION

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

XIX. HEADINGS

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



<Product Name>

DECLARATIONS

NOTICE: THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY SUBJECT TO ITS TERMS. IT APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE UNDERWRITERS AS SOON AS PRACTICABLE BUT IN NO EVENT LATER THAN THE END OF THE POLICY PERIOD, IN ACCORDANCE WITH AN APPLICABLE EXTENSION PERIOD, OR 60 DAYS AFTER THE POLICY PERIOD EXPIRATION DATE IN THE CASE OF A CLAIM FIRST MADE DURING THE LAST 60 DAYS OF THE POLICY PERIOD. AMOUNTS INCURRED AS DEFENSE COSTS SHALL REDUCE AND MAY EXHAUST THE APPLICABLE LIMITS OF LIABILITY AND ARE SUBJECT TO THE APPLICABLE RETENTIONS. THE UNDERWRITERS HAVE NO OBLIGATION TO PAY DEFENSE COSTS OR ANY SETTLEMENTS OR JUDGMENTS ONCE THE APPLICABLE LIMIT OF LIABILITY IS EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY.

These Declarations along with the completed and signed **Application** and the Policy with endorsements shall constitute the contract between the **Insureds** and Underwriters.

Underwriters: <Insurer Name>
Authority Ref. Number B6012BUSANMSL1001

Policy Number: <Policy Number>

Item 1. **Named Insured:** Named Insured

Principal Address:

<Applicant Address>

<Applicant City>, <Applicant State> <Applicant_Zip>

Item 2. **Policy Period:** From: <Effective Date> To: <Expiration Date>

Both dates at 12:01 a.m. Local Time at the Principal Address stated in Item 1.

Item 3. **Clauses Forming This Policy**

Policy Terms and Conditions (F00041 042008 ed.)

Private Organization Directors, Officers and Entity Liability Clause (F00043 042008 ed.)

Item 4. **Aggregate Limit(s) of Liability**

Clause

Aggregate Limit of Liability for
the **Policy Period**

All Coverages Under This Policy

All_Coverage_Limit

Private Organization Directors, Officers and
Entity Liability Clause

PCL_Liability

Additional Side A D&O Limit of Liability

Add_Side_A

Derivative Demand Sublimit

<Limit>

Item 5. **Retention(s)**

Clause
Private Organization Directors, Officers
and Entity Liability Clause

Retention each **Claim**
PCL_Retention

Item 6. **Premium:** Premium

Item 7. **Optional Extension Period**

- a. Premium for **Optional Extension Period:** <Extension Premium>% of the total annual premium for the Policy
- b. Length of **Optional Extension Period:** <Extension Period>Months

Item 8. **Notification Under This Policy**

(a) Notification pursuant to Clause IX. shall be given to:
Beazley USA Services, Inc.
30 Batterson Park Road
Farmington, CT 06032
Attn: Claims
Or by email: claims@beazley.com

(b) All other notices under this Policy shall be given to:
Beazley USA Services, Inc.
30 Batterson Park Road
Farmington, CT 06032
Attn: Claims
Or by email: claims@beazley.com

Item 9. **Pending or Prior Litigation Date(s)**

Clause
Private Organization Directors, Officers and Entity Liability Clause

Date:
<Date>

Item 10.

Terrorism Coverage:

Coverage Purchased: Yes No

If "Yes", Terrorism Coverage Premium:
<Terrorism Premium>

Item 11. **Endorsements Effective at Inception**
<Endorsements>

Item 12. **Choice of Law: <Choice of Law>**

The Underwriters have caused this Policy to be signed and attested by its authorized officers, but it shall not be valid unless also signed by another duly authorized representative of the Underwriters.

Authorized Representative

Date

Secretary

President

<INSURANCE POLICY>
PRIVATE ORGANIZATION DIRECTORS, OFFICERS AND ENTITY LIABILITY CLAUSE

I. INSURING CLAUSES

- A. The Underwriters shall pay on behalf of the **Insured Persons** all **Loss** which is not indemnified by the **Insured Organization** resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- B. The Underwriters shall pay on behalf of the **Insured Organization** all **Loss** which the **Insured Organization** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- C. The Underwriters shall pay on behalf of the **Insured Organization** all **Loss** resulting from any **Claim** first made against the **Insured Organization** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- D. The Underwriters shall pay on behalf of the **Insured Organization** all **Costs of Investigation** resulting from any **Derivative Demand** first made and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- E. The Underwriters shall pay on behalf of the **Insured Persons** all **Loss** resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act** committed while serving in an **Outside Executive Position**.

The coverage afforded by this Insuring Clause shall be specifically excess of any indemnification and insurance available to such **Insured Persons** from the **Outside Entity**.

II. DEFINITIONS

The following terms whenever used in this Clause in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the Policy Terms and Conditions.

- A. **“Application”** means all applications, including all attachments and other materials submitted therewith or incorporated therein, and any other documents or information submitted in connection with the underwriting of this Policy, including any endorsement or other part thereof, or any other directors, officers or corporate liability policies issued by the Underwriter of which this Policy is a renewal, replacement or which it succeeds in time.
- B. **“Claim”** means:
 - 1. a written demand or request for monetary damages or non-monetary relief against any of the **Insureds**, or to toll or waive a statute of limitations;

2. a civil, criminal, administrative, investigative or regulatory proceeding initiated against any of the **Insureds** commenced by:
 - a. the service of a complaint or similar pleading;
 - b. the filing of a notice of charges, investigative order or similar document; or
 - c. written notice or subpoena from an investigatory authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced;
 3. solely for the purpose of coverage afforded under Insuring Clause I.D., a **Derivative Demand**;
 4. an arbitration or mediation or other alternative dispute resolution proceeding if the **Insured Organization** is obligated to participate in such proceeding or if the **Insured Organization** agrees to participate in such proceeding with the Underwriter's prior written consent, such consent not to be unreasonably withheld.
- C. "**Costs of Investigation**" means reasonable and necessary legal fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of the **Insured Persons** or the **Insured Organization's** overhead expenses) incurred by the **Insured Organization** (including its board of directors or any committee of its board of directors) in connection with the investigation or evaluation of any **Derivative Demand**.
- D. "**Defense Costs**" means reasonable and necessary legal fees and expenses to which the Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedeas, injunction, attachment or similar bonds (provided, however, the Underwriters shall have no obligation to apply for or furnish any bond for appeal, supersedeas, injunction, attachment or any similar purpose), but shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Insured Persons** or the **Insured Organization's** overhead expenses. **Defense Costs** means only "**Costs of Investigation**" for the purpose of coverage afforded under Insuring Clause I.D.
- E. "**Derivative Demand**" means a written demand by one or more owners of voting securities of the **Insured Organization** upon the board of directors of the **Insured Organization** to bring a civil proceeding in a court of law against any of the **Insured Persons** for a **Wrongful Act**.
- F. "**Executive Officer**" means the chairperson, chief executive officer, chief operating officer, president, **Manager**, chief financial officer, in-house general counsel, risk manager, human resources staff or an individual acting in a similar capacity with the **Insured Organization**.
- G. "**Insureds**" means the **Insured Persons** and the **Insured Organization**.
- H. "**Insured Persons**" means all persons who were, now are, or shall be duly elected or appointed directors, officers, trustees or **Managers** of the **Insured Organization** including all persons outside the United States serving in a functionally equivalent role for the **Insured**

Organization including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

- I. **“Loss”** means money which an **Insured** is legally obligated to pay as a result of a **Claim** including compensatory damages, judgments (including prejudgment and post judgment interest awarded against an **Insured** on that part of any judgment paid by the Underwriters), settlements, statutory attorney fees, **Defense Costs** and punitive, exemplary and multiple damages where insurable by law in the applicable jurisdiction most favoring coverage for punitive, exemplary or multiple damages. However, **Loss** shall not include any of the following:
1. the cost of providing non-monetary relief (this provision does not apply to **Defense Costs** where non-monetary relief is sought);
 2. civil or criminal fines, penalties, sanctions, liquidated damages; payroll or other taxes or other matters that may be deemed uninsurable according to the law under which this Policy is construed;
 3. awards, costs, judgments, or orders resulting from contempt of court or violation of a court order or administrative decree;
 4. any investigative costs other than **Costs of Investigation** or **Defense Costs** in connection with a **Claim**; or
 5. any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.
- J. **“Outside Entity”** means:
1. any non-profit corporation, community chest, fund or foundation that is not included in the definition of the **Insured Organization** and that is exempt from federal income tax; or
 2. any other entity, if specified in an endorsement to this Policy.
- K. **“Outside Executive Position”** means the position of director, officer, trustee or other equivalent executive position held by any of the **Insured Persons** in an **Outside Entity** if service in such position is at the specific request of the **Insured Organization**.
- L. **“Wrongful Act”** means:
1. any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, act or omission by:

- a. any of the **Insured Persons** solely in their capacity as such;
 - b. any of the **Insured Persons** while in an **Outside Executive Position** solely with respect to the coverage afforded under Insuring Clause I.E;
 - c. the **Insured Organization** solely with respect to the coverage afforded under Insuring Clause I.C.;
2. any matter claimed against any of the **Insured Persons** solely by reason of their serving in such capacity or in an **Outside Executive Position** solely with respect to the coverage afforded under Insuring Clause I.E.

III. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** in connection with or resulting from any **Claim**:

- A. for actual or alleged libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of tangible property (including loss of use thereof);
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
 1. the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
 2. any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so (such costs hereinafter "Clean Up Costs") including, but not limited to, any **Claim** alleging damage to the **Insured Organization** or its securities holders, purchasers or sellers;

provided, however, this exclusion shall not apply to the extent such **Claim** is otherwise covered under Insuring Clause I.A., other than Clean Up Costs; or **Loss** resulting from any **Claim** covered under Insuring Clauses I.B., I.C., I.D. or I.E., other than Clean Up Costs, to the extent such **Claim** is brought by any security holders of the **Insured Organization** solely in their capacity as such whether directly in their own name or right or derivatively on behalf of the **Insured Organization** and such **Claim** is instigated and continuously pursued totally independent of and totally without the solicitation, assistance, active participation or intervention of the **Insureds**;

- C. for any actual or alleged violation(s) of any of the responsibilities, obligations or duties imposed by any law concerning workers' compensation, disability benefits, unemployment compensation law, social security or other employment benefits law, the Fair Labor Standards Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, including any similar federal, state or local law, regulations promulgated thereunder, or any amendments thereto, or any other law based on the same violations;

- D. for actual or alleged violation(s) of the Employee Retirement Income Security Act of 1974 (“ERISA”), or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments thereto or for an **Insured’s** failure or refusal to establish, contribute to, pay for, insure, maintain, provide benefits pursuant to, or enroll or maintain the enrollment of an **Insured Person** or dependent in, any employee benefit plan, fund or program, including contracts or agreements which are not subject to the provisions of ERISA;
- E. by, on behalf of, or at the direction of any of the **Insureds**, except and to the extent such **Claim**:
1. is a derivative action brought or maintained by or on behalf of a securities holder of the **Insured Organization** who, when such **Claim** is first made, is acting independently of and without the solicitation, assistance, participation or intervention of any **Insured**;
 2. is brought by any of the **Insureds** in the form of a crossclaim, third party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** not otherwise excluded by the terms of this Policy;
 3. is a **Derivative Demand**;
 4. is brought by a receiver, liquidator, trustee or similar official of the **Insured Organization**; or
 5. is brought by any former **Insured Person** who has not served in such capacity or as a consultant to the **Insured Organization** for at least four (4) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** without any active assistance or participation of, or solicitation by, the **Insured Organization** or any other **Insured Persons** or consultants to the **Insured Organization** who are serving or have served in such capacity within such four (4) year period;
- F. against any of the **Insured Persons** serving in an **Outside Executive Position**:
1. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** occurring prior to the date such **Insured Persons** began serving in an **Outside Executive Position** if any of the **Insured Persons**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this Policy; or
 2. by, on behalf of, or for the benefit of the **Outside Entity**, or one or more of the **Outside Entity’s** directors, officers, trustees or equivalent executives;
- G. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. the public offer, sale, solicitation or distribution of securities of the **Insured Organization** or an **Outside Entity**; or

2. the actual or alleged violation of any federal, state, local or provincial statute relating to securities, including but not limited to the Securities Act of 1933 and the Securities and Exchange Act of 1934, or any rules or regulations promulgated thereunder;

provided, however, this exclusion will not apply to any offer, purchase or sale of securities of the **Insured Organization**, whether debt or equity, in a transaction that is exempt from registration under the Securities Act of 1933 (an "Exempt Transaction").

If at least thirty (30) days prior to an offering of securities of the **Insured Organization**, other than pursuant to an Exempt Transaction, the Underwriters receive notice of the proposed transaction and any additional information requested by the Underwriters, the **Insured Organization** may request a proposal for coverage subject to any additional terms and conditions and payment of any additional premium the Underwriters may specify in such proposal. However, the Underwriters will not be obligated to provide such coverage;

H. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, the purchase by the **Insured Organization** of securities of any entity whose securities are traded on any public stock exchange which purchase results in the **Insured Organization** having the right to vote for the election of such entity's directors, either directly or indirectly;

I. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:

1. any deliberately dishonest, fraudulent or criminal act or omission by any of the **Insureds**; or

2. any personal profit or advantage gained by any of the **Insured Persons** to which they were not legally entitled

as determined by a judgment, settlement or a final adjudication; provided, however, this exclusion shall not apply to **Defense Costs** incurred up until such determination is made;

J. for the return by any of the **Insured Persons** of any remuneration paid to them without the previous approval of the appropriate governing body of the **Insured Organization** provided that this exclusion shall not apply to **Defense Costs** incurred in connection with any such **Claim** until such time as it is determined by a judgment, settlement or a final adjudication that such payment was unlawful;

K. with respect to Insuring Clause C. only:

1. for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, service mark, trade name, trade secret, trade dress, or any other intellectual property rights;

2. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged malfunction of any product or failure of any product to perform in any manner as a result of any defect, deficiency, inadequacy or dangerous condition in such product or in its design or manufacture;

3. for actual or alleged breach of written contract, agreement, warranty, or guarantee where such **Claim** is brought by or on behalf of a party to or beneficiary of such contract, agreement, warranty, or guarantee except to the extent that the **Insured** would have been liable in the absence of such contract, agreement warranty, or guarantee;
4. for the liability of others assumed by the **Insured Organization** under any contract or agreement, oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement;
5. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged breach of duty, neglect, error, misstatement, misleading statement, act or omission in connection with the rendering of, or actual or alleged failure to render, professional services by or on behalf of the **Insured Organization** for the benefit of any other entity or person; or
6. by, on behalf of, or at the direction of any employee of or applicant for employment with the **Insured Organization** including without limitation any leased employee, seasonal employee or volunteer; provided that this exclusion shall not apply to a **Claim** brought by any such person in his or her capacity as a shareholder of the **Insured Organization**.

No **Wrongful Acts** shall be imputed to any other natural person for the purpose of determining the applicability of Exclusions I. and J.

IV. ADJUSTMENT

This Policy is issued and the premium computed on the basis of the information submitted to Underwriters as part of the **Application**. In the event the **Named Insured**, after the inception date of this Policy:

- a. merges with another entity such that the **Named Insured** is the surviving entity, or
- b. acquires assets of another entity or creates or acquires a **Subsidiary** whose assets exceed 25% of the total assets of the **Insured Organization** at the time of acquisition,

coverage shall be afforded for a period of ninety (90) days for any **Loss** in any way involving the assets acquired or the assets, liabilities, directors or officers of the entity acquired or merged with, or such **Subsidiary**. Coverage beyond such ninety (90) day period shall only be available if written notice of such transaction or event is given to Underwriters by the **Named Insured**; the **Named Insured** provides Underwriters with such information in connection therewith as Underwriters may deem necessary; the **Insureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by Underwriters; and Underwriters, at their sole discretion, agree to provide such coverage.

V. ORDER OF PAYMENTS

The Underwriters shall pay **Loss** in the order in which **Loss** is incurred. If **Loss** payable under Insuring Clause I.A. and one or more of the other Insuring Clauses is incurred contemporaneously, the

Underwriters shall pay **Loss** payable under Insuring Clause I.A. The **Named Insured** may elect through its chief executive officer to decline or defer such payment under the other Insuring Clauses. The Underwriters shall have no obligation to pay **Loss** after exhaustion of the applicable Limits of Liability, regardless of whether the **Named Insured** has declined or deferred payment.

VI. ADDITIONAL SIDE A D&O LIMIT

If purchased as indicated in Item 4. of the Declarations, the applicable amount shown in Item 4. shall be the Additional Side A D&O Limit of Underwriters applicable only to **Claims** under Insuring Clause I.A. above, which Limit shall be separate and in addition to any other limit shown in Item 4. of the Declarations. The Additional Side A D&O Limit shall apply excess of the aggregate limit of liability applicable to the Private Organization Directors, Officers and Entity Liability Clause and all policies of insurance providing excess coverage.

DECLARATIONS
THB EPL 2012
EMPLOYMENT PRACTICES LIABILITY INSURANCE

Insurance is provided by: Various Insurers as per Schedule attached.

Policy Number:

1. NAMED INSURED:

NOTICE: This is a Claims First Made and Reported Policy which includes Costs of Defense within Coverage Limits. Please read this Policy carefully and discuss the coverage with your insurance agent. The application form and attachments are hereby attached and made a part of this Policy.

Individual Partnership Joint Venture Corporation Other

2. POLICY PERIOD:

(Standard Time at YOUR address shown below).

3. ADDRESS:

4. LIMIT OF LIABILITY (INCLUDES COST OF DEFENSE):

a) Each Claim Limit: USD

b) Total Aggregate Limit: USD

5. SELF-INSURED RETENTION: (INCLUDES COST OF DEFENSE):

Each Claim: USD

6. PRIOR & PENDING DATE:

7. PREMIUM: USD

8. NOTICE OF CLAIM:

Eric Ross
Claims Manager,
Beazley Group,
30 Batterson Park Road,
Farmington,
CT 06032
USA

9. Application form signed and dated:
TRIA Notice signed and dated:

Dated in London:

THB EPL 2012

EMPLOYMENT PRACTICES LIABILITY INSURANCE

**This is a Claims Made and Reported Policy which includes
Cost of Defense within Coverage Limits.**

This policy covers Claims: (1) that are first made against the Insured during the Policy Period or any extension thereof; and (2) that are reported to us in accordance with the policy provisions regarding notice (Section X., Conditions A. and C.); and that arise from Insured Events or Third Party Insured Events consistent with the terms, conditions, limitations and exclusions set forth in this policy. It has been issued in reliance upon statements made to us in the application and any attachments thereto which, application and attachments, are incorporated herein and form part of this policy.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured.

Under this policy the words "we", "us" and "our" refer to the Underwriters providing this insurance.

The word "Insured" means any person or organization qualifying as such under Who Is Insured.

READ THIS POLICY CAREFULLY TO DETERMINE THE EXTENT OF COVERAGE.
IMPORTANT: THIS IS A CLAIMS MADE AND REPORTED POLICY WHICH
INCLUDES COST OF DEFENSE WITHIN THE COVERAGE LIMITS.

I. COVERAGE: WHAT IS COVERED

- A. **Claims Made By Claimants.** We will pay on behalf of the Insured Loss that the Insured is legally obligated to pay because of a Claim first made during the Policy Period or any extension thereof by a Claimant because of an Insured Event, provided that the Claim is reported to us in accordance with Section X., CONDITIONS A.

- B. **Claims Made by Third Party Claimants.** We will pay on behalf of the Insured Loss amounts that the Insured is legally obligated to pay because of a Claim first made during the Policy Period or any extension thereof by a Third Party Claimant because of a Third Party Insured Event, provided that the Claim is reported to us in accordance with Section X., CONDITIONS A.

II. DEFENSE OF CLAIMS

- A. **Duty to Defend.** We have the right and duty to appoint and select counsel and to defend any Claim because of an Insured Event or Third Party Insured Event made or brought against any Insured to which this policy applies. Our consent to your preference for counsel shall not be unreasonably withheld. We have no duty to provide other services or take other actions. Our duty to defend any Claim ends when the Coverage Limits that apply have been exhausted.
- B. **Duty to Pay.** We have the duty to pay any Loss that results from any Claim because of an Insured Event or Third Party Insured Event made or brought against any Insured to which this policy applies. Our duty to pay ends when the available Coverage Limits have been exhausted. We will not pay more than the applicable Coverage Limits. We have the duty to pay Defense Costs incurred for the defense of any Claim which is controlled by us. Payment of Defense Costs are included in the Coverage Limits, they are not in addition to the Coverage Limits.
- C. **Consent To Settle.** We have the right to investigate and settle any Claim in the manner and to the extent that we believe is proper. We will not settle any Claim without your consent. If you refuse to consent to any settlement recommended by us and you elect to contest or continue any legal proceedings, then our liability shall not exceed: 1) the amount for which the Claim could have been settled including Defense Costs incurred with our consent, up to the date of such refusal; plus 2) 80% of covered Loss excess of the proposed settlement as long as 20% is borne by the Insured at its own risk and uninsured. This provision shall not apply unless the total Loss, including the proposed settlement, would exceed the applicable Self-Insured Retention.

Notwithstanding the foregoing, you may settle any matter without our consent if it can be fully resolved (including all defense fees and costs incurred in connection with the handling and settlement of the matter) for 100% (or less) of the Self-Insured Retention amount.

- D. **Transfer of Control.** You may take over control of any outstanding Claim previously reported to us only if we agree that you should or if a court orders you to take over control.

If your Coverage Limits are exhausted, we will notify you of all outstanding Claims so that you can take over control of their defense. We will transfer control to you.

During the transfer of control, we agree to take whatever steps are necessary to continue the defense of any outstanding Claims and avoid a default judgment during the transfer of control to you. If we do so, you agree to pay reasonable expenses we incur for taking such steps after the Coverage Limits are exhausted.

III. DEFINITIONS

A. **Claim** means:

1. a letter, written complaint or written demand where specific charges of Employment Discrimination, Employment Harassment and/or Inappropriate Employment Conduct are made against the Insured or where specific charges of discrimination against or harassment of a Third Party Claimant are made against the Insured;
2. a written demand or request for monetary damages or non monetary relief against the Insured, or to toll or waive a statute of limitations;
3. a charge, administrative complaint or other notice of the commencement of a federal, state or local administrative proceeding;
4. a civil complaint, action or lawsuit;
5. an arbitration proceeding to which any Insured must submit or to which any Insured submits with our consent; or
6. any written complaint, writ or other proceeding in which an Insured is alleged to have committed or engaged in a criminal offense or violation of a federal, state or local penal law where the facts contained in such involve an Insured Event or Third Party Insured Event. Underwriters will have the final decision whether to identify such a proceeding as a Claim and must be agreed to by the Insured Company.

The date of Claim, for purposes of Section I., Coverage A. and B., and Section V., When Coverage is Provided, will be the date the Insured is served or first receives notice of a Claim.

B. **Claimant** means a current or former Employee, applicant for employment with an Insured, or the Equal Opportunity Employment Commission or a similar state or local agency acting on behalf of such current or former Employee or applicant for employment.

C. **Coverage Territory** means Worldwide.

D. **Defense Costs** mean those reasonable and necessary expenses that result from the investigation, settlement or defense of a specific Claim because of an Insured Event or a Third Party Insured Event, including attorney fees and expenses, the cost of legal proceedings, the cost of appeal bonds, the cost of bonds to release property being used to secure a legal obligation (but only for bond amounts within the Coverage Limits of this policy that apply; we have no obligation to furnish any bonds).

We do not consider the following to be Defense Costs: 1) salaries and expenses of our employees, including our in-house and/or coverage attorneys and/or our independent adjusters; 2) salaries and/or expenses of any Insured.

Defense Costs shall not include any amount incurred by you or any Insured(s) before notice of the Claim was given to us, as shown in the Declarations.

E. **Employment Discrimination** means actual or alleged termination of the employment relationship, a demotion, a failure or refusal to hire or promote, denial of an employment benefit or the taking of any adverse or differential employment actions because of race, color, religion, age, sex, disability (including AIDS), pregnancy, sexual orientation, sexual preference, transgender status, national origin, including associational discrimination, or any other basis prohibited by federal, state or local law.

F. **Employee** means an individual whose labor or service is or was engaged by and directed by the Named Insured, or any covered entity. This includes volunteers, part time, seasonal, temporary and leased Employees, as well as any individual employed in a supervisory, managerial or confidential position. Independent contractors whose labor or service is or was engaged by and directed by the Named Insured are Employees but only with respect to the conduct of the insured entity's business.

Employee shall not include: 1) employees leased to others; or 2) temporary employees provided to another employer.

G. **Employment Harassment** means actual or alleged unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal or physical conduct of a sexual or non-sexual nature that: 1) explicitly or implicitly are made a condition of employment, 2) are used as basis for employment decisions, or 3) create a hostile, intimidating or offensive work environment or that interferes with performance.

H. **Inappropriate Employment Conduct** means:

1. any actual or alleged wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied employment contract or allegations of breach of the implied covenant of good faith and fair dealing;

2. any actual or alleged wrongful demotion, wrongful deprivation of career opportunity, failure to grant tenure or seniority, negligent hiring, retention or supervision, wrongful, excess or unfair discipline, negligent Employee evaluation and investigation, retaliation, retaliatory discharge, whistle blowing, violation of public policy, promissory estoppel or intentional interference with an employment contract;

3. any actual or alleged wrongful failure to employ or promote, train, create or enforce adequate workplace policies and procedures;
4. any actual or alleged misrepresentation made to an Employee or applicant for employment;
5. any actual or alleged breach of an express written employment agreement;
6. any actual or alleged wrongful infliction of emotional distress (whether negligently or intentionally), mental injury, mental anguish, humiliation, shock, disease, sickness or other personal injury;
7. any actual or alleged false imprisonment, detention, malicious prosecution, libel, slander, defamation, disparagement, workplace bullying, or invasion of right of privacy; or
8. any actual or alleged violation of the Family Medical Leave Act or Uniformed Services Employment and Re-employment Rights Act or any similar state law

but only if employment-related and claimed by or on behalf of an Employee, former Employee, or applicant for employment, and only if committed or allegedly committed by any of the Insureds in their capacity as such.

- I. **Insured Event** means: actual or alleged acts of Employment Discrimination, Employment Harassment, and/or Inappropriate Employment Conduct by an Insured against an Employee, former Employee or applicant for employment.
- J. **Interrelated Claims** means: 1) one or more covered Claims containing allegations which are related by an unbroken chain of events; 2) related Claims brought by or on behalf of the same Claimant or Third Party Claimant; or 3) class action or multiple plaintiff Claims.
- K. **Loss** means damages, Punitive Damages, statutory liquidated damages, judgments (including prejudgment and post judgment interest awarded against an Insured in connection with that part of any judgment paid by us), settlements, statutory attorney fees, back pay, front pay, damages representing the loss of insurance benefits, and Defense Costs.

With respect to Punitive Damages only, the applicable law for purposes of insurability will be the law most favorable to the Insured.

Loss shall not include:

1. the cost of providing non-monetary relief (this provision does not apply to Defense Costs where non-monetary relief is sought);

2. payment of actual insurance plan benefits claimed by or on behalf of retired Employees, or actual insurance plan benefits that a Claimant would have been entitled to as an Employee of the Insured had the Insured provided the Claimant with a continuation of insurance;
 3. costs incurred by an Insured to modify or adapt any building or property in order to make such building or property more accessible or accommodating to any disabled person or Third Party Claimant; costs associated with eliminating non-essential duties from the job description of a disabled person; costs associated with providing a disabled person with reasonable workplace accommodations; and costs associated with lost productivity by an employer as the result of making a reasonable workplace accommodation for a disabled person;
 4. amounts owed under Wage and Hour Laws;
 5. severance payments, commissions, bonuses, profit sharing or benefits, including but not limited to medical, stock options, vacation, holiday, and/or sick pay;
 6. amounts owed under a written or express contract of employment unless such liability would have attached in the absence of such contract or agreement; provided, that this Exclusion shall not apply to Defense Costs incurred in connection with such Claim;
 7. any payment, incentive, or other compensation that is granted in the form of securities of an Insured or is based on the value of securities of an Insured;
 8. civil or criminal fines (other than civil fines imposed under the Health Insurance Portability and Accountability Act), penalties, sanctions, liquidated damages (other than those awarded under the Age Discrimination in Employment Act or the Equal Pay Act); payroll or other taxes or other matters that may be deemed uninsurable according to the law under which this policy is construed; or
 9. awards, costs, judgments or orders resulting from contempt of court or violation of a court order or administrative decree.
- L. **Management Personnel** means In-house counsel, HR department, risk manager, owner or director.
- M. **Punitive Damages** means punitive damages, exemplary damages and additional damages resulting from the multiplication of compensatory damages.
- N. **Third Party Claimant** means any natural person who is not an Employee of the Insured who makes a Claim because of a Third Party Insured Event.

- O. **Third Party Insured Event** means actual or alleged acts of discrimination against or harassment of a Third Party Claimant by an Insured which violate any federal, state or local statute which prohibits discrimination or harassment.
- P. **Wage and Hour Law** means any federal, state or local law governing or relating to the payment of wages including the payment of overtime, on-call time, rest periods, minimum wages or the classification of employees for the purpose of determining employees' eligibility for compensation or other benefits under such law(s) including any statutory or common law premised on such law.

IV. **EXCLUSIONS: WHAT IS NOT COVERED**

- A. **Worker's Compensation.** This policy does not cover any Loss for violation(s) of any obligation(s) under worker's compensation, disability benefits, social security benefits, or unemployment compensation law, or any similar law. *However*, this exclusion does not apply to any Claim made against the Insured by a Claimant for retaliation, Discrimination or Inappropriate Employment Conduct on account of the filing of a workers' compensation claim, a claim for disability benefits, a claim for social security benefits, a claim for unemployment compensation, or a claim under any similar law.
- B. **Liability Assumed by a Contract.** This policy does not cover any Loss which any Insured is obligated to pay by reason of the assumption of another's liability for an Insured Event or Third Party Insured Event in a contract or agreement.

This exclusion does not apply to liability for damages because of an Insured Event or Third Party Insured Event that any Insured would have had without such contract or agreement.
- C. **ERISA, FLSA, NLRA, COBRA and OSHA.** This policy does not cover any Loss for violation(s) of the Employee Retirement Income Security Act of 1974 Public Law 93-406 with the exception of Claims brought under Section 510, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety Act and Health Act, or any amendments thereto, or any similar federal, state or local law; provided, however, this exclusion does not apply to any Claim of any actual or alleged retaliatory treatment on account of the exercise of rights pursuant to any such law.
- D. **Prior and Pending.** This policy does not cover any Loss arising from:
1) any written demand, suit or other proceeding pending, or order, decree or judgment entered against any Insured on or prior to the applicable Prior and Pending Date as shown in the Declarations; or 2) an Insured Event or Third Party Insured Event which was the subject of notice under any prior policy; or 3) any incident or Claim that was identified in any summary or statement of Claims or potential Claims submitted in connection with or as part of the application for this policy.

- E. **Wage and Hour Law.** This policy does not cover any Loss for an alleged violation of the responsibilities, duties or obligations imposed on an Insured under any Wage and Hour Law; provided, however, that in the event such Claim also alleges an Insured Event otherwise covered by this policy and notwithstanding the provisions of Section II Defense of Claims of this policy and subject to all other terms, conditions and exclusions contained in this policy, this exclusion does not apply to Loss solely applicable to that portion of the Claim alleging such Insured Event.

However, this exclusion does not apply to any Claim made against the Insured by a Claimant for retaliation, Discrimination or Inappropriate Employment Conduct on account of them exercising their rights pursuant to any such law.

- F. **Fraud and Collusion.** This policy does not cover any Loss awarded as part of an adjudicated Claim where there is a finding of fraud or collusion against an Insured. We will pay Defense Costs incurred relating to allegations of fraud and collusion to defend an Insured named in such Claim so long as such Claim also contains allegations against that Insured involving an Insured Event otherwise covered by this policy.

V. **WHEN COVERAGE IS PROVIDED**

- A. This policy applies only to Claims because of an Insured Event or Third Party Insured Event which are first made during the Policy Period and reported to us in accordance with Section X. CONDITIONS. A and C. A Claim is considered to be first made on the date the Insured is served or first receives notice of a Claim.
- B. All Interrelated Claims will be considered to have been made or brought on the date that the first Claim was made or brought.
- C. **Limited Reporting Period** means the sixty (60) day period after the policy ends, during which Claims because of Insured Events or Third Party Insured Events which happen or commence during the Policy Period can be made.

The Limited Reporting Period will apply if this policy is not renewed. Coverage under the Limited Reporting Period may not be canceled. However, the Limited Reporting Period will not apply to Claims if other insurance the Insureds buy covers them or would cover them if its limits of coverage had not been exhausted. A change in the premium, terms or conditions we require shall not be deemed non-renewal by us.

The Limited Reporting Period does not extend the Policy Period, as shown in the Declarations, or change the scope of coverage provided. We will consider any Claim because of an Insured Event or Third Party Insured Event which was first made during the Limited Reporting Period to have been made on the last date on which this policy is in effect.

- D. **Extended Reporting Period.** If this policy is non-renewed or canceled, an Extended Reporting Period of either twelve (12) months, twenty-four (24) months or thirty-six (36) months from the end of the Policy Period, or the effective date of cancellation, which ever is earlier, can be added by us issuing you an Extended Reporting Period Endorsement in exchange for your payment of an additional premium.

Coverage under the Extended Reporting Period is limited to Claims because of Insured Events or Third Party Insured Events which happen or commence before the policy is canceled or the Policy Period ends and which are otherwise covered by this policy.

The Extended Reporting Period Endorsement will not be issued unless we receive a written request for it within thirty (30) days after the policy ends, nor will it take effect unless the additional premium is paid within forty five (45) days after the policy ends. Once the additional premium is paid, the Extended Reporting Period Endorsement may not be canceled and the premium will be fully earned.

The additional premium for a 12 month Extended Reporting Period will be one hundred percent (100%) of the premium charged for the last Policy Period. The additional premium for a 24 month Extended Reporting Period will be one hundred and twenty five percent (125%) of the premium charged for the last Policy Period. The additional premium for a 36 month Extended Reporting Period will be one hundred and fifty percent (150%) of the premium charged for the last Policy Period.

However, the Extended Reporting Period will not apply to any Claim if other insurance you buy covers you or would cover you if its limits of coverage had not been exhausted.

- E. **Coverage Limits For Limited and Extended Reporting Periods.** The Coverage Limits that apply to the policy at the end of the Policy Period shall not be renewed or increased and the Coverage Limits, as shown in the Declarations, shall not be increased in any way by the Limited Reporting Period or the addition of an Extended Reporting Period.

VI. **WHERE COVERAGE IS PROVIDED**

This policy covers Claims made or brought in the Coverage Territory for Insured Events or Third Party Insured Events that happen anywhere in the world.

VII. **WHO IS INSURED**

- A. **Individual Extension.** If you are shown in the Declarations as an individual, you are an Insured but only for conduct in connection with a business of which you are the owner.

- B. **Spousal Extension.** An Insured's lawful spouse or domestic partner (whether such status is derived by reason of statute or common law as recognized by the applicable jurisdiction) will also be considered to be an individual Insured, but only in respect of a Claim arising solely out of his or her capacity as your spouse where such Claim seeks recovery of marital property, community property, jointly held property, or property you transferred to your spouse; provided however, that no coverage is afforded hereunder for any acts that may have been or are alleged to have been committed by such spouse.
- C. **Estates, Heirs and Legal Representatives.** If you are shown in the Declarations as an individual, upon your death, incapacity or bankruptcy, your estates, heirs, legal representatives and assigns are Insureds; *but only* with respect to Claim(s) made against you because of an Insured Event(s) or a Third Party Insured Event(s) to which this policy applies.
- D. **Limited Liability Company (LLC).** If you are shown in the Declarations as a limited liability company, you are an Insured. Your members and managers are also Insureds, but only with respect to the conduct of your business.
- E. **Corporation.** If you are shown in the Declarations as a corporation or an organization other than a partnership or joint venture, you are an Insured. Your stockholders are also Insureds, but only with respect to their liability as your stockholders. Additionally, any entity more than 50% owned by you is an Insured, along with such entity's Employees but only for conduct within the scope of their employment with the entity and provided that the entity's Employees were included in the employee count of the policy application.
- F. **Partnership or joint venture.** If you are shown in the Declarations as a partnership or joint venture, you are an Insured. Your partners or co-ventures and their spouses are also Insureds, but only for the conduct of your business.

However, no person or organization is covered for the conduct of any current or past partnership or joint venture not named in the Declarations.

- G. **Employees.** Your employees, executive officers, directors and your trustees are Insureds including all persons outside the United States serving in a functionally equivalent role but only for conduct that is within the scope of their employment. All persons outside the United States serving in a functionally equivalent role are Insureds including any such organization as a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law.
- H. **Newly Acquired or Formed Entities.** Any organization that you newly acquire, or form while this policy is in effect is an Insured, if you own at least fifty percent (50%) of it. If the total number of existing employees of such newly acquired organization is greater than thirty five percent 35% of the employees listed on the application for this policy, no newly acquired organization is covered for more than ninety

(90) days or the remainder of the Policy Period, whichever is less, from the date acquired unless we agree to cover such acquisition organization within such for a ninety (90) day period in consideration of an additional premium to be determined by us. Notwithstanding the foregoing, no coverage is available under this policy for a Claim against any acquired entity if the Claim results from an Insured Event that happened or first commenced before the Insured acquired the entity.

- I. **Acquisition of the Named Insured / Change in Ownership.** If the Named Insured is acquired by any other person or entity, then coverage under this policy shall continue in full force and effect until termination of this policy, but coverage is limited to Insured Events that took place prior to the effective date of such acquisition. In the event of such acquisition, the Named Insured shall have the right to an Extended Reporting Period pursuant to the terms and conditions of Section V.D. of this policy.

VIII. COVERAGE LIMITS

- A. **Limits of Liability.** The Limits of Liability shown in the Declarations of this policy and the information contained in the Coverage Limits Section establish the most we will pay regardless of the number of Insureds or Claims made.
- B. **Each Claim Limit.** This is the most we will pay for any Claim first made or brought during the Policy Period for Loss.
- C. **Total Aggregate Limit.** This is the most we will pay for the combined total of all Claims first made or brought during the Policy Period for Loss.
- D. **How the Coverage Limits apply to an extension of the Policy Period.** If this Policy Period is extended, the Coverage Limits, as shown in the Declarations, shall not in any way increase. For purposes of the Limits of Liability any policy extension is considered to be part of and not in addition to the former Policy Period.
- E. **Supplemental Limit.** We will pay expenses of up to \$5,000 for your attendance at a trial, hearing or arbitration proceeding at which you are required to attend.

IX. SELF INSURED RETENTION

- A. Our obligation to pay under the policy applies only to the amount of Loss in excess of any Self Insured Retention amount, as shown in the Declarations, and the Coverage Limits will not be reduced by the amount of such Self Insured Retention.
- B. The Self Insured Retention amount will apply separately to each Claim made, however, it will only apply once to all Interrelated Claims.

- C. If, prior to terminating or demoting an Employee the insured consults with and follows the advice of a labor law attorney which we have designated, then the Self Insured Retention amount stated in Item 5. of the Declarations is reduced by 50% in the event the Insured faces a Claim involving such termination or demotion.. If, prior to terminating or demoting an Employee the insured consults with and follows the advice of a labor law attorney who we have not designated, then the Self Insured Retention amount stated in Item 5. of the Declarations is reduced by 25% in the event the Insured faces a Claim involving such termination or demotion.
- D. If the Insured accepts our initial recommendation to agree to a settlement proposal within twenty (20) days of the first request by Underwriters to consent and that settlement is accepted by the claimant, then the unexhausted portion of the Insured's self-insured retention is reduced by 25%.

The Insured may also qualify for the 25% reduction in the Self Insured Retention amount stated in Item 5. of the Declarations if the Insured reports a Claim to us as soon as possible, and in any event, not less than four (4) days prior to the date a response to the agency charge (either the formal response date or the date the respondent must indicate whether it agrees to mediate) is due and before the Insured retains counsel to handle the charge/Claim (even though the Insured may have previously consulted with a labor law or corporate attorney prior to taking employment action, management action or making a management decision, i.e. termination or demotion)

- E. The aggregate reduction in any one Self Insured Retention as set forth in IX. C. and D. cannot be greater than 50% or USD 25,000 whichever is less.

X. CONDITIONS

We have no duty to provide coverage under this policy unless there has been full compliance with all of the conditions contained in this policy.

A. Duties in the event of a Claim

It is a condition precedent to any obligation we may have under this policy that you provide us, as shown in the Declarations, with timely notice of any Claim that is first made during the Policy Period, or Limited Reporting Period or Extended Reporting Period if applicable. Timely notice means: as soon as practicable after any Management Personnel first becomes aware of the Claim but in no event later than 60 days after the end of the Policy Period, or during the Extended Reporting Period if applicable.

Whenever possible when providing notice of a Claim please provide us with name of the Claimant(s) or Third Party Claimants involved in the Claim, the name of the Insured(s) involved in the Claim, the date(s) the alleged Insured Event(s) or Third Party Insured Event(s), took place and copies of any

demands, notices, summonses or legal papers received by the Insured in connection with the Claim. With respect to Claims involving Insured Events, please provide the Claimant's employee / personnel file.

B. Prior Consent

No Insured will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expenses without our consent. Subsequent payments which are deemed by us as having been prejudiced by any such voluntary payment will also be the sole responsibility of the Insured.

C. Report of a Potential Claim

Solely at the Insured's option, the Insured may within the Policy Period or during the Extended Reporting Period, if purchased, report any incident which they learn about which they believe could lead to a Claim. If such report of a Potential Claim is received by us within the Policy Period or before the end of the Extending Reporting Period if purchased, then any Claim made because of an Insured Event or Third Party Insured Event arising from the Potential Claim will be deemed to have been made on the date such report was received.

Whenever possible when providing notice of a Potential Claim, please provide us with the name of the potential Claimant(s) or Third Party Claimants involved in the incident or circumstance being reported, the name of the Insured(s) involved in the such incident or circumstance, the date(s) the incident or circumstance took place and any supporting documentation or information in connection with the incident or circumstance. If applicable, we also request that you provide us with the Potential Claimant's employee / personnel file if the circumstance involves an Employee.

D. Legal Action Against Us

1. No person or organization has the right under this policy:
 - a) To join us as a party or otherwise bring us into a suit asking for damages from an Insured; or
 - b) To sue us on this policy unless all of its terms have been fully complied with.
2. A person or organization may sue us to recover on an agreed settlement or on final judgment against an Insured obtained after an actual trial, but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable Coverage Limits. An agreed settlement means a settlement and release of liability signed by us, the Insured and the claimant's legal representative.

E. Other Insurance

This policy shall apply as primary insurance, except with respect to:

- a. Claims brought by or on behalf of an Independent Contractor or leased or temporary Employee; or
- b. Claims for Third Party Wrongful Acts;

In which case this policy shall apply in excess of any other existing valid policy including any self Insured retention or deductible portion thereof, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, and regardless of whether or not any Loss in connection with such Claim is collectible or recoverable under such other policy, unless such other policy is written only as specific excess insurance over the Limits of Liability of this policy.

F. Premium

The Premium shown in the Declarations, is for the Policy Period shown in the Declarations.

G. Cancellation

You may cancel this policy by mailing to us written notice stating when thereafter such cancellation shall be effective. We may cancel this policy for non-payment of premium only by mailing to the Named Insured, at the address shown in the Declarations, written notice stating when not less than ten (10) days thereafter such cancellation shall be effective.

The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation as stated in the notice shall become the end of the Policy Period. Delivery of such written notice shall be equivalent to mailing.

If you cancel, Underwriters shall retain the customary short rate proportion of the premium hereon. If we cancel for non payment of premium, we shall retain the pro rata proportion of the premium.

H. Representations In Application and Severability

In issuing this policy, we relied upon the statements and representations in the application. The Insureds represent that all such statements and representations are true and deemed material to the acceptance of the risk or the hazard assumed by us under this policy.

The Insureds agree that in the event any such statements or representations are untrue, this policy will not afford any coverage with respect to any of the following Insureds:

1. any Insured who knew the facts that were not truthfully disclosed in the application, and

2. the Insured Company, if the individual(s) who executed the application knew the facts that were not truthfully disclosed.

No knowledge possessed by any Insured shall be imputed to any other Insured.

I. **When We Do Not Renew**

If we decide not to renew this policy, we will mail or deliver to the Named Insured shown in the Declarations, written notice of the non-renewal not less than sixty (60) days before the expiration date.

If notice is mailed, proof of mailing will be sufficient notice of non-renewal.

J. **Transfer Of Rights Of Recovery Against Others to Us/Subrogation**

If the Insured has rights to recover all or part of any payments we have made under this policy, those rights are transferred to us; the Insured must do nothing after a Loss to impair them. At our request, the Insured will bring suit or transfer those rights to us and help us to enforce them.

K. **Bankruptcy**

Bankruptcy or insolvency of the Insured or of the Insured's estate will not relieve us of our obligations under this policy.

L. **Allocation**

If both Loss covered by this policy and non-covered loss are incurred, either because the Claim made against the Insured includes both covered and non-covered matters, or because a Claim is made against both the Insured and others not insured under this policy, then such covered Loss and non-covered loss shall be allocated as follows:

a. one hundred percent (100%) of Defense Costs shall be allocated to covered Loss;

b. Settlements, judgments, verdicts and awards shall be allocated between covered Loss and non-covered loss based upon the relative legal and financial exposures of, and the relative benefits obtained in connection with the resolution of the Claim as between the Insureds' or non-Insureds' exposure to non-covered loss, and the Insureds' exposure to covered Loss. In making such allocation determination, the Insureds' and Underwriters agree to use their best efforts to determine a fair and proper allocation. In the event that an allocation cannot be agreed to, then Underwriters shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

Notwithstanding the foregoing, the Insureds' and Underwriters agree to use their best efforts to determine a fair and proper allocation of all covered Defense Costs and non-covered defense costs associated with the defense of Claims, made by or on behalf of multiple claimants or plaintiffs (irrespective of whether it constitutes a class action), alleging a violation of the responsibilities, duties, or obligations imposed under any Wage and Hour Law. In the event that an allocation cannot be agreed to, then Underwriters shall make an interim payment of the amount of Defense Costs that the parties agree is not in dispute until a final amount is agreed upon or determined by applicable law.



**BEAZLEY ONE MANAGEMENT LIABILITY INSURANCE POLICY
FIDUCIARY LIABILITY CLAUSE**

I. INSURING CLAUSES

- A. The Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- B. The Underwriters shall pay on behalf of the **Insureds** in an amount not to exceed \$100,000 any **Voluntary Compliance Fees** and **Defense Costs** incurred with respect to a **Voluntary Compliance Notice**. Such amount shall be subject to the Retention set forth in Item 5. of the Declarations and shall be part of and not in addition to the Limit of Liability set forth in Item 4. of the Declarations. This Insuring Clause shall not apply to any **Voluntary Compliance Fees** and **Defense Costs** incurred with respect to any **Insured's** participation in any **Voluntary Compliance Program** initiated prior to the Inception Date of this Policy.

II. DEFINITIONS

The following terms whenever used in this Clause in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the Policy Terms and Conditions.

- A. **“Administration”** means one or more of the following administrative duties or activities with respect to a **Plan**:
 - 1. counseling or advising participants or beneficiaries;
 - 2. providing interpretations;
 - 3. handling of records; or
 - 4. affecting enrollment, notification, termination, amendment or cancellation of participants or beneficiaries.
- B. **“Administrator”** means a natural person with responsibility for **Administration** and any third party which is included in the definition of **Administrator** by written endorsement attached hereto, but only with respect to a **Plan**.
- C. **“Application”** means all applications, including all attachments and other materials submitted therewith or incorporated therein, and any other documents or information submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other fiduciary liability policy issued by the Underwriters, of which this Policy is a renewal, replacement or which succeed it in time; and any publicly available documents that are filed by the **Named Insured** or **Plan** prior to the inception date of this Policy with the Internal Revenue Service (“IRS”), Department of Labor or Pension Benefit Guaranty Corporation (or for any similar federal, state, local or foreign regulatory agency).
- D. **“Benefits”** means any obligation under a **Plan** to a participant or beneficiary of a **Plan**.

- E. **“Claim”** means:
1. a written demand or request for monetary damages or non-monetary relief against any of the **Insureds**, or to toll or waive a statute of limitations;
 2. a civil, criminal, arbitration, administrative, investigative or regulatory proceeding initiated against any of the **Insureds** commenced by:
 - a. the service of a complaint or similar pleading;
 - b. the filing of a notice of charge, investigative order or similar document; or
 - c. written notice or subpoena from an investigatory authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced;
 3. any fact-finding investigation by the Department of Labor, the Pension Benefit Guaranty Corporation or similar governmental agency located outside the United States;
 4. solely for the purpose of coverage afforded under Insuring Clause I.B., a **Voluntary Compliance Notice**; or
 5. an arbitration or mediation or other alternative dispute resolution proceeding if the **Insured** is obligated to participate in such proceeding or if the **Insured** agrees to participate in such proceeding with Underwriters’ prior written consent, such consent not to be unreasonably withheld.
- F. **“Defense Costs”** means reasonable and necessary legal fees and expenses to which the Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedeas, injunction, attachment or similar bonds (provided, however, the Underwriters shall have no obligation to apply for or furnish any bond for appeal, supersedeas, injunction, attachment or any similar purpose), but shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Insured Persons** or the **Insured Organization’s** overhead expenses.
- G. **“ERISA”** means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), and any amendment or revision thereto, or any similar common or statutory law of the United States, Canada or any state, foreign or other jurisdiction to which a **Plan** is subject. **ERISA** shall not include any law concerning worker’s compensation, unemployment insurance, social security, government mandated disability benefits or similar law.
- H. **“ESOP”** means any employee stock ownership plan as defined in **ERISA** or any **Plan** under which investments are made primarily in securities of the **Insured Organization**.
- I. **“ESOP Administration”** means one of more of the following administrative duties or activities with respect to an **ESOP**:

1. giving notice to employees, participants or beneficiaries;
2. interpreting benefits;
3. handling records; or
4. effecting enrollment, termination or cancellation of employees, participants, or beneficiaries

Provided, however, that **ESOP Administration** does not include the giving of advice or counsel with respect to any matter relating to securities issued by the **Insured Organization**.

- J. **“Executive Officer”** means any duly elected officer, director, natural person partner, principal, **Manager**, in-house general counsel or member of the **Insured Organization’s** legal department, trustee or **Administrator** or individual acting in a similar capacity with the **Insured Organization**.
- K. **“Fiduciary”** means a fiduciary of a **Plan** as defined in **ERISA**.
- L. **“Insured”** means any **Insured Person**, the **Insured Organization** and any **Plan**.
- M. **“Insured Person”** means all persons who were, now are, or shall be employees of the **Insured Organization** or a **Plan**; or duly elected or appointed directors, officers, trustees or **Managers** of the **Insured Organization** or a **Plan** in his or her capacity as a **Fiduciary** or **Administrator** of a **Plan** including all persons outside the United States of America serving in a functionally equivalent role including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.
- N. **“Loss”** means money which an **Insured** is legally obligated to pay as a result of a **Claim**, other than a **Voluntary Compliance Notice**, including damages, judgments (including prejudgment or postjudgment interest awarded against an **Insured** on that part of any judgment paid by the Underwriters), settlements, statutory attorney’s fees, **Defense Costs** and punitive, exemplary and multiple damages where insurable by law in the applicable jurisdiction most favoring coverage for punitive, exemplary or multiple damages. However, **Loss** shall not include:
1. taxes or the loss of tax benefits, or civil or criminal fines or penalties imposed by law except for:
 - a. the five percent (5%) or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**;
 - b. the twenty percent (20%) or less civil penalty imposed upon an **Insured** under Section 502(l) of **ERISA**;
 - c. **Voluntary Compliance Fees**; or
 - d. penalties or other awards imposed by the Pension Ombudsman of England or Occupational Pensions Regulatory Authority of England pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, the UK Pensions

Act 2004, as amended, and any rules and regulations promulgated thereunder, provided always that no part of the premium for this Policy attributable to this exception has been funded, paid or reimbursed from the funds or assets of any pension scheme insured under this Policy;

2. **Benefits**, which are or may become due except to the extent that such sums are payable as a personal obligation of a natural person **Insured** because of such natural person **Insured's Wrongful Act**;
 3. any amounts for which the **Insureds** are legally or financially absolved from payment;
 4. matters deemed uninsurable under the law pursuant to which this Policy shall be construed; or
 5. any amounts incurred in defense of any **Claim** for which any other Underwriter has a duty to defend.
- O. **"Plan"** means any plan, fund or program, regardless of whether it is subject to regulation under Title I of **ERISA** or any part thereof, or meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1986, as amended, and which is:
1. a welfare plan as defined in **ERISA** sponsored solely by the **Insured Organization** or sponsored jointly by the **Insured Organization** and a labor organization, solely for the benefit of the employees of the **Insured Organization**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy pursuant to Clause IV.A.;
 2. a pension plan as defined in **ERISA** (subject to 7. below) sponsored solely by the **Insured Organization** or sponsored jointly by the **Insured Organization** and a labor organization, solely for the benefit of the employees of the **Insured Organization**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy pursuant to Clause IV.A.;
 3. a plan which is both a welfare plan and a pension plan as defined in **ERISA** (subject to 7. below) sponsored solely by the **Insured Organization** or sponsored jointly by the **Insured Organization** and a labor organization solely for the benefit of the employees of the **Insured Organization**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy pursuant to Clause IV.A.;
 4. a government-mandated program for unemployment insurance, workers compensation, social security or disability benefits for employees of the **Insured Organization**;
 5. any other plan, fund or program which is included in the definition of **Plan** by written endorsement attached hereto;
 6. any other employee benefit plan that is not subject to Title I of **ERISA**, including any fringe benefit or excess benefit plan, that was, is, or becomes sponsored solely by the

Insured Organization exclusively for the benefit of employees of the **Insured Organization**; or

7. an **ESOP** but solely with respect to **ESOP Administration**. No **ESOP** is included within the definition of **Plan** with respect to **Claims** for any **Wrongful Act** other than **ESOP Administration** unless that **ESOP** is specifically included within the definition of **Plan** by written endorsement attached hereto.
- P. **“Voluntary Compliance Fees”** means any costs of corrections, fees, penalties or sanctions imposed by law under a **Voluntary Compliance Program** that any **Insured** becomes legally obligated to pay as a result of **Wrongful Acts**, but shall not include any other costs, charges, expenses, fees, penalties, sanctions, assessments, damages, taxes or matters that may be deemed to be uninsurable under the law pursuant to which this Policy shall be construed.
- Q. **“Voluntary Compliance Notice”** means a written notice given to the Underwriters indicating an **Insured’s** intent to participate in a **Voluntary Compliance Program** during the **Policy Period**.
- R. **“Voluntary Compliance Program”** means any voluntary compliance resolution program or similar voluntary settlement program administered by the Internal Revenue Service or Department of Labor of the United States, including, but not limited to, the Employee Plans Compliance Resolution System, the Self Correction Program, the Audit Closing Agreement Plan, the Delinquent Filer Voluntary Compliance program and the Voluntary Fiduciary Correction program.
- S. **“Wrongful Act”** means:
 1. as respects a **Fiduciary**, a **Plan** or the **Insured Organization**:
 - a. any actual or alleged violation of any of the responsibilities, obligations or duties imposed on **Fiduciaries** by **ERISA** in connection with a **Plan**; or
 - b. any matter claimed against an **Insured** by reason of his, her or its status as a **Fiduciary** of a **Plan**;
 2. as respects an **Administrator**:
 - a. any actual or alleged act, error or omission in the performance of **Administration**; or
 - b. any matter claimed against an **Administrator** by reason of his or her status as such;
 3. as respects an **Insured Person**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or **Administrator** of any other plan, including a multi-employer plan, but only if such service is at the specific request of the **Insured Organization**; or

4. any actual or alleged act, error or omission by an **Insured Person** in the performance of **ESOP Administration**.

III. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** or **Voluntary Compliance Fees** in connection with or resulting from any **Claim**:

- A. for actual or alleged libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of any tangible property (including loss of use thereof);
- B. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
 1. the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere, or
 2. any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so, including, but not limited to, any **Claim** alleging damage to the **Insured Organization** or the **Plan** or any of their security holders, purchasers or sellers

provided, however, that this exclusion shall not apply to any **Claim** by or on behalf of a beneficiary of or a participant in any **Plan** relating to the diminution in value of any securities issued by an organization other than the **Insured Organization** which are owned by the **Plan**;

- C. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving discrimination in violation of any law other than **ERISA** or any similar act;
- D. for liability of others assumed by the **Insured** under any contract or agreement, either oral or written, except to the extent that the **Insured** would have been liable in the absence of the contract or agreement or unless the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established;
- E. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any act or omission in his, her or its capacity as a **Fiduciary** or **Administrator** of any plan, fund or program other than a **Plan** as defined in this Policy, or by reason of his, her or its status as a **Fiduciary** or **Administrator** of such other plan, fund or program;
- F. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any **Wrongful Act** as respects a **Plan** taking place at any time when the **Insured Organization** did not sponsor such **Plan**;
- G. for any actual or alleged violation of responsibilities, duties or obligations imposed on an **Insured** under any law concerning workers' compensation, unemployment insurance, Social Security, or disability insurance, the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the Occupational Safety and Health Act, the National Labor Relations

Act, including amendments thereto and regulations promulgated thereunder, or any similar or related federal, state or local law other than COBRA;

- H. for the failure to collect contributions owed to any **Plan** from any employer unless such failure is due to the negligence of an **Insured**;
- I. for **Benefits**, which are or may become due except to the extent that such sums are payable as a personal obligation of an **Insured Person**; provided, however this exclusion shall not apply to **Defense Costs**; or
- J. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
 - 1. any deliberately dishonest, fraudulent or criminal act, or omission by any of the **Insureds**; or
 - 2. any personal profit or advantage gained by any of the **Insured Persons** to which they were not legally entitled

as determined by a judgment, settlement or a final adjudication; provided, however, this exclusion shall not apply to **Defense Costs** incurred up until such determination is made.

No **Wrongful Act** shall be imputed to any of the other **Insureds** for the purpose of determining the applicability of any of the Exclusions.

IV. **ACQUISITIONS**

A. **Sponsorship of Another Plan**

In the event the **Insured Organization** becomes a sponsor of a plan, other than an **ESOP**, after the inception date of this Policy, whether by acquisition of a **Subsidiary** or another entity, merger with another entity where the **Insured Organization** is the surviving entity or by its own creation, and the total assets of such newly sponsored plan do not exceed twenty-five percent (25%) of the total consolidated assets of the existing **Plans** as set forth in the most recent audited financial statements, coverage shall be afforded for such **Subsidiary** or entity, such **Subsidiary's** or entity's **Plan** and its **Insured Persons** until the end of the **Policy Period**, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of such sponsorship by the **Insured Organization**. Coverage for such **Subsidiary** or entity, such **Subsidiary's** or entity's **Plan** and its **Insured Persons** for such **Plans** whose total assets do exceed twenty-five percent (25%) of the total consolidated assets of the existing **Plans** as set forth in the most recent audited financial statements shall be afforded for a period of ninety (90) days, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of such sponsorship by the **Insured Organization**. Coverage beyond such ninety (90) days shall only be available if:

- 1. written notice of such sponsorship is given to the Underwriters by the **Insured Organization**;

2. the **Insured Organization** provides the Underwriters with such information in connection therewith as the Underwriters may deem necessary;
3. the **Insureds** accept any special terms, conditions, exclusions or additional premium as may be required by the Underwriters; and
4. the Underwriters, at its sole discretion, agrees to provide such coverage.

Notwithstanding the foregoing, with respect to an **ESOP**, coverage shall be granted pursuant to this Clause only for **Claims** relating to **ESOP Administration** and no coverage shall be granted for **Claims** alleging any other **Wrongful Acts** unless such **ESOP** is included in the definition of **Plan** by a written endorsement to this Policy and any related additional premium required by the Underwriters has been paid.

B. Cessation of Plan Sponsorship and Termination, Sale or Spin-off of Plan

In the event a **Plan** ceases to be sponsored by the **Insured Organization** or ceases to be sponsored jointly by the **Insured Organization** and a labor organization after the Inception Date of this Policy, or in the event the **Insured Organization** terminates, sells or spins off any **Plan** before or after the inception date of this Policy; or of any policy issued by the Underwriters of which this Policy is a renewal or replacement, coverage under this Policy with respect to such **Plan** and its **Insured Persons** shall continue until the end of the **Policy Period** for those who were **Insureds** at the time such **Plan** ceased to be sponsored by the **Insured Organization**, or jointly by the **Insured Organization** and a labor organization, or who were **Insureds** at the time of such **Plan** termination, sale or spin-off or who would have been **Insureds** at the time of **Plan** termination, sale or spin-off if this Policy had been in effect, but only with respect to **Wrongful Acts** committed or allegedly committed prior to the date such **Plan** ceased to be sponsored by the **Insured Organization**, or jointly by the **Insured Organization** and a labor organization, or such **Plan** termination, sale or spin-off. The **Insureds** shall give notice to the Underwriters of cessation of sponsorship as soon as practicable together with such information as the Underwriters may require.

C. Merged Plans

In the event a **Plan** is merged with another **Plan** during the **Policy Period**, this Policy shall continue to provide coverage for both **Plans** for as long as this Policy shall remain in effect and subject to all the terms and conditions of this Policy.

In the event a **Plan** is merged with another plan for which coverage is not provided under this Policy, this Policy shall continue to provide coverage only for the covered **Plan** for as long as this Policy shall remain in effect and subject to all the terms and conditions of this Policy for **Claims** with regard to **Wrongful Acts** which took place prior to the date the plans merged.